

STANDARD

TRANSMISSION SERVICE AGREEMENT

FOR

**PROCUREMENT OF TRANSMISSION SERVICES THROUGH
THE PROPOSED INTEGRATED TRANSMISSION SYSTEM IN
UTTARAKHAND**

BETWEEN

**POWER TRANSMISSION CORPORATION OF
UTTARAKHAND LIMITED**

AND

..... **[INSERT THE NAME OF THE GENERATING
COMPANY]**

.....2007

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THIS AGREEMENT (hereinafter referred to as “Agreement” or “the Agreement” or “this Agreement”) is made on the [Insert day] of..... [Insert month] of Two Thousand and..... [Insert Year]

Between:

This Agreement entered into onday ofby and between:

Power Transmission Corporation of Uttarakhand Limited, a Government of Uttarakhand Undertaking and a company incorporated under the Companies Act, 1956 having its registered office at_____ (hereinafter referred to as “**PTCUL**”, which expression shall unless repugnant to the context or meaning thereof, include its successors and assigns) as party of the first part;

AND

[Insert name of the Generating Company], a company registered under the Companies Act, 1956 having its registered office at _____ (hereinafter referred to as “**Company**”, which expression shall unless repugnant to the context or meaning thereof, include its successors and assigns) as party of the second part;

AND WHEREAS

- A. The Company has executed an Implementation Agreement dated..... with the State Government to set up a hydropower project of capacity _____MW in the _____district of Uttarakhand (hereinafter referred to as “Project”);
- B. Under the Implementation Agreement, the Government of Uttarakhand has undertaken to arrange for suitable transmission facility for transmission of power beyond the Interconnection Point of the Project.
- C. The Project is one amongst several hydropower projects under development/implementation by several agencies necessitating planning and development of transmission capacity in an integrated basin approach to save on limited right of way in the ecologically sensitive region of the state.

- D. PTCUL has finalised proposal to develop an Integrated Transmission System (hereinafter referred to as “ITS”) for evacuation of power across the four river basins of Yamuna, Bhagirathi, Alaknanda and Sarada, from the interconnection points up to pooling points within the state, from where inter-state lines will convey power to procurers outside the state or PTCUL’s intra-state lines would transmit power to consumers/licensees within the state.
- E. The development of the ITS has been approved by the Central Electricity Authority and the Ministry of Power, Government of India and is to be financed by the Asian Development Bank and other Financial Institutions. Copies of such approvals are annexed as Schedule IV of this Agreement.
- F. The Parties have agreed to sign this Agreement setting out the broad terms and conditions for PTCUL to provide transmission service to the Generating Company.
- G. In the absence of clearly identified beneficiaries for the Project, it is agreed and understood between the Parties that PTCUL shall through the ITS, provide for and make transmission capacity available for use by the Project for which the Generating Company shall pay such charges as determined by the Appropriate Commission.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL AGREEMENTS, COVENANTS AND CONDITIONS SETFORTH HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

ARTICLE: 1

1: DEFINITIONS AND INTERPRETATIONS

1.1 Definitions:

The words/expressions 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), and as amended or re-enacted from time to time.

The words/expressions when used in this Agreement shall have the respective meanings as specified below:

“Act” or **“Electricity Act”** or **“The Electricity Act 2003”** shall mean the Electricity Act, 2003 and any amendments made to the same or any succeeding enactment thereof;

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

“Appropriate Commission” shall mean the Central Regulatory Commission referred to in sub-section (1) of section 76 of the Electricity Act, or the State Regulatory Commission referred to in section 82 of the Electricity Act or the Joint Commission referred to in section 83 of the Electricity Act, as the case may be.

“Business Day” shall mean with respect to the Parties, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State of Uttarakhand;

“CEA” shall mean the Central Electricity Authority constituted under Section -70 of the Electricity Act, the body responsible for monitoring the progress of execution of the Project;

“Commercial Operation Date (COD)” shall mean the date of charging the Project or part thereof to its Rated Voltage level or seven days after the date on which it is declared ready for charging by the Company, but is not able to be charged for reasons not attributable to the Company, its suppliers or contractors.

Provided that the date of commercial operation shall not be a date prior to the Scheduled Date of Commercial Operation mentioned in the TSA, unless mutually agreed to by all Parties.

“Commissioning” or “Commissioned” or its grammatical variations, in relation to the Project shall mean the date on which the Project has successfully passed the Commissioning Tests required to be conducted and is declared commissioned. In relation to the Project, “Commissioned” shall mean the date when all the Elements of the Project have successfully passed the Commissioning Tests required to be conducted and have been declared commissioned under this Agreement and the Implementation Agreement.

“Commissioning Tests” shall mean such tests that are required pursuant to this Agreement and the Implementation Agreement to demonstrate successful and safe commissioning of the Project;

“Consents, Clearances, Permits” shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any Indian Government Instrumentality for the development, execution and performance of ITS including without any limitation for the construction, ownership, operation and maintenance of the transmission lines and/or sub-stations.

“Contract Year” shall mean a period of 12 months or less beginning on the Scheduled COD or the Revised Scheduled COD, if applicable, and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31.

“CTU” or “Central Transmission Utility” shall mean the utility notified by the Central Government under Section-38 of The Electricity Act, 2003.

“Day” shall mean Calendar day of Gregorian Calendar;

“Due Date” in relation to any Invoice shall mean the thirtieth day after the date on which any Invoice is received (or, if that day is not a Business Day, the immediately following Business Day), and by such date, the Invoice is payable by the Company;

“Effective Date” for the purposes of this Agreement, shall mean the date on which this Agreement is signed and delivered by the Parties.

“Electrical Inspector” shall mean a person appointed as such by the Appropriate Government under sub-section (1) of section 162 of the Electricity Act 2003 and also includes Chief Electrical Inspector;

“Element” shall mean each Transmission Line or each circuit of the Transmission Lines (where there are more than one circuit) & each bay of Sub-station of the ITS;

“Expiry Date” shall be the date which is 25 (twenty five) years from the Scheduled COD or the Revised Scheduled COD, as applicable, of the Project;

“Financing Agreements” shall mean the Agreements pursuant to which PTCUL is to finance the ITS 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.

“Financial Year” shall mean a period of twelve months at midnight Indian Standard Time (IST) between first April & thirty first March;

“Force Majeure” shall have the meaning assigned thereto in Article 6;;

“Grid Code” / “IEGC” or “State Grid Code” shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable.

“Indian Governmental Instrumentality” shall mean Government of India, Government of any State in India or any ministry, department, board, authority, instrumentality, agency, corporation, commission under the direct or indirect control of Government of India or any State Government or any political sub-division of any of them including any court or Appropriate Commission or tribunal or judicial or quasi-judicial body in India but excluding PTCUL;

Interconnection Point: Means the point in the PTCUL Transmission System at ____ KV voltage level, where the Company's interconnecting line is terminated and where Company's generation is delivered to PTCUL system. The Interconnection Point for the purpose of this Project are contained in Schedule III of this Agreement.

“Interconnection Facilities” shall mean the facilities as may be set up for transmission, on either one or both sides of the Interconnection Point in accordance with this Agreement and which shall include, without limitation, all other transmission lines, gantries, sub-stations and associated equipments not forming part of the Project;

“Invoice” shall mean a Monthly Transmission Charges Invoice or a Supplementary Invoice;

“Invoice Dispute Notice” shall have the same meaning as defined in Article 5.5.2 of this Agreement;

“Late Payment Surcharge” shall have the meaning ascribed thereto under the Terms and Conditions of Tariffs Regulations or its equivalent by the Appropriate Commission.

“Law” or “Laws” in relation to this Agreement, shall mean all laws including Electricity Laws in force in India and any statute, ordinance, rule, regulation, notification or code, or any interpretation of any of them by an Indian Governmental Instrumentality having force of law and shall further include all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the Appropriate Commission;

“LC” shall mean Irrevocable Revolving Letter of Credit;

"Lenders" means the banks, other financial institutions, multilateral funding agencies, RBI registered non banking financial companies, mutual funds and agents or trustees of debenture / bond holders, including their successors and assignees.

“Month” shall mean calendar month of Gregorian Calendar;

“Project” shall mean [Name of the Hydro Electric Project to be inserted] consisting of the following: [To be inserted]

“Prudent Utility Practices” shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric transmission utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation, repair and maintenance of the Transmission System and which practices, methods and standards shall be adjusted as necessary, to take account of:

- (i) operation, repair and maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Project,
- (ii) the requirements of Law, and
- (iii) the physical conditions at the Site;

"Scheduled COD” shall mean date(s) as per Schedule II of this Agreement on which the Project is to be commissioned.

“SLDC” shall mean "State Load Despatch Centre" means the centre established under subsection (1) of section 31

“STU” or “State Transmission Utility” shall have the meaning ascribed thereto in the Electricity Act 2003;

“Transmission Charges” shall mean the charges as specified by the Appropriate Commission under applicable regulations for use of the ITS or any of its Elements by the Company;

“Transmission System” shall mean a line with associated sub-stations or a group of lines inter-connected together along with associated sub-stations and the term includes equipment associated with transmission lines and sub-stations; the term Integrated Transmission System has been used in the context of the system proposed to be developed by PTCUL as detailed in Schedule I.

“Week” means a period of seven consecutive days beginning at midnight Indian Standard Time between Sunday and Monday;

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, Appendices and Annexures;

“business day” shall be construed as a reference to a day other than Sunday on which banks are generally open for business;

“encumbrance” shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;

“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;

“winding-up”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organization, merger, amalgamation, takeover dissolution, arrangement, protection or relief of debtors.

1.2.1 Words importing the singular shall include the plural and vice versa.

- 1.2.2 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented.
- 1.2.3 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time.
- 1.2.4 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time.
- 1.2.5 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.
- 1.2.6 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.
- 1.2.7 All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days.
- 1.2.8 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement.
- 1.2.9 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement shall bear the meaning in General Clauses Act, failing which it shall bear its ordinary English meaning.

ARTICLE: 2

2: EFFECTIVENESS AND TERM OF AGREEMENT

2.1 Effective Date:

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

2.2 Term:

The Agreement shall be valid from the Effective Date up to the twenty fifth anniversary of the Scheduled COD of the Project, unless mutually extended by both Parties on mutually agreed terms and conditions, at least ninety (90) days prior to the Expiry Date, subject to the approval of the Appropriate Commission.

2.3 Survival:

The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it effect any continuing obligations for which this Agreement provides, either expressly or by necessary implication, the survival of, post its expiry or termination.

ARTICLE: 3

3: SCOPE OF THE INTEGRATED TRANSMISSION PROJECT

3.1 Current Scope of the Project

3.1.1 The proposed ITS is detailed in Schedule I of this Agreement.

3.1.2 Subject to the provisions of this Agreement, PTCUL shall provide Transmission Services to the Company for transmitting energy from the Interconnection Point to:

(a) the Company's consumers / Licensees within the state of Uttarakhand; and/or

(b) the pooling points within the state.

3.1.3 The Company shall provide notice to PTCUL, no later than one hundred and twenty (120) days prior to the Commercial Operation Date of the Project of its intention to connect with the ITS.

3.1.4 PTCUL shall within thirty (30) days of the receipt of such notice from the Company, intimate the updated details of the ITS to the Company.

3.2 Changes in Scope of Project

3.2.1 Any transmission line and or substation or transformer that may be added to the ITS after the timeframe specified in Article 3.1.4, shall be promptly intimated by PTCUL to the Company. Such additions shall become part of this Agreement, subject to approval of the same as a part of the ITS by the Appropriate Commission.

ARTICLE: 4

4: OBLIGATIONS OF PARTIES

4.1 PTCUL's obligations in development of the ITS:

Subject to the terms and conditions of this Agreement, PTCUL at its own cost and expense shall observe, comply with, perform, undertake and be responsible:

- a. for procuring and maintaining in full force and effect all Consents, Clearances and Permits, required in accordance with Law for development of the ITS;
- b. for financing, building owning and commissioning each of the Element of the ITS in accordance with applicable standards, SEGC and IEGC and in conformity with the time schedule specified in Schedule I of this Agreement, so as to make Transmission System available from the Interconnection Point up to designated Pooling Points within the state.
- c. to make available the transmission capacity of the ITS to the Company for safe transmission of power as per this Agreement, subject to the provisions of applicable regulations, along with their amendments .
- d. to apply to the Appropriate Commission for determination of Transmission Charges for the ITS before the Scheduled COD of the Project.

4.2 Company's obligations:

4.2.1 Subject to the terms and conditions of this Agreement, the Company, at its own cost and expense undertakes to be responsible;

- a. for ensuring the Project is commissioned not later than the Scheduled COD of the project, as detailed in Schedule II of this Agreement.

Provided however that the Company can revise the Scheduled COD by notifying PTCUL in writing no later than 12 (twelve) months before the Scheduled COD. This revised date shall be the Revised Scheduled COD for the Project and no more than 2 (two) such revisions are permitted under this Agreement.

- b. to submit to PTCUL, quarterly report on the progress on the Project in Agreed Form to enable PTCUL to plan for and make available the required transmission Interconnection Facilities in time for the Project to be commissioned.

- c. for payment of all applicable Transmission Charges, as determined by the Appropriate Commission for use of the ITS.
- d. The Company shall be responsible to evaluate, design, install, operate and maintain the Interconnection Facilities associated with the Project and perform all work, at the Company's expense, necessary to economically, reliably and safely transfer the power to the Interconnection Point in the designated substation of the PTCUL, duly providing the Interconnection Line at ____KV level from the Project to the _____ substation of PTCUL. The Interconnection Facilities include termination of the Line, Protection (including Relays and Circuit Breakers etc.) and metering system for measurement of import and export of energy, with Special Energy Meters capable of implementation of Availability Based Tariffs as per PTCUL's standards and requirements detailed in Schedule V and the applicable provisions of the Grid Code/State Grid Code. The Company shall design, install, operate and maintain the Company's Interconnection Facilities in proper condition in accordance with good and generally accepted electric utility engineering and operating practices. Company shall adhere to all technical and performance parameters applicable in force or contemplated by UERC/ Grid Code/SLDC.
- e. The Company shall be responsible for providing interconnection facility at its end for interconnecting the Power Plant with the designated grid substation. The Company should obtain and provide the equipment to match with the equipment provided in PTCUL's grid substation. Company shall operate and maintain the project in accordance with good and generally accepted utility standard with respect to synchronising voltage and active, reactive power control.
- f. The Company is fully responsible for establishment of Interconnection Facilities so as to be ready to match with the schedule of the ITS and the Scheduled COD of the Project. PTCUL may, subject to exigencies and receipt of adequate advance notice, undertake the erection of interconnection Facilities in the designated substation at Company's request as a deposit work.
- g. The Company shall, before commissioning the Project and its Interconnection Facilities, obtain all statutory approvals from the Chief Electrical Inspector. Company shall issue a 15 days notice to PTCUL before trial operation and commercial operation of the generating sets and charging Interconnection Facilities.

4.3 Obligations of both Parties

4.3.1 PTCUL and the Company shall cooperate with each other in exchanging information (such as Design specifications and Schedules) regarding the Engineering, Procurement, Erection and construction of the Project and the Interconnection Facilities so as to coordinate the Engineering, Procurement, Erection and Construction of the Interconnection Facilities. In addition, the PTCUL shall be notified when the Interconnection Facilities are ready to arrange joint testing and statutory inspection and commissioning for acceptance.

4.4 Indemnification for delay by either Party:

4.4.1 PTCUL, subject to terms of this Agreement and unless prevented from performing its obligation by a Company event of default or a Force Majeure event, shall compensate the Company for any delay in making the ITS available for interconnection with the Project on or before the date following 2 (two) months of the Scheduled COD (or the Revised Scheduled COD, if the COD has been revised by the Company), provided the Project is ready for commissioning by this date.

4.4.2 The Company, subject to terms of this Agreement and unless prevented from performing its obligation by PTCUL event of default or a Force Majeure event, shall compensate PTCUL for any delay in commissioning the Project on or before the date exceeding 2 (two) months of the Scheduled COD (or the Revised Scheduled COD, if the COD has been revised by the Company), provided PTCUL's Interconnection Facilities are ready by this date.

4.4.3 The compensation by either Party in 4.4.1 or 4.4.2 shall be equal to the applicable Transmission Charges for the Project, as determined by the Appropriate Commission to be computed and paid for each week of delay.

4.5 Extension of time:

4.5.1 The Scheduled COD and/or the Revised Scheduled COD of the Project may be extended up to one hundred eighty (180) days from the date first determined pursuant to this Agreement by reason of one or more Force Majeure Events.

4.5.2 The schedule for providing Interconnection Facilities of the ITS to enable interconnection by the Company with PTCUL's system may be extended up to one hundred eighty (180) days from the date first determined pursuant to this Agreement by reason of one or more Force Majeure Events.

ARTICLE: 5

5: DETERMINATION, BILLING AND PAYMENT OF TRANSMISSION CHARGES

5.1 Subject to the other provisions of this section, the Company shall pay to PTCUL, on a monthly basis, the Monthly Transmission Charges from the date of Scheduled COD of the Project or the Revised Scheduled COD of the Project, if applicable, provided PTCUL's Interconnection Facilities are ready for connection by this date.

5.2 Determination of Transmission Charges

Monthly Transmission Charges shall be as determined by the Appropriate Commission from time to time for the ITS or its applicable Elements.

5.3 Delivery of Invoices:

5.3.1 PTCUL's Invoices

- a. Commencing with the month following the month in which the Scheduled COD (or the Revised Scheduled COD, if applicable) occurs, PTCUL shall submit to the Company by the fifth day of such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day) an Invoice in the Agreed Form (the "Monthly Transmission Charge Invoice") signed by the authorised signatory of PTCUL setting out the computation of the Monthly Transmission Charge payable by Company to PTCUL in respect of the immediately preceding month in accordance with this Agreement; and
- b. Each Monthly Transmission Charge Invoice shall include detailed calculations of the amounts payable under it, together with such further supporting documentation and information as the Company may require/ request, from time to time. Any supplementary bill shall be submitted to the Company along with supporting documentation and calculation for the same.

5.4 Payment of Invoices:

5.4.1 Subject to Article 9:, any amount payable under an Invoice shall be paid in immediately available and freely transferable cleared funds, for value on or before the Due Date, to such account of PTCUL as shall have been previously notified to the Company by PTCUL.

5.4.2 As per provision of this agreement company has to pay monthly transmission charge to PTCUL through a letter of credit, applicable late payment surcharge/rebate shall be governed by the regulations of appropriate commission in this regard.

5.5 Disputed Invoices

5.5.1 If the Company does not question or dispute an Invoice within thirty (30) days of receiving it, the Invoice shall be considered correct, complete and conclusive between the Parties.

5.5.2 If the Company disputes any item or part of an item set out in any Invoice then the Company shall serve a notice (an "Invoice Dispute Notice") on PTCUL setting out (i) the item or part of an item which is in dispute together, (ii) along with its estimate of what such item or part of an item should be, (iii) and with all written material in support of its claim.

5.5.3 If PTCUL agrees to the claim raised in the Invoice Dispute Notice issued pursuant to Article 5.5.2, then PTCUL shall revise such Invoice within fifteen (15) days of receiving such notice and if the Company has already made the excess payment refund to PTCUL, The credit of this excess amount is to be given by PTCUL to the company in the immediate next bill. Failing which an interest at the same rate as the late payment surcharge shall be applied.

5.5.4 If PTCUL does not agree to the claim raised in the Invoice Dispute Notice issued pursuant to Article 5.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice to the Company 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.

5.5.5 Upon receipt of notice of disagreement to the Invoice Dispute Notice under Article 5.5.4, authorised representative(s) or a director of the board of directors/member of board of each Party shall meet at PTCUL Head Quarter and make best endeavours to amicably resolve such dispute within fifteen (15) days of receiving such notice of disagreement to the Invoice Dispute Notice.

5.5.6 If the Parties do not amicably resolve the dispute within fifteen (15) days of receipt of notice of disagreement to the Invoice Dispute Notice pursuant to Article 5.5.4, the matter shall be referred to Dispute Resolution in accordance with Article 9:

5.5.7 In case of Disputed Invoices, it shall be open to the aggrieved Party to approach the Appropriate Commission for Dispute Resolution in accordance with Article 9: and also for interim orders protecting its interest including for

orders for interim payment pending Dispute Resolution and the Parties shall be bound by the decision of the Appropriate Commission, including in regard to interest or Late Payment Surcharge, if any, directed to be paid by the Appropriate Commission.

5.5.8 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Company shall, without prejudice to its right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months Invoices (being the undisputed portion of such three Months invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement and existing regulations of the Appropriate Commission.

5.6 Payment Mechanism:

5.6.1 Establishment of Letter of Credit:

- (a) The Company shall establish in favour of PTCUL, in respect of payment of its Monthly Transmission Charge Invoice, a monthly unconditional, revolving and irrevocable Letter of Credit, which may be drawn upon by PTCUL.
- (b) The Letter of Credit shall be provided to PTCUL not later than two (2) months before the Scheduled COD (or the Revised Scheduled COD, if applicable) of the Project and should be in the Agreed Form.
- (c) Not later than one (1) month prior to the Scheduled COD (or the revised Scheduled COD, if applicable) the Company shall through a scheduled bank at Dehradun open a Letter of Credit in favour of the PTCUL, to be made operative from a date prior to the Due Date of its first Monthly Transmission Charge Invoice 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 one point one (1.1) times the estimated average Monthly Transmission Charges based on Normative Availability;
 - ii. for each subsequent Contract Year, equal to the one point one (1.1) times the average of the Monthly Transmission Charges of the previous Contract Year plus the estimated Monthly Transmission Charges during the current year from any additional Elements expected to achieve Scheduled COD during the current Contract Year based on Normative Availability.

Provided that PTCUL shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Transmission Charge Invoice, and shall not make more than one drawal in a Month.

- (d) The Company shall ensure that the Letter of Credit shall be renewed not later than forty five (45) days prior to its expiry.
- (e) All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Company, however, the Letter of Credit negotiation charges shall be borne and paid by PTCUL.

ARTICLE: 6

6: FORCE MAJEURE

6.1 Force Majeure shall mean any event or circumstance or combination of events or circumstances that wholly or partly prevent or unavoidably delay the Party claiming Force Majeure (hereinafter referred to as the “Affected Party”) in the performance of its obligation under this agreement and which act or event:

- (i) is beyond the reasonable control of and not arising out of the fault of the Affected party;
- (ii) the Affected party has been unable to prevent by the exercise of due diligence and reasonable efforts, shall and care, including through expenditure of reasonable sums of money; and
- (iii) has materially adverse effect on the project.

Such events may include acts of Government/GOI either in its sovereign or its contractual capacity, war, civil war, insurrection, riots, revolutions, fires, floods, epidemics, quarantine restrictions, freight embargoes, radioactivity and earthquakes,

6.2 Notification of Obligations:

6.2.1 The party claiming Force Majeure shall notify the other party in writing of any event of Force Majeure as soon as reasonably practicable, but in no event later than five (5) days after the date on which such party knew of the commencement of the event of Force Majeure. Notwithstanding the preceding sentence, if the event of Force Majeure results in a breakdown of communications rendering it impracticable to give notice within the applicable time limit specified above, then the party claiming Force Majeure shall give such notice as soon as reasonably practicable after the reinstatement of communications, but not later than seven (7) days after such reinstatement.

6.2.2 The party claiming Force Majeure shall give prompt notice to the other party of:

- (a) the cessation of the relevant event of Force Majeure, and
- (b) the cessation of the enact of such Force Majeure event on such party's performance of its obligations under this Agreement.

6.2.3 Any notice pursuant to the above clause 6.2 shall include full particulars of:

- (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under its Article with evidence in support thereof.

- (ii) the estimated duration and the effect or probable effect which such Force majeure Event is having or will have on the Affected party's performance of its obligations under the Agreement.
- (iii) the measures which the Affected Party is taking or proposed to take, to alleviate the impact of such Force Majeure Event; and
- (iv) any other information relevant to the Affected Party's claim.

6.3 Duty to Mitigate:

- (i) The party claiming Force Majeure shall use reasonable efforts to mitigate the effects of any event of Force Majeure and to develop and implement a plan of remedial and reasonable alternative measures to remove the event of Force Majeure or if the event of Force Majeure cannot be removed, work to give effect to the intent of this Agreement by some new or alternative means.

ARTICLE: 7

7: NOTICES

7.1 Except as otherwise expressly provided in this Agreement, all notices or other communications which are required or permitted hereunder shall be in writing and sufficient if delivered personally or sent by registered mail, telefax addressed as follows:

If to the Company:

Attention: Managing Director

If to the PTCUL

Attention: Managing Director

7.2 All notices or communications given by telefax shall be confirmed by depositing a copy of the same in the post office in an envelope properly addressed to the appropriate party for delivery by registered mail. All notices shall be deemed delivered upon receipt, including notices given by telefax regardless of the date the confirmation of such notice is received.

7.3 Any Party may, by written notice, change the address and / or addresses to which such notices and communications to it are to be delivered or mailed.

ARTICLE: 8

8: ASSIGNMENTS AND CHARGES

8.1 Assignments:

8.1.1 This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. Subject to Article 8.2, this Agreement shall not be assigned by any Party (and no Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement) other than by mutual consent between the Parties to be evidenced in writing:

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

- a. such transferee is either the owner or operator of all or substantially all of the transmission system in Uttarakhand and is under Section 131 of the Electricity Act, 2003, and
- b. this Agreement shall continue to remain valid and binding on such successor.

8.1.2 Over the term of this Agreement, in case there is any change in the composition of Company due to merger, de-merger, acquisition, takeover or in any other manner, such change shall be brought to the notice of PTCUL. In the opinion of PTCUL, if such changes adversely affect the ability of the Company to fulfil its obligations under this Agreement, PTCUL may specify additional and reasonable mechanisms for ensuring timely payment of Transmission Charges, which shall be promptly complied with by the Company.

8.2 Permitted Charges:

8.2.1 Notwithstanding anything contained in Article 8.1, PTCUL may create any encumbrance over all or part of the payment mechanism as in Article 5.6 or the other assets of the Project in favour of the Lenders or the Lender's Representative on their behalf, as security for amounts payable under the Financing Agreements and any other amounts agreed by the Parties.

ARTICLE: 9

9: GOVERNING LAW AND DISPUTE RESOLUTION

9.1 Governing Law:

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

9.2 Amicable Settlement:

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

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

9.2.2 The other Party shall, within thirty (30) days of issue of dispute notice issued under Article 9.2.1, furnish:

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

9.2.3 Within thirty (30) days of issue of notice by any Party pursuant to Article 9.2.2, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days of receipt of the notice referred to in the preceding sentence, the Dispute shall be referred for Dispute Resolution in accordance with Article 9.3.

9.3 Dispute Resolution:

- 9.3.1 Where any Dispute arises from a claim made by any Party for any change in or determination of the Transmission Charges or any matter related to Transmission Charges or claims made by any Party which partly or wholly relate to any change in the Transmission Charges or determination of any of such claims could result in change in the Transmission Charges, or relates to any matter agreed to be referred to the Appropriate Commission under this Agreement, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be admissible only as per the provisions of the Electricity Act, 2003, as amended from time to time.
- 9.3.2 In the event of such Dispute remaining unresolved as referred to in Article 9.2.3 hereof, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration. If the Dispute arises out of or in connection with any claims not covered in Article 9.3.1, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article.
- (i) The Arbitration Tribunal shall consist of three arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules
 - (ii) The place of arbitration shall be Dehradun, India. The language of the arbitration shall be English.
 - (iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
 - (iv) The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws.
 - (v) The provisions of this Article shall survive the termination of this Agreement for any reason whatsoever.

9.4 Parties to Perform Obligations:

Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the arbitral tribunal as provided in Article 9.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

ARTICLE: 10

10: REPRESENTATION AND WARRANTIES

10.1 Representation and warranties of the Company

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

- a. It has all requisite power authorizing and has been duly authorized to execute and consummate this Agreement;
- b. This Agreement is enforceable against PTCUL in accordance with its terms;
- c. The consummation of the transactions contemplated by this Agreement on the part of the Company 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 Company is a Party or to which the Company is bound, which violation, default or power has not been waived;
- d. The Company is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Company;
- e. There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Company's knowledge, threatened in writing against the Company at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement;

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

10.1.3 In the event that any of the representations and warranties made by the Company in this Article above are not true or are incorrect, the occurrence of such event would amount to a the Company making the false or incorrect representation and warranty under this Agreement and PTCUL shall have the right to terminate this Agreement.

10.2 Representation and Warranties by PTCUL:

10.2.1 PTCUL hereby represents and warrants to and agrees with the Company as follows and acknowledges and confirms that the Long Term Transmission Customers is relying on such representations and warranties in connection with the transactions described in this Agreement:

- a. It has all requisite power authorizing and has been duly authorized to execute and consummate this Agreement;
- b. This Agreement is enforceable against it in accordance with its terms;
- c. The consummation of the transactions contemplated by this Agreement on the part of PTCUL 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 PTCUL is a Party or to which PTCUL is bound which violation, default or power has not been waived;
- d. PTCUL is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against PTCUL;
- e. There are no actions, suits, claims, proceedings or investigations pending or, to the best of the PTCUL's knowledge, threatened in writing against PTCUL at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the ITP to comply with its obligations under this Agreement.

- 10.2.2 PTCUL makes all the representations and warranties above to be valid as on the date of this Agreement.
- 10.2.3 In the event that any of the representations and warranties made by PTCUL this Article above are not true or are incorrect, the occurrence of such event would amount to the Company having the right to terminate this Agreement.

ARTICLE: 11

11: MISCELLANEOUS PROVISIONS

11.1 Language:

- 11.1.1 All agreements, all correspondence and communications between the Parties 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 that language.
- 11.1.2 If any of agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreement, correspondence, communications or document shall prevail in matters of interpretation.

11.2 Agreement Documents:

All documents forming part of the Agreement (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Agreement shall be read as a whole.

11.3 Table of Contents and Headings:

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

11.4 Interest:

All interest payable under the Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five days.

11.5 Affirmation

PTCUL and the Company, each affirm that:

1. neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
2. it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and PTCUL and the Company hereby undertake not to engage in any similar acts during the Term of Agreement.

11.6 Severability

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

11.7 No Partnership

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

11.8 Counterparts

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

11.9 Breach of Obligations

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

11.10 No Consequential or Indirect Losses

The liability of PTCUL and the Company shall be limited to that explicitly provided in this Agreement.

Provided that, notwithstanding anything contained in this Agreement, under no event shall the Company or PTCUL claim from one another any indirect or consequential losses or damages.

11.11 Discretion:

Except where this Agreement expressly requires a Party to act fairly or reasonably, a Party may exercise any discretion given to it under this Agreement in any way it deems fit.

11.12 Discrepancy:

In case of discrepancy between terms and conditions stipulated in Transmission License or Terms and Conditions of Tariff Regulations issued by Appropriate Commission and applicable to PTCCUL and this Agreement executed between PTCUL and the Company, the terms and conditions of specified by the Appropriate Commission shall prevail.

11.13 Amendments:

- 11.13.1 This Agreement may only be amended or supplemented by a written agreement between the Parties.
- 11.13.2 This Agreement is intended 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.

11.14 No Waiver:

- 11.14.1 No waiver by either Party of any default or breach in the performance of any of the provisions of this Agreement:
 - (i) shall operate or be construed as a waiver; and
 - (ii) shall be effective unless in writing duly executed by a duly authorised representative of such Party.
- 11.14.2 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.

11.15 Entirety:

- 11.15.1 This Agreement along with its sections, schedules and appendices are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.
- 11.15.2 All prior written or oral undertakings, offers or other communications of every kind pertaining to this Agreement between the Parties are abrogated and withdrawn.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR REPRESENTATIVE / DULY AUTHORISED OFFICERS AS OF THE DATE AND PLACE SET FORTH ABOVE.

1. For and on behalf of PTCUL

.....

[Name, Designation and Address]

2. For and on behalf of

..... [Insert Name of the Company

.....

[Name, Designation and Address]

[Name, Designation and Address]

WITNESSES:

1. For and on behalf of

2. For and on behalf of

SCHEDULES

Schedule : I

Scope and Schedule of the Integrated Transmission System

Schedule : II
Scheduled COD of the Project

Schedule : III
INTERCONNECTION POINTS FOR THE PROJECT

Schedule : IV
**APPROVALS FOR THE INTEGRATED TRANSMISSION
PROJECT**

METERING AND PROTECTION

This will be as per applicable provisions of the Grid code/State Grid Code.