

POWER SYSTEM DEVELOPMENT FUND SUPPORT AGREEMENT

POWER SYSTEM DEVELOPMENT FUND SUPPORT AGREEMENT (hereinafter referred to as this "**Agreement**") is entered into on this the ----- day of ----- (Month) --- --- (Year) at -----(Place).

BETWEEN:

THE PRESIDENT OF INDIA in his executive capacity for the Government of India, represented by the Ministry of Power, hereinafter referred to as "**GOI**" (which expression shall unless repugnant to the context or meaning thereof deemed to include its successors and permitted assigns) of the **ONE PART**;

AND

M/S _____ LIMITED, a company incorporated under the Companies Act, 1956 with CIN No. _____, having its registered office at _____ hereinafter referred to as the "**Successful Bidder**" (which expression shall unless repugnant to the context or meaning thereof deemed to include its successors and permitted assigns) of the **OTHER PART**.

WHEREAS:

RECITALS

- A. GOI vide Office Memorandum No.4/2/2015-Th-I dated 27th March 2015 (hereinafter referred to as "**Office Memorandum**") has introduced the Scheme for utilisation of Gas based power generation capacity for the financial years (April-March) 2015-16 and 2016-17 (hereinafter referred to as the "**Scheme**").
- B. The Scheme has envisaged provision of support from PSDF Fund (hereinafter defined) in connection with supply of RLNG (hereinafter defined) to stranded gas based plant ("**SGP**") and the power plants receiving limited domestic gas ("**DGP**") selected through a reverse e-bidding process.
- C. Accordingly, the GOI invited bids from {the SGPs under the Tender Document bearing no [•] dated [•] for grant support from PSDF Fund}/{the DGPs under the Tender Document bearing no [•] dated [•] for grant support from PSDF Fund}¹ ("**Tender Document**").
- D. Pursuant to the Tender Document and the bid submitted by the Successful Bidder, the GOI through the Letter of Award dated [•] bearing no. [•] ("**Letter of Award**") sanctioned support from the PSDF Fund upto the Sanctioned PSDF Support Amount (hereinfter defined) for generation of the Total Incremental

¹ To strike off whichever is not applicable and retain other.

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Electricity (hereinfter defined) during the Relevant Period (hereinfter defined) by the Successful Bidder at its Specified End Use Plant (hereinfter defined), in accordance with the terms and conditions of this Agreement.

- E. The Successful Bidder has agreed to supply the Total Incremental Electricity to the Discom(s) (hereinafter defined) under the PPA (hereinafter defined).
- F. In view of the aforesaid, the Parties wish to enter into this Agreement for setting out *inter alia* the terms and conditions of the disbursement of the Sanctioned PSDF Support Amount to the Successful Bidder.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS :

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

Account Bank	means [●] ² at its branch [●] being the bank with which the Successful Bidder has opened the Trust and Retention Account under the Trust and Retention Account Agreement and any successor or transferee thereof.
Agreement	means this Agreement as may be amended from time to time.
Allowable Station Heat Rate	means [●] ³ being 105% of the normative station heat rate of the Specified End Use Plant.
Applicable Law	means all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental

² Name of the bank with which the TRA has been entered into to be inserted.

³ To be inserted as per the Allowable SHR as set out in Annexure – I of the Tender Document.

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authority or court or other law, rule or regulation approval from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India.

Appropriation Event	shall have the meaning ascribed to in Clause 5.2.1.
Appropriate Commission	means the Central Electricity Regulatory Commission or the State Electricity Regulatory Commission (as the case may be) constituted under the Electricity Act, 2003 or such other succeeding authority or commission as may be notified by Government of India from time to time.
Base PLF	means the average PLF of [●] ⁴ .
Certificates	shall have the meaning ascribed to in Clause 2.3.
Capped Unit Price	means Rs. [●] ⁵ per Unit of Incremental Electricity.
Control	means and includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.
DGP	shall have the meaning ascribed to in Recital B.

⁴ Base PLF shall be inserted as provided in the Tender Document with respect to the Successful Bidder.

⁵ The Target Price as per the Tender Document to be inserted.

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Discom	means a distribution licensee holding licence for distribution of electricity issued under Section 14 of the Electricity Act, 2003 and/or any licensee under the acts set out in the Schedule specified in Section 14 to the Electricity Act, 2003 procuring power on behalf of the distribution licensees, with which the Successful Bidder has entered into a PPA for supply of the Total Incremental Electricity and which is required to sign and issue the Discom's Letter of Confirmations.
Discom's Letter of Confirmations	means the letter of confirmations to be issued by the Discom substantially in the form set out in <u>Annexure – I</u> hereto.
e-bid RLNG	means liquefied natural gas imported by the e-bid RLNG Operator and regasified at the regasification terminal(s), which is to be supplied by e-bid RLNG Operator to the Specified End Use Plant of the Successful Bidder pursuant to the e-bid RLNG Sale Agreement.
e-bid RLNG Operator	means GAIL (India) Ltd.
Eligibility Condition	shall have the meaning as ascribed to it in the Tender Document.
EPMC	means Empowered Pool Management Committee constituted in accordance with the Office Memorandum.
Financial Bid	means the Financial Bid submitted by the Successful Bidder and accepted by the Nodal Authority in accordance with the Tender Document.
e-bid RLNG Sale Agreement	means the e-bid RLNG Sale Agreement to be executed between the Successful Bidder and the e-bid RNLG Operator.

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Gross Payment	means the amount required to be paid by Discom to the Successful Bidder under the PPA for purchase of Incremental Electricity which shall not exceed the Capped Unit Price plus the Per Unit PSDF Support Amount.
Incremental Electricity	means the Units of the electricity to be generated over and above Base PLF upto the Target PLF at the Specified End Use Plant by using the e-bid RLNG, and which Units are supplied to the Discoms.
Letter of Award	shall have the meaning as ascribed to it in Recital D.
Nodal Authority	means the Joint Secretary, Thermal in the Ministry of Power empowered with the task of implementation and operation of the Scheme and this Agreement.
Normative SHR	means [●] ⁶ being the normative station heat rate of the Specified End Use Plant.
Office Memorandum	shall have the meaning as ascribed to it in Recital A.
Parties	means the GOI and the Successful Bidder.
Party	means each of the Parties.
Per Unit PSDF Support Amount	means the amount of Rs. [●] ⁷ for one Unit of the Incremental Electricity or such price per Unit of Incremental Electricity as may stand revised in accordance with Clause 2.8.

⁶ To be inserted as per the Normative SHR as set out in Annexure – I of the Tender Document.

⁷This is to be filled up as per the Per Unit PSDF Support Amount accepted in the Financial Bid of the Successful Bidder.

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PPA	means the power purchase agreement dated [●] ⁸ executed by the Successful Bidder with the Discom for supply of the Total Incremental Electricity.
PSDF Fund	means Power System Development Fund set up by GOI.
PSDF Performance Security	shall have the meaning ascribed to in Clause 5.1.
PSDF Support Amount	means the part of the Sanctioned PSDF Support Amount to be disbursed for Incremental Electricity generated in accordance with the provisions of Clause 2 hereto.
Person	includes any company or association or individual or body of individuals, whether incorporated or not.
PLF	mean Plant Load Factor = $\frac{\text{Gross energy generated (MWh) during the Relevant Period} \times 100}{(C \times H)}$ Where: 'C' is total installed capacity in MW 'H' is total hours in the period under review
RLNG	means re-gasified liquefied natural gas.
Relevant Period	means the period from June 1, 2015 to September 30, 2015 or such modified period as may be notified by the Nodal Authority.

⁸ To be inserted the execution date of the PPA.

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Sanctioned PSDF Support Amount	means the amount of Rs. [●] ⁹ for the Relevant Period or such total PSDF Support Amount as may stand revised in accordance with Clause 2.8.
Scheme	shall have the meaning ascribed to it in Recital A.
SGP	shall have the meaning ascribed to in Recital B.
Specified End Use Plant	means [●] ¹⁰ MW gas fired power plant of the Successful Bidder located at [●] ¹¹ .
Target PLF	means [●] ¹² % PLF to be achieved at the Specified End Use Plant.
Tender Document	shall have the meaning as ascribed to it in Recital C.
Total Incremental Electricity	means [●] ¹³ Units of the Incremental Electricity to be produced by the Successful Bidder in the Relevant Period from its Specified End Use Plant as per the Financial Bid of the Successful Bidder and which Units are supplied to the Discoms.
Trust and Retention Account	means Account Number [●] ¹⁴ with the Account Bank in its branch at [●] ¹⁵ opened pursuant to the Trust and Retention Account Agreement.

⁹ This will be the aggregate of the Per Unit PSDF Support Amount multiplied by number of Units of the Total Incremental Electricity.

¹⁰ The installed capacity of the Specified End Use Plant to be inserted as set out in Annexure – I of the Tender Document.

¹¹ To provide full address of the plant.

¹² The percentage of PLF at which the Letter of Award is issued to the Successful Bidder pursuant to the Tender Document, to be inserted.

¹³ No. of Units of the Total Incremental Electricity at which the Letter of Award is issued to the Successful Bidder pursuant to the Tender Document, to be inserted.

¹⁴ The Trust and Retention Account's number to be inserted.

¹⁵ The full address of the branch of the Account Bank where the Trust and Retention Account has been opened, to be inserted.

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Trust and Retention Account Agreement	means the trust and retention account agreement dated [●] ¹⁶ entered into between the Successful Bidder and the Account Bank for utilisation of the Gross Payment.
Trust and Retention Account Mechanism	means the mechanism of the operation of the Trust and Retention Account as prescribed under the Tender Document.
USD	means United States Dollars being the lawful currency of the United States of America.
USD Exchange Rate	means the exchange rate of Indian rupees and USD calculated at the Amount of Indian Rupees per USD as notified by Reserve Bank of India on the relevant date.
Unit	means one kWh of electricity.

1.2 Interpretation

- (a) Unless the context otherwise requires, a reference to the singular shall include a reference to the plural and vice-versa, and a reference to any gender shall include a reference to all other genders.
- (b) The headings of Clauses in this Agreement are inserted for convenience of reference only and shall not affect the meaning of construction of this Agreement.
- (c) A reference to a volume of e-Bid RLNG is a reference to the volume at standard pressure and standard temperature on gross heating value unless and otherwise specified contrary.
- (d) Any reference to a document (including this Agreement) or law shall be deemed a reference to such document or law as it may be amended, supplemented, revised or modified from time to time.
- (e) Any reference to any Person shall be deemed a reference to such Person's successors and permitted assigns.

¹⁶ The date of the Trust and Retention Account entered into as per the requirement of the Tender Document to be inserted.

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- (f) The terms and provisions of this Agreement, and the respective rights and obligations of the Parties under this Agreement, shall be binding upon, and inure to the benefit of, their respective successors and permitted assigns.
- (g) "year" "month" and "day" wherever used in this Agreement imply that of English calendar.

2. PSDF SUPPORT

- 2.1 The Successful Bidder is eligible to receive support from the PSDF Fund upto a maximum of the Sanctioned PSDF Support Amount for generation and supply of the Total Incremental Electricity to the Discom during the Relevant Period.
- 2.2 The Successful Bidder shall be eligible to receive PSDF Support Amount for the Units of Incremental Electricity generated at the Specified End Use Plant on monthly basis through the Discom. The PSDF Support Amount for a particular month shall be aggregate of: Per Unit PSDF Support Amount (x) the total Units of the Incremental Electricity generated in that particular month.
- 2.3 The PSDF Support Amount will be disbursed subject to the following:
 - (a) The Successful Bidder shall submit the following certificates ("**Certificates**") to the Nodal Authority:
 - (i) A Certificate by e-bid RLNG Operator certifying quantity of e-bid RLNG supplied in the previous month.
 - (ii) A Self-Certificate by the Successful Bidder certifying the quantity of e-bid RLNG actually utilized in the previous month for generation of the Incremental Electricity and actual Incremental Electricity supplied to the Discom.
 - (iii) A Certificate by the Discom certifying the quantum of the Incremental Electricity purchased in the previous month from the Successful Bidder's Specified End Use Plant.

Provided however in case different quantum are provided in Certificates provided under Clause 2.3 (a) (ii) and Clause 2.3 (a) (iii) above, the PSDF Support Amount shall be disbursed in accordance with the Certificate provided under Clause 2.3 (a) (iii). The GOI shall set aside and retain PSDF Support Amount for the disputed differential amount of the Incremental Electricity and the said PSDF Support Amount shall be be disbursed depending upon the outcome of the dispute for the disputed differential amount of Incremental Electricity to be resolved in terms of the PPA between the Successful Bidder and the Discom.

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Provided the Certificates shall be provided substantially in the format prescribed by the Nodal Authority from time to time.

- (b) Only after receipt of the Certificates, the GOI through the Nodal Authority will transfer the PSDF Support Amount to the Discom. The Successful Bidder shall not be entitled to receive the PSDF Support Amount directly in any scenario. The PSDF Support Amount shall only be conditional upon the supply of the Incremental Electricity to the Discom and submission of the Certificates in this regard.
- (c) The timing of the release of the PSDF Support Amount shall be subject to the availability of the funds in the Ministry of Power's relevant budget head.

- 2.4 The GOI is authorised to lay down further guidelines in this regard, including appropriate modification in the requirement of above Certificates and mechanism of release of the PSDF Support Amount, in the interest of ease of operation, subject to the overall condition that the Sanctioned PSDF Support Amount will be available only for the Total Incremental Electricity during the Relevant Period.
- 2.5 The Discom shall make payment of the Gross Payment to the Successful Bidder directly by depositing in the Trust and Retention Account.
- 2.6 The Successful Bidder shall supply the Incremental Electricity only to the Discom and no other Person.
- 2.7 The Successful Bidder and the Discom shall ensure that the price of the Incremental Electricity supplied by the Successful Bidder to the Discom does not exceed the Capped Unit Price plus Per Unit PSDF Support Amount.

2.8 Revision of PSDF Support Amount

- 2.8.1 The tender process under the Tender Document has been carried out by the GOI and the Successful Bidder has made the Financial Bid of Per Unit PSDF Support Amount considering *inter alia* on the following parameters:
 - (i) The indicative ex-terminal price of the e-bid RLNG (along with USD and Indian rupees components thereof) has been communicated to the Bidders before the auction process and any variation thereof shall be adjusted as per the formulae prescribed in the PSDF Support Agreement.
 - (ii) The applicable USD Exchange Rate applicable to the USD components of the ex-terminal price of the e-bid RLNG as set out in sub-clause (i) above, has also been communicated by the e-bid RLNG Operator before the auction.

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2.8.2 The GOI has agreed that Per Unit PSDF Support Amount shall stand revised ("**Revised Per Unit PSDF Support**") due to any fluctuation (whether downward or upward) in price of the components as mentioned in Clause 2.8.1(i) & (ii) and the USD Exchange Rate fluctuate from the rates as mentioned above, whether upward or downward, in accordance with the formulae set out below. The said variation fluctuation shall be based on the invoice raised by the e-bid RLNG Operator.

$$\Delta\text{PSDF} = \text{VC} \times (\text{P2} \times \text{E2} - \text{P1} \times \text{E1}) / (\text{P1} \times \text{E1})$$

VC = variable charge on account of fuel

$$\text{VC} = (\text{HR} \times \text{P1} \times \text{E1}) / 252000 \text{ (Rs/kWh)}$$

HR = Gross heat rate of the Specified End Use Plant on GHV basis

HHV = Higher heating value of gas

Final PSDF support needed = PSDF support during e-bid + ΔPSDF

ΔPSDF = change in PSDF support due to variations in spot RLNG rate or forex rate (Rs/kWh)

P2 = Final price of the components as mentioned in Clause 2.8.1(i), of e-bid RLNG which are payable in USD (USD/MMBTU)

P1 = Initial price of the components as mentioned in Clause 2.8.1(i), of RLNG which are payable in USD (USD/MMBTU)

E2= Final foreign exchange rate (USD to INR)

E1= Initial foreign exchange rate (USD to INR)

Assumption: the RLNG price in USD/MMBTU is on GHV basis.

It is clarified that the Heat Rate (HR) to be used in above formulae shall be the lower of Normative SHR provided by CEA for the Specified End Use Plant and the Allowable SHR (corresponding to the e-bid RLNG required and the Total Incremental Units).

2.8.3 The Revised Per Unit PSDF Support shall apply to the quantum of the Incremental Electricity which is yet to be produced from the e-bid RLNG supplied at revised RLNG price as per the invoice raised by the e-bid RLNG Operator, due to variations in price of the components as mentioned in Clause 2.8.1(i) & (ii) and the USD Exchange Rate. It is clarified that in such event, the Increased Per Unit Support Price may go above Rs. [●]/Unit.

2.8.4 Accordingly, the Sanctioned PSDF Support Amount shall stand revised. However, the aggregate PSDF support from the PSDF Fund shall be limited to Rs. [●].

3. TRUST AND RETENTION ACCOUNT (S)

3.1 The Successful Bidder shall ensure that the Trust and Retention Account Agreement shall be in compliance with and adhere to the Trust & Retention Account Mechanism.

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- 3.2 The Gross Payment including PSDF Support Amount shall be deposited in the Trust and Retention Account in accordance with the Trust & Retention Account Mechanism and shall be utilised further in accordance with provisions of the Trust and Retention Account Mechanism.
- 3.3 The Successful Bidder shall ensure that the Gross Payment shall be utilised only for {the payments towards the variable cost of generation of Incremental Electricity as per the applicable regulations under the Electricity Act, 2003 issued by the Appropriate Commission.}/{the payment towards the variable cost of generation of Incremental Electricity and operation & maintenance expenses, as per the applicable regulations under the Electricity Act, 2003 issued by the Appropriate Commission and for discharging debt service obligations. The Successful Bidder shall also ensure that no payment is made towards any return on equity to the sponsors/promoters/developer of the Specified End Use Plant.}¹⁷
- 3.4 The Successful Bidder shall procure that the Account Bank submits a certificate every month to the GOI/Nodal Authority certifying that the utilisation of the Gross Payment.

4. EXECUTION OF THE DISCOM’S LETTER OF CONFIRMATIONS BY DISCOM

Within the time prescribed in the Tender Document, the Successful Bidder shall procure that the Discom signs and issues the Discom’s Letter of Confirmations.

5. PSDF PERFORMANCE SECURITY AND APPROPRIATION

5.1 PSDF Performance Security

- 5.1.1 The Successful Bidder shall submit to the Nodal Authority an irrevocable and unconditional guarantee from an acceptable bank (the list of which is set out in the Tender Document) payable at Delhi, for the performance of its obligations under this Agreement, within such time as specified in the Tender Document in substantially the form as provided in the Tender Document (“**PSDF Performance Security**”).
- 5.1.2 The PSDF Performance Security amount shall be 10% percentage of the Sanctioned PSDF Support Amount.
- 5.1.3 The PSDF Performance Security shall remain valid for a period of 180 days from the date of issuance of such PSDF Performance Security.

5.2 Appropriation of PSDF Performance Security

¹⁷ To retain sentence in the first column if the Successful Bidder is a DGP and strike off the sentence in the second column. If the Successful Bidder is a SGP, then retain the sentence in second column and strike off the sentence in the first column.

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5.2.1 Without prejudice to its other rights and remedies hereunder or in law, the Nodal Authority shall be entitled to encash and appropriate the relevant amounts from the PSDF Performance Security as damages upon occurrence of any of the following events (the "**Appropriation Events**"), to be determined by the Nodal Authority in its sole discretion:

Sr. No.	Appropriation Events	Amount of the PSDF Performance Security to be appropriated
(a)	production and supply of the Incremental Electricity to the Discom less than 70% of the Total Incremental Electricity due to any reason;	An amount equal 15% of the aggregate of the Per Unit PSDF Support Amount (x)(multiplied by) number of Units being deficit in 70% of the Total Incremental Electricity subject a maximum of entire PSDF Performance Security.
(b)	failure of the Successful Bidder to procure the signing and issuance of the Discom's Letter of Confirmations by the Discom and submit one counterpart of the Discom's Letter of Confirmations to the Nodal Authority within the time stipulated under this Agreement;	entire PSDF Performance Security
(c)	any change in Control or transfer of right, title or interest in the Specified End Use Plant or the Successful Bidder which is not in conformity with Clause 6; and	entire PSDF Performance Security
(d)	any utilisation of e-bid RLNG for purposes other than for generation of the Incremental Electricity	entire PSDF Performance Security

5.2.2 The amounts of the PSDF Performance Security to be encashed and appropriated by the GOI are in nature of the liquidated damages payable by the Successful Bidder as genuine pre-estimated loss and damage to be suffered and incurred by the GOI under this Agreement and are not by way of penalty.

5.3 Manner of Appropriation of PSDF Performance Security

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5.3.1 Upon occurrence of an Appropriation Event, to be determined by the Nodal Authority, the Nodal Authority shall have the unconditional right to encash and appropriate the PSDF Performance Security by providing a written notice to the Successful Bidder.

5.3.2 Upon encashment and appropriation from the PSDF Performance Security and in the event this Agreement is not terminated by the GOI, the Successful Bidder shall, within 15 (fifteen) days thereof, replenish and furnish, in case of partial appropriation, to its original level the PSDF Performance Security, and in case of appropriation of the entire PSDF Performance Security provide a fresh PSDF Performance Security, as the case may be, failing which the GOI shall be entitled to terminate this Agreement.

6. CHANGE IN CONTROL AND TRANSFER

6.1 Change in Control of the Successful Bidder or any transfer of the Eligible Gas Based Plant along with the rights in relation to the PSDF Support and Allocated e-bid RLNG, shall require the prior approval of the Nodal Authority.

6.2 In the event that any change in Control of the Successful Bidder or any proposed transfer of the Eligible Gas Based Plant along with the rights in relation to the PSDF Support and Allocated e-bid RLNG which requires prior consent approval, no-objection certificate or the like of the relevant authority or authorities under any Applicable Laws, then such approval shall be granted only if:

- (a) the transferee of such right, title or interest or the Successful Bidder subsequent to change of Control, as the case may be, also meets the Eligibility Condition; or
- (b) the Successful Bidder continues to meet the Eligibility Condition, as the case may be.

7. ALLOCATION OF THE UNUTILISED RLNG BY THE E-BID RLNG OPERATOR

7.1 For the purposes of the Tender Document, the e-bid RLNG Operator has set aside a total of [●]¹⁸ MMSCMD of RLNG for allocation and supply to the bidders who have been declared 'Successful Bidders'. In the event, any of the 'Successful Bidders' (other than the Successful Bidder of this Agreement) does not purchase or fails to purchase due to any reason part or whole of the RLNG ("**Unutilised RLNG**") allocated pursuant to the auction under the Tender Document, the e-bid RLNG Operator has been authorised to allocate and supply the Unutilised RLNG in accordance with the terms of the Tender Document.

¹⁸ The quantum of the Available e-RLNG as set out in the Tender Document to be inserted.

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- 7.2 Notwithstanding anything contained in this Agreement, if the e-bid RLNG Operator at its discretion offers part or whole of the Unutilised RLNG to the Successful Bidder, the Successful Bidder as its sole discretion may decide to purchase such Unutilised RLNG.
- 7.3 If part or whole of the Unutilised RLNG is allocated ("**Additional RLNG**") by the e-bid RLNG Operator to the Successful Bidder of this Agreement, then all Units of electricity generated by the Additional RLNG shall be considered as 'Incremental Electricity' for the purposes of this Agreement.
- 7.4 The Successful Bidder shall be entitled to receive additional PSDF Support Amount ("**Additional PSDF Support Amount**") at the rate of Per Unit PSDF Support Amount for the Incremental Electricity generated from the Additional RLNG. All provisions of this Agreement (to the extent not contrary) including Clauses 2.2 to 2.8 shall apply *mutatis mutandis* to the Incremental Electricity generated from the Additional RLNG and the Additional PSDF Support Amount to be disbursed in this regard.
- 7.5 The percentage of the Target PLF ("**Increased Target PLF**") shall stand revised as per the terms of allocation of the Additional RLNG to the Successful Bidder. However, the Increased Target PLF can not exceed 50% PLF for the purposes of allocation of the Additional RLNG and generation of the Incremental Electricity therefrom as per the terms of the Tender Document.

8. SUCCESSFUL BIDDER'S UNDERTAKINGS

- 8.1 The Successful Bidder agrees and undertakes to perform, observe and comply with the following:
- (i) all Applicable Laws and Applicable Permits;
 - (ii) the provisions of the Scheme, the Letter of Award, the e-bid RLNG Sale Agreement and the Tender Document; and
 - (iii) its obligations under this Agreement.
- 8.2 The Successful Bidder shall hereby undertakes that:
- (i) it shall not amend the PPA without prior written consent of the Nodal Authority;
 - (ii) it shall ensure that the Trust and Retention Account Mechanism is strictly adhered to;
 - (iii) it shall not amend the Trust and Retention Account Agreement without prior written consent of the Nodal Authority;

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- (iv) it shall ensure that the Specified End Use Plant is operated within the Normative SHR and the Allowable SHR.

9. REPRESENTATIONS AND WARRANTIES

9.1 The Successful Bidder represents and warrants to the other Parties that:

- (i) it is duly organised, validly existing and in good standing under the laws of India;
- (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (iii) it has taken all necessary steps under Applicable Law and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iv) this Agreement constitutes its legal, valid and binding obligation enforceable in accordance with the terms hereof;
- (v) it is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (vi) the execution, delivery and performance of this Agreement will not conflict with nor will the same result in any breach or default under any other agreement or any Applicable Law or any covenant, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) there are no actions, suits, proceedings, or investigations pending or, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default under this Agreement or which individually or in the aggregate may result in any material adverse effect;
- (viii) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any order of any authority which may result in any material adverse effect;
- (ix) it has complied with all Applicable Law and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have material adverse effect; and

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- (x) no representation or warranty contained herein or in any other document furnished by it contain any untrue statement or material fact necessary to make such representation or warranty not misleading.

10. SOVEREIGN IMMUNITY

10.1 GOI hereto unconditionally and irrevocably :

- (i) Agrees that the execution, delivery and performance by it of this Agreement do not constitute sovereign acts;
- (ii) Agrees that should any proceedings be brought against it or its assets in relation to this Agreement or any transaction contemplated by this Agreement, no sovereign immunity from such proceedings, execution, attachment or other legal process shall be claimed by or in behalf of itself or with respect to any of its assets, to the extent permitted by law; and
- (iii) To the extent permitted by law, waives right of sovereign immunity, which it or its assets now has or may acquire in future.

10.2 Notwithstanding anything to the contrary herein contained such waiver of right of immunity shall not apply to

- (i) Property and assets of any consular or diplomatic mission or consulate or
- (ii) Property belonging to the Defence Services and such assets of the Union of India.

11. TERM AND TERMINATION

11.1 This Agreement shall come into force from the date hereof and shall be in force and effect for the Relevant Period or upto the date of earlier termination.

11.2 Without prejudice to any other right under this Agreement, the GOI shall have the right to terminate this Agreement on occurrence of any of the following events:

- (i) breach of any of the provisions of this Agreement;
- (ii) failure to supply all of the Incremental Electricity generated at the Specified End Use Plant to the Discom;
- (iii) termination of the PPA;
- (iv) termination of the e-bid RLNG Sale Agreement; or
- (v) an Appropriation Event.

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11.3 Upon termination of this Agreement, the Successful Bidder shall cease to be entitled to the support from PSDF Fund (except the PSDF Support Amount which has already accrued).

12. INDEMNITY

12.1 The Successful Bidder will indemnify, defend and hold GOI harmless against any and all proceedings, actions and claims for any loss, damage, cost and expense of whatever kind and nature arising on account of failure of the Successful Bidder to comply with and observe Applicable Law;

12.2 In the event that either Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Clause or in respect of which it is entitled to reimbursement (the '**Indemnified Party**') it shall notify the other Party ("**Indemnifying Party**") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all co-operation and assistance in contesting any claim and shall sign all such writings, and documents as the Indemnified Party may reasonably require.

13. GOVERNING LAW, DISPUTE SETTLEMENT AND JURISDICTION

13.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of India. The provisions contained in this Clause shall survive the termination of this Agreement.

13.2 Any dispute, difference or claim arising out of or in connection with or in relation to this Agreement which is not resolved amicably shall be decided finally by reference to arbitration in accordance with the Arbitration and Conciliation Act, 1996. The Arbitrators shall issue a reasoned award. The venue of such arbitration shall be New Delhi. The Award shall be final and binding on the Parties.

13.3 Subject to Clause 13.2 above, the Courts at New Delhi shall have sole and exclusive jurisdiction.

14. MISCELLANEOUS

14.1 Alteration of Terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

GOI	Successful Bidder
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14.2 Assignment and Encumbrances

14.2.1 The Successful Bidder shall directly or indirectly assign or transfer this Agreement or any interest or obligation herein without the prior written consent of the GOI which consent the Government shall be entitled to decline without assigning any reason.

14.2.2 The Successful Bidder shall not create nor permit to subsist any encumbrance, charges or any other security interest on this Agreement or on all or any of its rights and benefits under this Agreement except with prior consent in writing of the GOI, which consent the GOI shall be entitled to decline without assigning any reason.

14.3 Time or Indulgence Allowed

An indulgence by one Party to the other in respect of any obligation or matter hereunder including time for performance to the other Party hereunder or to remedy any breach hereof shall not be construed as a waiver of any of its rights hereunder Party may be on such terms and subject to such conditions as the Party giving it may specify and shall be without prejudice to that Party's then accrued rights under this Agreement except to the extent expressly varied in writing when giving such time or other indulgence.

14.4 Severance of Terms

If any provisions of this Agreement are declared to be invalid, unenforceable or illegal by any competent arbitration tribunal or court, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement, which shall continue in full force and effect.

14.5 Language

All notices, certificates, correspondence or other communications under or in connection with the Agreement shall be in English.

14.6 Notices

Any notice or communication hereunder shall be in writing and shall either be delivered personally or sent by registered post, with copy by facsimile transmission or other means of telecommunication in permanent written form. The service of notice shall unless otherwise notified by a notice hereunder to the parties at their following address:

IF to GOI:
Address:
Attn :
Fax No:

GOI	Successful Bidder
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Tel No:

IF to Successful Bidder :
Address:
Attn :
Fax No :
Tel No :

The notice pursuant hereto will be deemed to have been received on the date when such notice is in fact received by the addressee.

14.7 Authorised Representatives

Each of the Parties shall by notice in writing designate their respective authorised representative through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of its such authorised representative by similar notice.

14.8 No Partnership

None of the provisions of this Agreement shall constitute a partnership or agency or any such similar relationship between the Parties.

14.9 Counterparts

This Agreement is made in three counterparts, each of which shall be deemed to be an original but shall constitute one document.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE PUT THEIR HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED AND DELIVERED BY [.] the within named Successful Bidder, by the hand ofits Director.

THE COMMON SEAL OF [.] has pursuant to the Resolutions of its Board of Directors passed in that behalf on hereunto been affixed in the presence Mr. its Director

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who has signed these presents in token thereof

SIGNED AND DELIVERED BY the President of India through Ministry of Power by the hand ofits and authorized official.

GOI	Successful Bidder
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ANNEXURE – I
FORMAT OF THE DISCOM'S LETTER OF CONFIRMATIONS
(to be provided on the letterhead of the Discom)

Date: _____

To,

The Nodal Authority
The Ministry of Power
Government of India
("GOI")

and

M/s [●]¹⁹ Limited
[●]²⁰
("Successful Bidder")

Sub: Power System Development Fund Support Agreement dated [●] entered into between the GOI and the Successful Bidder ("**PSDF Support Agreement**").

Re: Letter of Confirmations

Dear Sir,

1. We refer to the PSDF Support Agreement, under which the Successful Bidder is required to procure these confirmations, covenants and undertakings from the distribution company purchasing the Incremental Electricity (as defined in the PSDF Support Agreement) from the Successful Bidder.
2. We are a distribution licensees holding licence for distribution of electricity issued under Section 14 of the Electricity Act, 2003.
3. We hereby confirm that:
 - (i) we as 'Discom' have duly and validly executed the Power Purchase Agreement on [●] with the Successful Bidder for purchase of the Incremental Electricity from the Successful Bidder ("**Power Purchase Agreement**");

¹⁹ name of the Successful Bidder to be inserted.

²⁰ full address of the Successful Bidder to be inserted.

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- (ii) the Power Purchase Agreement is valid and subsisting till date;
 - (iii) we have agreed to purchase the Incremental Electricity (as defined hereinafter) at a price of Rs. [●] per Unit (kW) of Incremental Electricity ("**Unit Price**"); and
 - (iv) the Discom has received a copy of the PSDF Support Agreement.
4. We understand that the GOI has agreed to provide support from Power System Development Fund to the Successful Bidder as follows:
- (i) The Successful Bidder is required to generate 'Incremental Electricity':

where:

"Incremental Electricity" means [●] Units of the electricity to be generated at the Specified End Use Plant by using the e-bid RLNG, which is equivalent to = Total Units of electricity generated upto the Target PLF (-) the electricity generated for the Base PLF.

"Target PLF" is [●]%.
 "Base PLF" is [●]%.
 "Specified End Use Plant" means gas fired plant of the Successful Bidder at [●].
 - (ii) The GOI has agreed to provide PSDF support ("**PSDF Support Amount**") at the rate of Rs. [●] per Unit of the Incremental Electricity. The GOI will not provide any support from PSDF Fund for the Units generated upto Base PLF and the Units generated over and above the Target PLF.
 - (iii) The GOI will transfer the PSDF Support Amount to us being the purchaser of the Incremental Electricity. However, we understand that the timing of the release of the PSDF Support Amount shall be subject to the availability of the funds in the Ministry of Power's relevant budget head.
 - (iv) The GOI is authorised to lay down further guidelines in this regard, including appropriate modification in the requirement of above Certificates

GOI	Successful Bidder
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and mechanism of release of the PSDF Support Amount, in the interest of ease of operation.

5. We hereby covenant and undertake:
- (i) to pay the Unit Price to the Successful Bidder by directly depositing the same in the Trust and Retention Account of the Successful Bidder being account no. [●] with [●] Bank at its branch [●] ("**TRA**");
 - (ii) to directly deposit the PSDF Support Amount in the TRA upon receipt of the same from the GOI;
 - (iii) to provide a certificate to the Successful Bidder certifying the quantum of the Incremental Electricity purchased in the previous month from the Successful Bidder's Specified End Use Plant substantially in the format prescribed by the GOI; and
 - (iv) to fulfill our obligations under the Power Purchase Agreement in a timely manner and not to do anything which will jeopardise the implementation of the PSDF Support Agreement.
6. This Letter of Confirmations is made in two counterparts, one counterpart is being submitted to the GOI and another counterpart is being submitted to the Successful Bidder.

**FOR AND ON BEHALF OF:
[NAME OF THE DISCOM]**

Authorized signatory
Name:

GOI	Successful Bidder
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