d/479

POWER PURCHASE AGREEMENT

FOR

PROCUREMENT OF POWER

FOR 200 MW on 'LONG TERM' Basis,

Under Case – 1 Bidding Procedure

THROUGH

TARIFF BASED COMPETITIVE BIDDING PROCESS
(As per Guidelines issued by the Government of India for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees)

FOR MEETING THE BASE LOAD REQUIREMENTS

Between

Electricity Department, UT of Dadra and Nagar Haveli (DNH)
("Procurer")

And

EMCO Energy Limited
("Seller")

EMCO Energy Ltd. GMR Bangalore

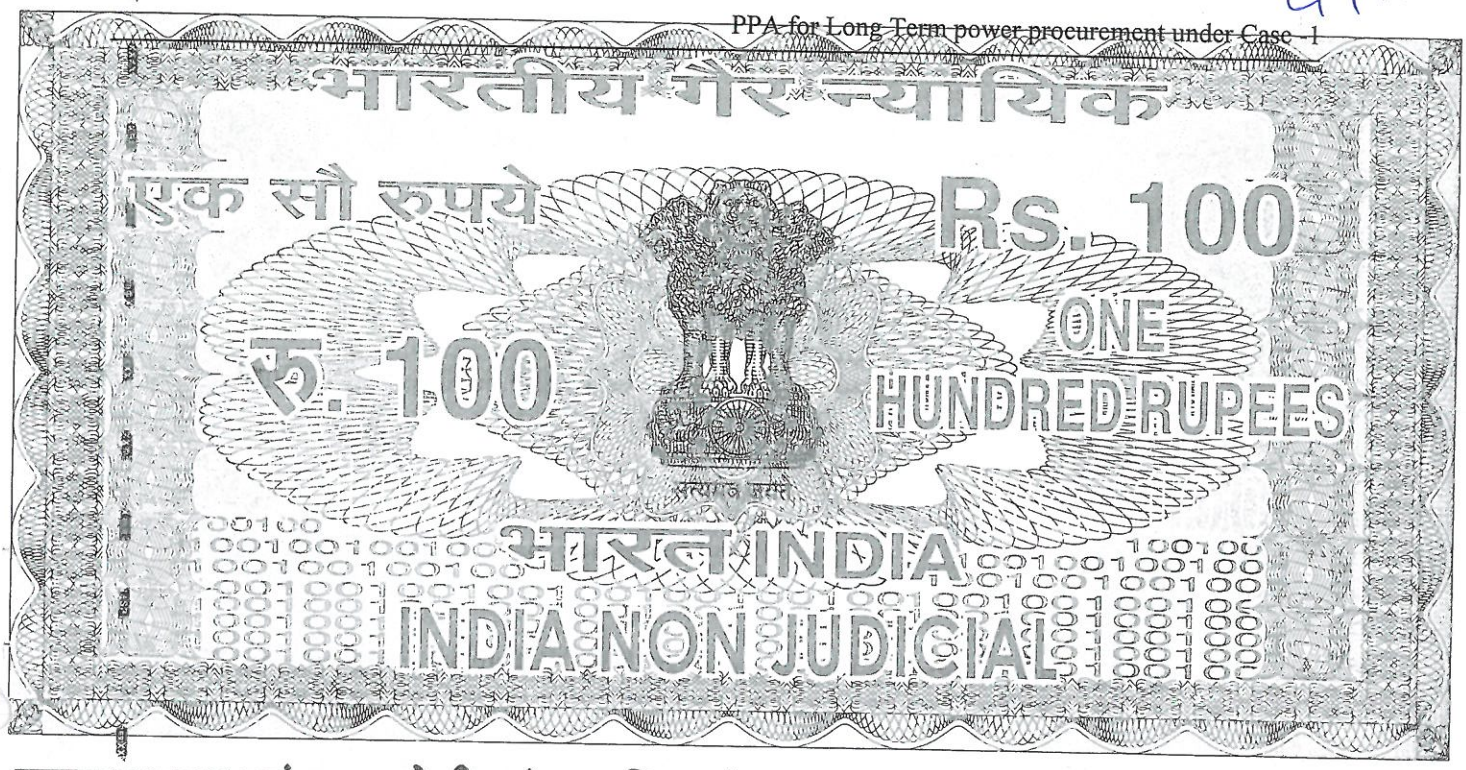
EXECUTIVE ENGINEER ELEC. D.N.H. SILVASSA

INDEX

SECTION	CONTENTS	PAGE NO.
1.	ARTICLE 1: DEFINITIONS AND INTERPRETATION	6
2	ARTICLE 2 : TERM OF AGREEMENT	21
3	ARTICLE 3 : CONDITIONS SUBSEQUENT TO BE SATISFIED BY SELLER/ PROCURER	22
4	ARTICLE 4 : SUPPLY OF POWER	27
5	ARTICLE 5: CAPACITY, AVAILABILITY AND DISPATCH	36
6	ARTICLE 6: METERING	39
7	ARTICLE 7: INSURANCES	40
8	ARTICLE 8: BILLING AND PAYMENT	41
9	ARTICLE 9 : FORCE MAJEURE	50
10	ARTICLE 10: CHANGE IN LAW	56
11	ARTICLE 11: EVENTS OF DEFAULT AND TERMINATION	58
12	ARTICLE 12: LIABILITY AND INDEMNIFICATION	64
13	ARTICLE 13: ASSIGNMENTS AND CHARGES	69
14	ARTICLE 14: GOVERNING LAW AND DISPUTE RESOLUTION	71
15	ARTICLE 15: MISCELLANEOUS PROVISIONS	73
1	SCHEDULE 1: NAMES AND DETAILS OF THE PROCURER	81
2	SCHEDULE 2: CALCULATION OF 'X' DAYS	82
3	SCHEDULE 3: AVAILABILITY FACTORS	83
4	SCHEDULE 4: TARIFF	84
5	SCHEDULE 5: DETAILS OF GENERATION SOURCE AND SUPPLY OF POWER	90
6	SCHEDULE 6: ESCALATION INDEX	92
7	SCHEDULE 7: REPRESENTATION AND WARRANTIES	94
8	SCHEDULE 8: QUOTED TARIFF	96
9	SCHEDULE 9: FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE	100
10	SCHEDULE 10: SELECTED BID	106
11	SCHEDULE 11: LIST OF BANKS	109
12	SCHEDULE 12: SUBSTITUTION RIGHTS OF THE LENDERS	111
13	SCHEDULE 13: CAPITAL STRUCTURE SCHEDULE	117

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. DEPTT. D.N.H. SILVASSA



प्रशासन दादरा एवं नगर हवेली, संघ शासित प्रदेश
ADMN. OF DADRA & NAGAR HAVELI U.T.

149940

Silvassa Stamp of ₹ 100/- Issued to Shri/Smt. Executive Engineer, Elect. Deptt.
No. 2012 of 301 Handed over to
Date 12 0 MAR 2013

Sub Treasury Officer
DNH - Silvassa.

THIS AGREEMENT IS MADE ON THE ..21... DAY OF MARCH 2013.

Between

Electricity Department, UT of Dadra and Nagar Haveli, having its divisional office at Vidyut Bhawan (Opposite Secretariat), Dadra and Nagar Haveli, Silvassa (hereinafter referred to as the "Procurer" which expression shall unless it be repugnant to the context or meaning thereof be deemed to include its sucessors and permitted assigns) for the FIRST PART;

AND

EMCO Energy Limited, a company incorporated underthe Companies Act, 1956 and having its Registered Office at 701/704, 7th Floor, Naman Centre, A-Wing, BKC (Bandra Kurla Complex), Bandra, Mumbai, Maharashtra – 400051 (hereinafter referred as the "Seller" which expression shall unless it be repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) of the SECOND PART.

EMCO Energy Ltd. GXNR Bangalore

EXECUTIVE ENGINEER ELEC. DPT. D.N.H. SILVASSA

("Procurer", and "Seller" are individually referred to as "Party" and collectively to as the "Parties")

Whereas:

A. In accordance with the Competitive Bidding Guidelines (as defined hereunder), the Procurer had initiated a competitive bidding process through issue of RFP for procurement of power for 200 (-20% / +20%) MW on Long Term basis under Case-1 bidding procedure for meeting the Procurer's Base Load power requirements.

B. Pursuant to the said bidding process, **EMCO Energy Limited** has been selected by the Procurer, as the Seller for sale and supply of electricity in bulk to the Procurer, for the Aggregate Contracted Capacity (as defined hereunder) of 200 MW, in accordance with the terms of this Agreement.

C. The Seller has provided to the Procurer, Contract Performance Guarantee as per format specified in Schedule 9 of this Agreement.

D. Deleted.

E. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power up to the Aggregate Contracted Capacity by the Seller to the Procurer.

F. The Procurer agrees, on the terms and subject to the conditions of this Agreement, to procure power up to the Aggregate Contracted Capacity and pay the Seller the Tariff as determined in accordance with the terms of this Agreement.

G. The Procurer has further agreed to make an application to the Appropriate Commission for the adoption of the Tariff under Section 63 of the Electricity Act, 2003.

H. All the other RFP Documents have been executed by the Procurer and the Seller simultaneously with the signing of this Agreement.

I. The Procurer and the Successful Bidder have mutually agreed on the Delivery Point for supplying power to the Procurer and have incorporated the same in Schedule 1 of this Agreement.

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. D.N.H. SILVASSA

d475

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

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. D.N.H. SILVASSA

1. ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 *Definitions*

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

"Act" or "Electricity Act, 2003"	shall mean the Electricity Act, 2003 and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time;
"Affiliate"	shall mean a company that either directly or indirectly i. controls or ii. is controlled by or iii. is under common control with a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and "control" means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;
"Aggregate Contracted Capacity"	with respect to the Seller, shall mean the aggregate capacity in **200 MW** contracted with the Procurer for supply at the Interconnection Point from the Power Station's Net Capacity from 2nd Unit;
"Agreement" or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	shall mean the the CERC, or the SERC or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
"Assessed Capacity"	in relation to the Power Station, shall mean the result of the most recent capacity assessment carried out by the Control Centre or "the Seller" in accordance with Article 5.5 of this Agreement;
"Availability Based Tariff" or "ABT"	shall mean all the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, as amended or revised from time to time, to the extent applied as per the terms of this Agreement;
"Availability Factor" or "Availability"	shall have the meaning ascribed thereto in ABT (provided that in place of Installed capacity and Normative auxiliary consumption it shall be Aggregate Contracted Capacity);

EMCO Energy Ltd GMR Bangalore

EXECUTIVE ENGINEER ELEC. DEPT. D.N.H. SILVASSA

"Available Capacity"	shall have the meaning ascribed thereto in ABT;
"Bid"	shall mean Non-Financial Bid and Financial Bid submitted by the Successful Bidder, in response to the RFP, in accordance with the terms and conditions of the RFP;
"Bid Deadline"	shall mean the last date and time for submission of the Bid in response to the RFP;
"Bidding Company"	shall refer to such single company that has submitted the Bid in accordance with the provisions of the RFP;
"Bidding Consortium" or "Consortium"	shall mean a group of companies that has collectively submitted the Bid;
"Bidding Guidelines" or "Competitive Bidding Guidelines"	shall mean the "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees", issued by Ministry of Power, Government of India, under Section 63 of the Electricity Act, 2003 on January 19, 2005 and as amended from time to time till the Bid Deadline;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to Seller and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the UT of Dadra and Nagar Haveli in which the concerned Procurer's registered office is located;
"Capacity Charge" or "Capacity Charges"	shall have meaning ascribed thereto in Schedule 4;
"Capital Cost"	shall mean the lower of the following: (a) actual capital cost of the Power Station on a relevant date which shall not be later than the Delivery Date, as certified by the auditors appointed jointly by the Seller and Procurer (jointly)[1]; or (b) total cost of the Power Station as set forth in the Financing Agreements, Provided that Capital Cost shall always exclude cost overruns arising due to a Seller Event of Default, or costs due to events for which compensation has been received by Seller from the Procurer or Insurers or third parties; Provided further that the Capital Cost in relation to an unit shall be the total cost of the Power Station allocated in proportion to the Aggregate Contracted Capacity;

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER D.N.H. SILVASSA

2 In this document reference to Procurers acting jointly is applicable only in case of joint procurement by more than one Procurer. In case of the contrary, the reference may be modified and consequential changes undertaken in the RFP Documents.

"Capital Structure Schedule"	shall mean sources of finance used to finance the Capital Cost of the Power Station as provided in the Financing Agreements;
"Central Transmission Utility" or "CTU"	shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;
"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
"Change in Law"	shall have the meaning ascribed thereto in Article 10.1.1 of this Agreement;
"Competent Court of Law"	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
"Consents, Clearances and Permits"	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
"Consultation Period"	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Seller Preliminary Default Notice or a Procurer Preliminary Default Notice as provided in Article 11 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
"Contract Performance Guarantee"	shall mean the irrevocable unconditional bank guarantee, submitted or to be submitted by the Seller or the Successful Bidder on behalf of the Seller to the Procurer from a bank mentioned in Schedule 11 of this Agreement in the form attached hereto as Schedule 9, in accordance with the terms of this Agreement and RFP;
"Contract Year"	shall mean the period commencing on the Effective Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31; Provided that: (i) in the financial year in which the Scheduled Delivery Date would occur, the Contract Year shall end on the date immediately before the Scheduled Delivery Date and a new Contract Year shall commence once again from the Scheduled Delivery Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;

EMCO Energy Ltd. GMR Bangalore

	And further provided that for the purpose of payment, the Tariff shall be the Quoted Tariff for the applicable Contract Year as per Schedule 8 of this Agreement;
"Contracted Capacity"	shall mean the Aggregate Contracted Capacity;
"Control Centre"	shall mean the RLDC and/or SLDC or such other load control centre designated by the Procurer from time to time through which the Procurer shall issue Dispatch Instructions to the Seller for supply of power;
"Debt Service"	shall mean the amounts which are due under the Financing Agreements by the Seller to the Lenders, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the reference exchange rate, which is the selling rate in Rupees for the foreign currency on the relevant Day, as notified by the State Bank of India as its TT Rate at 12:00 noon of the date of Notice to Proceed);
"Declared Capacity"	shall mean the Power Station's Net Capacity at the relevant time at the Interconnection Point (expressed in MW) as declared by the Seller in accordance with the Grid Code and dispatching procedures as per the Availability Based Tariff;
"Delivery Date"	shall mean the date on which the Seller commences supply of the Aggregate Contracted Capacity to the Procurer;
"Delivery Point"	shall mean the STU Interface as specified in Schedule 1 of this Agreement;
"Direct Non-Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 9.3 of this Agreement;
"Dispatch Instruction"	shall mean any instruction issued by the Procurer through the concerned SLDC / RLDC to the Seller, in accordance with applicable Grid Code and this Agreement;
"Dispute"	shall mean any dispute or difference of any kind between a Procurer and the Seller, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 14 of this Agreement;
"Due Date"	shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by the Procurer or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by such Procurer;
"Effective Date"	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;

EMCO Energy Ltd. GMR Bangalore

"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Charge" or "Energy Charges"	shall have the meaning ascribed to this term under Schedule 4 of this Agreement;
"Event of Default"	shall mean the events as defined in Article 11 of this Agreement;
"Expiry Date"	shall mean the date which is the 7 year 3 months from the Delivery Date or such extended period as mutually agreed upon by both Parties;
"Financial Closure"	shall mean the execution of all the Financing Agreements required for the Power Station and fulfillment of conditions precedents and waiver, if any, of any of the conditions precedent for the initial draw down of funds there under;
"Financing Agreements"	shall mean the agreements pursuant to which the Seller has sought financing for the Power Station including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of the Procurer;
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 9.3 of this Agreement;
"Fuel"	shall mean the primary fuel used to generate electricity namely domestic coal and/or imported coal;
"Fuel Supply Agreement(s)"	shall mean the agreement(s) entered into between the "Seller" and the fuel supplier for the purchase, transportation and handling of the Fuel, required for the operation of the Power Station. In case the transportation of the Fuel is not the responsibility of the fuel supplier, the Fuel Supply Agreement shall also include the separate agreement between the "Seller" and the fuel transporter for the transportation of Fuel in addition to the agreement between the "Seller" and the fuel supplier for the supply of the Fuel;
"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 the Government of India, Governments of state of Maharashtra and UT of Dadra and Nagar Haveli and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government or both, any political sub-division of any of

EMCO Energy Ltd. GMR Bangalore

D.N.H. SILVASSA

	them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurer;
"Indirect Non-Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 9.3 of this Agreement;
"Injection Point"	shall mean 400 KV Bhadravati Substation of PGCIL as specified by the Successful Bidder in Format 4.10 of the Selected Bid (Schedule 10 of this Agreement);
"Installed Capacity"	shall mean the sum of nameplate capacities of the units of the Power Station, confirmed by the respective performance tests;
"Insurances"	shall mean the insurance cover to be obtained and maintained by the "Seller" in accordance with Article 7 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on the Procurers' side of the Delivery Point for receiving and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 6, the Metering System required for supply of power as per the terms of this Agreement;
"Interconnection Point"	shall mean the point where the power from the Power Station switchyard bus of the Seller is injected into the interstate/intrastate transmission system (including the dedicated transmission line connecting the Power Station with the interstate/intrastate transmission system);
"Invoice" or "Bill"	shall mean either a Monthly Invoice, or a Supplementary Invoice by any of the Parties;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 8.3.5 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;
"Lender(s)"	shall mean the banks, other financial institutions, multilateral agencies, RBI registered non banking financial companies, mutual funds and agents or trustees of debenture/ bond holders, including their successors and assignees, who have agreed as on or before commencement of supply of power from the Power Station to provide the Seller with the debt financing described in the Capital

	Structure Schedule, and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned: Provided that, such assignment or transfer shall not relieve the Seller of its obligations to the Procurer under this Agreement in any manner and does not lead to an increase in the liability of the Procurer at any given point of time;
"Lender's Representative"	shall mean the person notified by the Lenders in writing as being the representative of the Lenders and such person may from time to time be replaced by the Lenders pursuant to the Financing Agreements by written notice to the Seller ;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 8.4.1 of this Agreement;
"Letter of Intent" or "LOI"	shall mean the letter issued by the Procurer / Authorized Representative to the Successful Bidder for supply of power pursuant to the RFP;
"Meters" or "Metering System"	shall mean meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;
"Minimum Offtake Guarantee" (Applicable in case of linkage-based coal/ imported coal/domestic gas/ imported LNG based projects)	shall mean guaranteed offtake of Sixty Five percent (65%) of the Aggregate Contracted Capacity for the Procurer during a Contract Year[2].
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Monthly Bill" or "Monthly Invoice"	shall mean a monthly invoice comprising of Capacity Charges (applicable after Delivery Date) and Energy Charges (as applicable), including incentive and penalty, as per Schedule 4 hereof;
"Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 9.3 of this Agreement;
"Non-Natural Force Majeure Event"	shall have the meaning ascribed thereto in Article 9.3 of this Agreement;
"Normative Availability"	shall mean Eighty Five percent (85%)[3] Availability of the Aggregate Contracted Capacity at the Interconnection Point on Contract Year basis.

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. DEPTT. U.T. SILVASSA

[2] To be decided by the Procurer but needs to be aligned with the prevalent CERC norms

"Notice to Proceed" or "NTP"	shall mean the date on which the "Seller" shall fulfill the conditions as contained in Article 3.1.1 of this Agreement in accordance with the provisions of this Agreement;
"Operating Period";	shall mean the period commencing from the Delivery Date, until the Expiry Date or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
"Parent Company" or "Parent"	shall mean a company that holds at least twenty six percent (26%) of the paid-up equity capital directly or indirectly in the Seller or in the Member, as the case may be;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Mechanism"	shall have the meaning ascribed thereto in Article 8.4 of this Agreement;
"Power Station"	shall mean the Emco Energy Limited power generation facility of installed capacity of 600 (2 x 300) MW, located at Warora in Chandrapur district, Maharashtra; This includes all units and auxiliaries such as associated Fuel handling, treatment or storage facilities; water supply, treatment or storage facilities; the ash disposal system including ash dyke; bay/s for transmission system in the switchyard, dam, intake, water conductor system, and all the other assets, buildings/structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement;
"Power Station's Net Capacity"	shall mean 549 MW, being Installed Capacity of the Power Station measured at the bus-bar, reduced by the normative auxiliary power consumption as prescribed by CERC from time to time; In case of a dedicated transmission line connecting the bus-bar and the Interconnection Point, the Power Station's Net Capacity shall be 546.255 MW, being the Installed Capacity of the Power Station measured at the Interconnection Point and reduced by the normative auxiliary power consumption and losses, if any, of such dedicated transmission line;
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 11 of this Agreement;
"Project Company"	shall mean the company where incorporated by the Successful Bidder, as per Indian laws, to undertake all rights and obligations of

[3] This shall be aligned to the level specified in the tariff regulations of the Central Electricity Regulatory Commission (CERC) and the Bidding Guidelines prevailing at the time of the bid process.

	the Seller and to sign this Agreement for the supply of power to the Procurer as per the terms of this Agreement;
"Provisional Bill"	shall mean the bill raised by the Seller as ascried thereto in Article 8.3.6 of this Agreement;
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Station; b) the requirements of Indian Law; and the physical conditions at the site of the Power Station;
"Quoted Capacity Charges"	shall mean the sum total of Quoted Non Escalable Capacity Charges and Quoted Escalable Capacity Charges;
"Quoted Energy Charges"	shall mean the sum total of Quoted Non Escalable Energy Charges and Quoted Escalable Energy Charge;
"Quoted Escalable Capacity Charges"	shall have the meaning as ascribed thereto in Column 5 of Schedule 8 of this Agreement;
"Quoted Escalable Energy Charges"	In case of Fuel being other than imported coal/ imported R-LNG shall have the meaning as ascribed thereto in Column 7 of Schedule 8 of this Agreement; In case of Fuel being imported coal/ imported R-LNG shall have the meaning as ascribed thereto in Column 9 of Schedule 8 of this Agreement;
"Quoted Escalable Fuel Handling Charges"	shall have the meaning as ascribed thereto in Column 15 of Schedule 8 of this Agreement;
"Quoted Escalable Inland Transportation Charges"	shall have the meaning as ascribed thereto in Column 11 of Schedule 8 of this Agreement;
"Quoted Escalable Overseas Transportation Charges"	shall have the meaning as ascribed thereto in Column 13 of Schedule 8 of this Agreement;
"Quoted Non Escalable Capacity Charges"	shall have the meaning as ascribed thereto in Column 4 of Schedule 8 of this Agreement;
"Quoted Non Escalable Energy Charges"	*In case of Fuel being other than imported coal/ imported R-LNG* shall have the meaning as ascribed thereto in Column 8 of Schedule 8 of this Agreement;

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. D.H. SILVASSA

	In case of Fuel being imported coal/ imported R-LNG shall have the meaning as ascribed thereto in Column 6 of Schedule 8 of this Agreement;
"Quoted Non Escalable Fuel Handling Charges"	shall have the meaning as ascribed thereto in Column 14 of Schedule 8 of this Agreement;
"Quoted Non Escalable Inland Transportation Charges"	shall have the meaning as ascribed thereto in Column 10 of Schedule 8 of this Agreement;
"Quoted Non Escalable Overseas Transportation Charges"	shall have the meaning as ascribed thereto in Column 12 of Schedule 8 of this Agreement;
"Quoted Tariff "	shall mean the sum total of Quoted Energy Charges and Quoted Capacity Charge;
"RBI"	shall mean the Reserve Bank of India;
"Rebate"	shall have the same meaning as ascribed thereto in Article 8.3.6 of this Agreement;
"Receivables"	shall have the meaning as ascribed thereto in Article 8.4.11 of this Agreement;
"Regional Energy Accounts" or "REA"	shall have the same meaning as in the Grid Code and issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"Revised Scheduled Delivery Date"	shall have the meaning ascribed thereto in Article 4.1 of this Agreement;
"RFP"	shall mean the Request For Proposal document along with all formats dated 17.3.2012 issued by the Procurer and shall include any modifications, amendments or alterations and clarifications thereto;
"RFP Documents"	shall mean the following documents entered into in respect of the procurement of power, by the Parties to the respective agreements: a) PPA; b) Deleted; c) Deleted; d) Any other agreement(s) designated as such, from time to time by the Procurer
"RLDC"	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"RPC"	shall mean the relevant Regional Power Committee established by

	the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Rupees" or "Rs." or " ` "	shall mean Indian rupees, the lawful currency of India;
"SBAR"	shall mean the prime lending rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties;
"Scheduled Delivery Date"	shall have the meaning ascribed thereto in Article 4.1 of this Agreement;
"Scheduled Energy" or "Scheduled Generation"	Shall mean scheduled generation as defined in the ABT;
"Scheduled Outage"	shall mean the final outage plan as approved by the RPC as per the provisions of the Grid Code;
"Selected Bid"	shall mean the Bid of the Successful Bidder as accepted by the Procurer/ Authorized Representative, copy of which is attached herewith and marked as Schedule 10 of this Agreement;
"Selectee"	shall mean a new company (i) proposed by the Lenders pursuant to Schedule 12 hereof and approved by the Procurers (ii) or proposed by the Procurer in accordance with Schedule 12 hereof and approved by the Lenders, for substituting the Seller for the residual period of the PPA by amendment of the PPA or by execution of a fresh PPA in accordance with the terms and conditions contained in the said Schedule;
"SERC"	shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Sub-section (1) of Section 83 of the Electricity Act 2003;
"Settlement Period"	shall mean the time period for the issuance of daily generation and drawl schedules as provided in ABT;
"SLDC"	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where either of the Interconnection Point, the Injection Point and/or the Delivery Point are located;
"SLDC Charges"	shall mean the charges levied by any of the relevant SLDCs for the supply of power by the Seller to the Procurer;
"State Transmission Utility" or "STU"	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELECTRICITY DEPT. U.T. SILVASSA

	the Act;
"STU Interface"	shall mean the point at which the CTU network is connected to the intrastate transmission system of the Procurer's State(s), and at which the Procurer agree to receive power up to the Requisitioned Capacity; For generation source in the same state as that of the Procurer, the STU Interface shall be the bus-bar of the generating station from which power is contracted to be supplied, at an appropriate voltage level as specified by the STU.
"Substitution Notice"	shall have the same meaning as ascribed to in Clause 12.3 of Schedule 12 of this Agreement;
"Successful Bidder"	shall mean the Bidder selected by the Procurer / Authourized Representative pursuant to the RFP for supply of power by itself or through the Project Company to the Procurer as per the terms of PPA and other RFP Documents, and to whom a LOI has been issued;
"Supplementary Bill"	shall mean a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 8 of this Agreement;
"Tariff"	shall mean the tariff as computed in accordance with Schedule 4 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Schedule 4 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Articles 3.4.2, 3.4.3, 3.4.4, 3.4.5, 4.1.1, 11.3.4, 11.4.5, 11.5.1 and Clause 7.2.3 of Schedule 7 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2.2 of this Agreement;
"Total Debt Amount"	shall mean the sum of the following amounts, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the reference exchange rate, which is the selling rate in Rupees for the foreign currency on the relevant Day, as notified by the State Bank of India as its telegraphic transfer rate at 12:00 noon on the date of issuance of Substitution Notice by the Lenders (a) the principal amount of the debt incurred by the Seller (as per the terms of the Financing Agreements) to finance the Power Station according to the Capital Structure Schedule which remains outstanding on the date of issuance of Substitution Notice by the Lender after taking account of any debt repayments which could have been made out of the Tariff Payments received by the Seller on or before the date of issuance of Substitution Notice by the Lender as per the terms

EMCO Energy Ltd. GMR Bangalore

provided in the Financing Agreements; and

(b) all accrued interest and financing fees payable under the Financing Agreements on the amounts referred to in (a) above from the date of the Capacity Charge payment (as specified in Clause 4.2.1 of Schedule 4 hereof) immediately preceding the date of issuance of Substitution Notice by the Lender or, if the Capacity Charges have not yet fallen due to be paid, from the most recent date when interest and financing fees were capitalised.

"Transmission Service Agreement"	shall mean the agreements(s) signed by the Seller and the relevant transmission licensee for transmission of power up to the Aggregate Contracted Capacity from the Injection Point to the Delivery Point;
"Ultimate Parent Company"	shall mean a company which directly or indirectly owns at least twenty six percent (26%) paid up equity capital in the Seller or Member (as the case may be) and such Seller or Member (as the case may be) shall be under the direct control or indirectly under the common control of such company;
"Unscheduled Interchange" or "UI"	shall have the meaning ascribed thereto in Rule 24 of the CERC (Terms and Conditions of tariff) Regulations 2004 as amended or revised from time to time; In case the Power Station and the Procurer being within the same state, the Unscheduled Interchange shall be regulated by the respective SERC regulations;
"Unscheduled Outage"	shall mean an outage that is not a Scheduled Outage and is for the purpose of performing work on specific plant and equipments, which work could not be postponed till the next Scheduled Outage;
"US $" or "USD" or "Dollar" [*for imported fuel only*]	shall mean United States Dollars, the lawful currency of the United States of America;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
"Wheeling Charges" or "Transmission Charges"	shall mean the charges to be paid by the Seller as transmission tariff for usage of intervening CTU networks for the transmission of power from the Injection Point up to the Delivery Point, as approved by the Appropriate Commission (excluding the charges for the STU network or charges of STU system operation or SLDC Charges, if any);

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELECTRICITY U.T. OF D&NH SILVASSA

1.2 *Interpretation*

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

1.2.1 "Agreement" shall be construed as including a reference to its Schedules, Appendices and Annexures;

1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;

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

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

1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;

1.2.7 "Rupee", "Rupees", "Rs." and " ` " shall denote Indian Rupees, the lawful currency of India;

1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

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

1.2.10 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;

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

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

1.2.13 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;

1.2.14 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;

1.2.15 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;

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

1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

1.2.18 The contents of Schedule 10 shall be referred to for ascertaining accuracy and correctness of the representations made by the Successful Bidder / Seller in Clause 7.2.1(vi) of Schedule 7 hereof.

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. SILVASSA

2 ARTICLE 2 : TERM OF AGREEMENT

2.1 *Effective Date*

2.1.1 This Agreement shall come into effect from the date it is executed and delivered by the last of all the Parties and such date shall be referred to as the Effective Date.

2.2 *Term of Agreement*

2.2.1 This Agreement shall be valid for a term commencing from the Effective Date until the Expiry Date ("Term of Agreement"), unless terminated earlier pursuant to Article 2.3. Upon the occurrence of the Expiry Date, this Agreement shall, subject to Article 2.4, automatically terminate, unless mutually, extended by all the Parties on mutually agreed terms and conditions, at least one hundred and eighty (180) days prior to the Expiry Date, subject to approval of the JERC.

2.3 *Early Termination*

2.3.1 This Agreement shall terminate before the Expiry Date:

i. if either Procurer or the Seller exercises a right to terminate, pursuant to Articles 3.4.2, 3.4.3, 3.4.4, 3.4.5, 4.1.1, 11.3.4, 11.4.5, 11.5.1 or Clause 7.2.3 of Schedule 7 of this Agreement; or

ii. in such other circumstances as the Seller and the Procurer may agree, in writing.

2.4 *Survival*

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 3.4.2, Article 9 (Force Majeure), Article 11 (Events of Default and Termination), Article 12 (Liability and Indemnification), Article 14 (Governing Law and Dispute Resolution), Article 15 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

EMCO Energy Ltd. GMR Bangalore

D.M.H. SILVASSA

3 ARTICLE 3 : CONDITIONS SUBSEQUENT TO BE SATISFIED BY SELLER/ PROCURER

3.1 *Satisfaction of conditions subsequent by the Seller*

3.1.1 The Seller agrees and undertakes to duly perform and complete the following activities at the Seller's own cost and risk within twelve (12) months from the Effective Date, unless such completion is affected by any Force Majeure event or due to the Procurers' failure to comply with their obligations under Article 3.2.1 of this Agreement, or if any of the activities is specifically waived in writing by the Procurer:

a) The Seller shall have executed the Fuel Supply Agreement and have provided the copy of the same to the Procurer.

b) In case the Power Station is located outside the state of the Procurer, the Seller shall have obtained all the necessary permission for the long term open access for the intrastate transmission system from the Power Station bus bar to the Injection Point (except in case of dedicated transmission lines) and shall have excuted all necessary agreements for such transmission access and provided a copy of the same to the Procurer;

c) The Seller shall have obtained the necessary permission for long term open access or short term open access (for the initial period) as deemed necessary for the transmission system from the Injection Point up to the Delivery Point and have executed the Transmission Service Agreement with the transmission licensee for transmission of power from the Injection Point up to the Delivery Point and provided a copy of the same to the Procurer;

d) The Seller shall have acquired and taken the possession of the balance area of land out of the total land requirement as mentioned in the proposal filed before the competent authourity at the RFP stage;

The Seller shall submit the letter of possession and equivalent documents for such area of land as mentioned above to the Procurer.

e) The Seller shall have awarded the Engineering, Procurement and Construction contract ("EPC contract) or main plant contract for boiler, turbine and generator ("BTG"), for setting up of the Power Station and shall have given to such contractor an irrevocable NTP and shall have submitted a letter to this effect to the Procurer;

f) The Seller shall have obtained all Consents, Clearances and Permits required for supply of power to the Procurer as per the terms of this Agreement. In case a Project Company is incorporated and the Consents, Clearances and Permits have been obtained in the name of a company other than the Project Company, all such Consents, Clearances and Permits shall have been transferred in the name of such Project Company;

g) The Seller shall have sent a written notice to the Procurer indicating the Aggregate Contracted Capacity and total Installed Capacity for each unit and for the Power Station as a whole expressed in MW;

h) The Seller shall have achieved Financial Closure and has provided a certificate from the lead banker to this effect;

i) The Seller shall have provided an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the terms of this Agreement and all other RFP Documents;

3.2 Satisfaction of conditions subsequent by the Procurer

3.2.1 The Procurer agrees and undertakes to duly perform and complete the following activities at the Procurer's own cost and risk within twelve (12) Months from the Effective Date, unless such completion is affected by any Force Majeure event or due to the Seller's failure to comply with their obligations under Article 3.1.1 of this Agreement or if any of the activities is specifically waived in writing by the Seller:

a) The Procurer shall facilitate the representation of the Seller in the relevant RPC forum in coordinating on applicable inter-state/regional transmission linkages required from the Injection Point to the Delivery Point.

b) Deleted

c) The Procurer shall have obtained the order of the JERC for adoption of the tariff under Section 63 of the Electricity Act 2003 and given a copy of the same to the Seller.

3.3 *Joint responsibilities of the Procurer and the Seller*

3.3.1 The Procurer and the Seller shall have jointly agreed on the specific date(s) for commencement of supply of power and quantum of the Contracted Capacity to be supplied to Procurer from each such date. Such mutually agreed date(s) shall not be later than the Scheduled Delivery Date, and the total quantum of power shall be equal to the Aggregate Contracted Capacity.

3.3.2 These date(s) shall be mutually agreed upon within twelve (12) Months and shall be the Revised Scheduled Delivery Date(s) for the respective quantum of power.

3.4 *Consequences of non-fulfillment of conditions subsequent*

3.4.1 If any one or more of the conditions specified in Article 3.1 is not duly fulfilled by the Seller, even within three (3) Months after the time specified under Article 3.1, otherwise than for the reasons directly attributable to the Procurer or Force Majeure event in terms of Article 3.4.3, then on and from the expiry of such period and until the Seller has satisfied all the conditions specified in Article 3.1, the Seller shall, on weekly basis, be liable to furnish to the Procurer additional Contract Performance Guarantee from any of the banks listed in Schedule 11 of this Agreement, of Rs. Three (3) Crore, which has been provided to the Procurer within two (2) Business Days of expiry of every such Week. Such additional Contract Performance Guarantee shall initially be valid till the Scheduled Delivery Date, and the Procurer shall be entitled to hold and/ or invoke the Contract Performance Guarantee, including such additional Contract Performance Guarantee, in accordance with the provisions of this

Agreement. However, upon satisfaction of the conditions subsequent by the Seller, the additional Contract Performance Guarantee shall be returned by the Procurer.

3.4.2 Subject to Article 3.4.3, if:

(i) fulfillment of any one or more of the conditions specified in Article 3.1 is delayed beyond the period of three (3) Months after the date specified in Article 3.1 above, and the Seller fails to furnish the additional Contract Performance Guarantee to the Procurer in accordance with Article 3.4.1 hereof; or

(ii) the Seller furnishes additional Contract Performance Guarantee to the Procurer in accordance with Article 3.4.1 hereof, but fails to fulfill the conditions specified in Article 3.1 for a period of six (6) Months beyond the period specified in Article 3.1 above,

The Procurer shall have the right to terminate this Agreement by giving a Termination Notice to the other Party in writing of at least seven (7) days. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period ("Termination Date").

If the Procurer elects to terminate this Agreement in the event specified in the preceding paragraph of this Article, the Seller shall be liable to pay to the Procurer on the Termination Date an amount of Rupees Forty Lakh (40.00 Lakh) per MW of the Contracted Capacity only as liquidated damages.

The Procurer shall be entitled to recover this amount of liquidated damages on the Termination Date, by invoking the Contract Performance Guarantee and shall then return the balance Contract Performance Guarantee, if any, to the Seller. If the Procurer is unable to recover the amount of liquidated damages or any part thereof from the Contract Performance Guarantee, the amount of liquidated damages not recovered from the Contract Performance Guarantee, if any, shall be payable by the Seller to the Procurer within ten (10) days from the Termination Date.

For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

3.4.3 In case of inability of the Seller to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the Procurer or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period.

3.4.4 Similarly, in case of inability of the Procurer to fulfill the conditions specified in Article 3.2 due to any Force Majeure event, the time period for fulfillment of the condition subsequent as mentioned in Article 3.2, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may

be terminated by either the Procurer or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement, shall take effect upon the expiry of the last date of the said notice period.

3.4.5 In case of inability of the Procurer to perform the activities specified in Article 3.2 within the time period specified therein, otherwise than for the reasons directly attributable to the Seller or Force Majeure event, the time period for the fulfillment of condition subsequent by the Procurer as mentioned in Article 3.2 would be extended for an additional time period which may be required by the Procurer to complete the activities mentioned in Article 3.2, subject to a maximum additional time period of three (3) months. Thereafter, this Agreement may be terminated by the Seller at its option, by giving a Termination Notice of at least seven (7) days, in writing to the Procurer. If the Seller elects to terminate this Agreement, the Procurer shall, within a period of thirty (30) days of termination by the Seller, release the Contract Performance Guarantee of the Seller forthwith. In addition, the Procurer shall pay to the Seller as liquidated damages, a sum equivalent to ten percent (10%) of the value of the Contract Performance Guarantee.

3.4.6 No Tariff adjustment shall be allowed on account of any extension of time arising under any of the sub-articles of Article 3.4;

Provided that due to the provisions of Articles 3.4.3, 3.4.4 and 3.4.5, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

3.5 *Contract Performance Guarantee*

3.5.1 The Performance Guarantee furnished under this Agreement shall be for guaranteeing the commencement and continuity of the supply of power up to the Contracted Capacity within the time specified in this Agreement.

3.5.2 The failure on the part of the Seller to furnish and maintain the Contract Performance Guarantee shall be a material breach of the term of this Agreement on the part of the Seller.

3.5.3 If the Seller fails to commence supply of power on the respective Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date specified in this Agreement, subject to conditions mentioned in Article 4.7.1, the Procurer shall have the right to encash the Contract Performance Guarantee and appropriate in their favour as liquidated damages an amount specified in Article 4.8.1, without prejudice to the other rights of the Procurer under this Agreement.

3.6 *Reduction in the amount of Contract Performance Guarantee*

3.6.1 On successful supply of power as per the terms of this Agreement for a duration of three (3) years and eight (8) months from the Delivery Date and provided that there has been no Seller Event of Default in the immediately preceeding thirty-six (36) Months, the value of the Contract Performance Guarantee shall be reduced by an aggregate amount of Rupees Thirty (30) Crore. The Seller shall thereafter provide such reduced Contract Performance Guarantee to the Procurer, in lieu of the Contract

EMCO Energy Ltd. GMR Bangalore

Performance Guarantee, of an amount of Rupees Sixty (60) Crore. Such reduced Contract Performance Guarantee shall be initially valid for a period, which is the lower of five (5) years or the balance Term of this Agreement.

3.7 ***Renewal of Contract Performance Guarantee***

3.7.1 The Seller shall ensure the renewal of the Contract Performance Guarantee before a date, which is thirty (30) days prior to the expiry of the then existing validity of the Contract Performance Guarantee.

3.7.2 Such renewed Contract Performance Guarantee shall be initially valid for a period which is the lower of five (5) years or the balance Term of this Agreement.

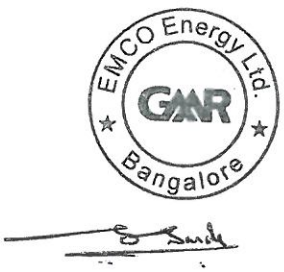
3.7.3 If such extended Contract Performance Guarantee is not received as per the date specified above, the Procurer shall have the right to encash the then exisiting Contract Performance Guarantee.

3.8 ***Return of Contract Performance Guarantee***

3.8.1 The Procurer shall return / release the Contract Performance Guarantee in the event of (i) applicability of Article 3.4.2 to the extent the Contract Performance Guarantee is valid for an amount in excess of Rupees Eighty (80) Crore or (ii) termination of this Agreement by any Party under Article 3.4.3, 3.4.4 or Article 3.4.5 of this Agreement.

3.8.2 Subject to the provisions of Article 3.8.1, the Procurer shall return / release the Contract Performance Guarantee to the Seller at the end of the Term of this Agreement.

3.8.3 The return / release of the Contract Performance Guarantee shall be without prejudice to other rights of the Procurer under this Agreement.





4 ARTICLE 4 : SUPPLY OF POWER

4.1 *Commencement of Supply of Power to Procurer*

4.1.1 The Seller shall be responsible to commence supply of power up to the Aggregated Contracted Capacity of **100 MW** by the Scheduled Delivery Date **1ST APRIL 2013,** additional **50 MW** (total of 150 MW) by the Scheduled Delivery Date **1ST JULY 2013** and additional **50 MW** (total of 200 MW) by the Scheduled Delivery Date **1ST OCTOBER 2013** in accordance with the provisions of this Agreement. Further till **30TH SEPTEMBER 2013** based on the requirement, the Procurer may also request the Seller to supply additional power upto 200 MW at the applicable quoted tariff. However, the Seller and the Procurer may mutually agree for commencement of supply of power in a phased manner from the Revised Scheduled Delivery Date(s) as specified in Article 3.3 of this Agreement. The quoted tariff rates as per Schedule 8 and Schedule 10 shall be applicable from scheduled delivery date.

4.1.2 The Seller shall give the Procurer and the concerned RLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice, of the date on which it intends to commence supply of power.

4.2 *Seller's Obligations*

4.2.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller's own cost and risk, for:

a) obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement;

b) the commencement of supply of power, up to the Aggregated Contracted Capacity, to the Procurer no later than the Scheduled Delivery Date or the Revised Scheduled Delivery Date(s), as the case may be, such that as much of the Contracted Capacity as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurer's scheduling and dispatch requirements throughout the Term of this Agreement;

c) obtaining all the necessary permissions for the long term open access or short term open access for the intrastate transmission system for evacuation of power from the Power Station bus bar to the Injection Point (except in case of dedicated transmission lines) and excute all necessary agreements for such transmission access and provide a copy of the same to the Procurer;

d) obtaining open access for transmission of Aggregated Contracted Capacity of power from the Injection Point to the Delivery Point;

e) owning the Power Station throughout the Term of this Agreement free and clear of encumbrances, except those expressly permitted under Article 13;

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. DEPTT. SILVASSA

f) procuring electricity at the Power Station (including construction, commissioning and start-up power) and to comply in a timely manner all formalities for getting such a supply of electricity;

g) providing on a timely basis, all relevant information to the Procurer which may be required for receiving power at the Delivery Point; and

h) fulfilling all obligations undertaken by the Seller under this Agreement.

i) Deleted.

4.3 ***Procurer's Obligations***

4.3.1 Subject to the terms and conditions of this Agreement, the Procurer shall:

a) ensure the availability of Interconnection Facilities and evacuation of power from the Delivery Point before the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be;

b) Deleted

c) Deleted

d) Deleted

e) make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station; subject to the availability of transmission capacity; and

f) fulfill all obligations undertaken by the Procurer under this Agreement.

4.4 ***Purchase and sale of Available Capacity and Scheduled Energy***

4.4.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to the Procurer, and the Procurer undertake to pay Tariff for all of the Available Capacity up to the Contracted Capacity and corresponding Scheduled Energy.

4.4.2 Unless otherwise instructed by the Procurer, the Seller shall sell all the Available Capacity up to the Contracted Capacity to the Procurer pursuant to Dispatch Instructions given by the Procurer.

4.5 ***Right to Contracted Capacity and Scheduled Energy***

4.5.1 Subject to provisions of this Agreement, the entire Aggregate Contracted Capacity shall be for the exclusive benefit of the Procurer and the Procurer shall have the exclusive right to purchase the entire Aggregate Contracted Capacity from the Seller. The Seller shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Capacity and/or Scheduled Energy..

4.5.2 a) Notwithstanding Article 4.5.1, the Seller is free to sell such power to any third party prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date(s) as the case may be and any capacity which is in excess of the quantum of power agreed to be supplied under this Agreement from each such Revised Scheduled Delivery Date(s).

b) Further notwithstanding Article 4.5.1, the Seller shall be permitted to sell power, being a part of the Contracted Capacity to third parties, if:

i) there is a part of Available Capacity corresponding to the Contracted Capacity which has not been Dispatched by the Procurer, ordinarily entitled to receive such part ('Concerned Procurer'); and

ii) Deleted

4.5.3 If the Procurer does not avail of power up to the Available Capacity provided by the Seller corresponding to the Contracted Capacity, the Seller shall be entitled to sell such Available Capacity not scheduled by the Procurer, to any person without losing the right to receive the Capacity Charges from the Procurer for such unavailed Available Capacity. In such a case, the sale realization in excess of Energy Charges, shall be equally shared by the Seller and the Procurer. In the event, the Seller sells such Available Capacity to any direct or indirect Affiliate of the Seller/ shareholders of the Seller without obtaining the prior written consent of the Procurer, the Seller shall be liable to sell such Available Capacity to such entity at Tariffs being not less than the Tariff payable by the Procurer. During this period, the Seller will continue to receive the Capacity Charges from the Procurer.

4.5.4 The sale under Unscheduled Interchange shall not be considered as sale to third party for the purposes of this Agreement.

4.5.5 Upon the Procurer intimating to the Seller of its intention and willingness to avail of the part or whole of the Available Capacity corresponding to the Contracted Capacity not availed of and therefore sold to the third party, the Seller shall, notwithstanding anything contained in the arrangement between the Seller and any third party, commence supply of such capacity to the Procurer from the later of two (2) hours from receipt of notice in this regard from the Procurer or the time for commencement of supply specified in such notice subject to the provisions regarding scheduling as per IEGC .

4.6 ***Alternative Source of Power Supply***

4.6.1 During the Operating Period, if the Seller is unable to provide supply of power to the Procurer up to the Aggregate Contracted Capacity from the Power Station except due to a Force Majeure Event or due to a Procurer Event of Default, the Seller is free to supply power up to the Aggregate Contracted Capacity from an alternative generation source to meet its obligations under this Agreement. Such power shall be supplied to the Procurer at the same Tariff as per the terms of this Agreement and subject to provisions of Article 4.6.2. In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges from the Injection Point to the Delivery Point, the Seller would be liable to bear such additional charges.

4.6.2 The Seller shall be permitted to supply power to the Procurer from any alternative source for a maximum continuous duration of six (6) Months or a maximum non continuous period of twelve (12) months during the Operating Period, excluding any period of supply from alternative generation source that the Seller avails prior to the

commencement of supply from the generation source named in this Agreement as provided for in Article 4.8.

4.7 *Extensions of Time*

4.7.1 In the event that the Seller is prevented from performing its obligations under Article 4.1.1 by the Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date, as the case may be, due to:

a) any Procurer Event of Default; or

b) Force Majeure Events affecting the Procurer, or

c) Force Majeure Events affecting the Seller,

the Revised Scheduled Delivery Date(s), Scheduled Delivery Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.7.2, for a reasonable period but not less than 'day for day' basis, to permit the Seller or the Procurer through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Seller or the Procurer, or till such time such Event of Default is rectified by the Procurer.

4.7.2 In case of extension occurring due to reasons specified in Article 4.7.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Delivery Date would not be extended by more than twelve (12) Months or the date on which the Seller elects to terminate this Agreement, whichever is later.

4.7.3 In case of extension due to reasons specified in Article 4.7.1(b) and (c), and if such Force Majeure Event continues even after the maximum period of twelve (12) Months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.5.

4.7.4 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Revised Scheduled Delivery Date(s), Scheduled Delivery Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 14.

4.7.5 As a result of such extension, the Scheduled Delivery Date and the Expiry Date newly determined shall be deemed to be the Scheduled Delivery Date and the Expiry Date for the purposes of this Agreement.

4.8 *Liquidated Damages for delay in commencement of supply of power to Procurer*

4.8.1 If the Seller is unable to commence supply of power to the Procurer by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, other than for the reasons specified in Article 4.7.1, the Seller shall pay to the Procurer liquidated damages as per this Article 4.8.1, for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

EMCO Energy Ltd. GMR Bangalore

Provided that the Seller shall have the option to supply power from any alternative generation source from the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, for a continuous period not exceeding twelve (12) months at the same Tariff as per the terms of this Agreement. Provided further that the cumulative Availability from such alternative generation source in the twelve (12) months period shall not be less than the Normative Availability. If the Seller fails to commence such supply of power or fails to achieve the required Availability as mentioned above in this para, it shall pay to the Procurer liquidated damages as per this Article 4.8.1.

In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges from the Injection Point to the Delivery Point, the Seller would be liable to bear such additional charges.

The sum total of the liquidated damages payable by the Seller to the Procurer shall be calculated as follows:

SLDb = [CC * d * DR1], if d <= 60

SLDb = [CC * 60 * DR1] + [CC * (d - 60) * DR2], if d > 60

where:

a) "SLDb" are the liquidated damages payable by the Seller during the period beginning with the day from the Scheduled Delivery Date or the Revised Scheduled Delivery Date or from the end of continuous period of supply from the alternative generation source or for the period during which the Availability from the alternative generating source is less than the Normative Availability, as the case may be, up to and including the day on which supply of power to the Procurer actually commences from the generation source as provided in this Agreement;

b) "CC" is the Contracted Capacity;

c) "d" is the number of days in the period beginning with the day after the Scheduled Delivery Date or the Revised Scheduled Delivery Date or from the end of continuous period of supply from the alternative generation source or for the period during which the Availability from the alternative generating source is less than the Normative Availability, as the case may be, up to and including the day on which supply of power to the Procurer actually commences from the generation source as provided in this Agreement;

d) "DR1" is Rs. Ten Thousand (10,000) of damages per MW per day of delay in case "d" is equal to or less than 60 days and "DR2" is Rs. Fifteen Thousand (15,000) of damages per MW per day of delay in case "d" is more than 60 days.

4.8.2 The Seller's maximum liability under this Article 4.8 shall be limited to the amount of liquidated damages calculated in accordance with Article 4.8.1 for and up to twelve

(12) Months of delay for commencement of supply of power from the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

Provided that in case of failure of the Seller to start supply of power to Procurer even after expiry of twelve (12) Months from its Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, it shall be considered as a Seller Event of Default and provisions of Article 11 shall apply.

4.8.3 The Seller shall pay the amount calculated pursuant to Article 4.8.1 to the Procurer within ten (10) days of the earlier of:

a) the date on which the Seller commences supply of power to the Procurer, or

b) expiry of the twelve (12) Months period mentioned in Article 4.8.2.

4.8.4 If the Seller fails to pay the amount of liquidated damages within the period of ten (10) days as specified in Article 4.8.3, the Procurer shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If the then existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Seller to the Procurer under this Article 4.8, then the Seller shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Contract Performance Guarantee by the Procurer.

4.8.5 The Parties agree that the formula specified in Article 4.8.1 for calculation of liquidated damages payable by the Seller under this Article 4.8, read with Article 11 is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurer in the event of Seller's delay in starting supply of power by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

4.8.6 In addition to the liquidated damages payable by the Seller to the Procurer for delay in commencement of supply of power, as specified in Article 4.8.1, the Seller shall further pay to the Procurer liquidated damages as per this Article 4.8.6. The liquidated damages payable by the Seller to the Procurer shall be limited to the damages/charges payable by the Procurer to the STU for the period of such delay, as per the terms of the agreement as may be entered by the Procurer with STU for establishment of transmission system from the Delivery Point(s) onwards. The liquidated damages payable as mentioned above in this Article, shall not be more than twenty percent (20%) of liquidated damages computed in the manner mentioned in Article 4.8.1.

4.9 ***Liquidated Damages for delay due to Procurer Event of Default or Indirect Non Natural Force Majeure Events or Natural Force Majeure Event (affecting the Procurer)***

4.9.1 If the Seller is otherwise ready to commence supply of power and has given due notice, as per provisions of Article 4.1.2, to the Procurer of the date of commencement of power supply, where such date is on or before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, but is not able to commence supply of power by the said date specified in the notice, due to a Procurer Event of Default or due to Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer) provided such Indirect Non

Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer) has continued for a period of more than three (3) continuous or non-continuous Months, the Seller shall, until the effects of the Procurer Event of Default or of Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer) no longer prevent the Seller from providing supply of power to the Procurer, be deemed to have an Available Capacity equal to the Aggregated Contracted Capacity relevant to that date and to this extent, be deemed to have been providing supply of power with effect from the date notified, and shall be treated as follows:

a) In case of delay on account of the Procurer Event of Default, the Procurer shall make payment to the Seller of Capacity Charges in proportion to their Contracted Capcity, calculated on Normative Availability of Contracted Capacity for and during the period of such delay.

b) In case of delay due to Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer), the Procurer shall make payment to the Seller for Debt Service, subject to a maximum of Capacity Charges calculated on Normative Availability of Contracted Capacity, which is due under the Financing Agreements for the period of such events in excess of three (3) continuous or non-continuous Months.

c) In case of delay due to Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer) or Procurer Event of Default, the Procurer shall be liable to make payments mentioned in (a) and (b) above, after commencement of supply of power, in the form of an increase in Capacity Charges. These amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer) or Procurer Event of Default and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer from the Seller.

Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid amounts mentioned in (b) above in a situation where the Force Majeure Event or Procurer Event of Default had not occurred.

4.10 *Liquidated Damages for delay due to Direct Non Natural Force Majeure Event*

4.10.1 If the Seller is otherwise ready to commence supply of power and has given due notice, as per provisions of Article 4.1.2, to the Procurer of the date of commencement of power supply, where such date is on or before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, but is not able to commence supply of power by the said date specified in the notice, due to a Direct Non Natural Force Majeure Event, provided such Direct Non Natural Force Majeure Event has continued for a period of more than three (3) continuous or non-continuous Months, the Seller shall, until the effects of the Direct Non Natural Force Majeure Event no longer prevent the Seller from providing supply of power to the Procurer, be deemed to have an Available Capacity equal to the Contracted Capacity relevant to

that date and to this extent, be deemed to have been providing supply of power with effect from the date notified, and shall be treated as follows:

a) In case of delay due to Direct Non Natural Force Majeure not attributable to the Procurer, the Procurer shall make payment for Debt Service, subject to a maximum of Capacity Charges calculated on Normative Availability of Contracted Capacity which are due under the Financing Agreements for the period of such events in excess of three (3) continuous or non-continuous Months.

b) In case of delay due to Direct Non Natural Force Majeure attributable to the Procurer, the Procurer shall make payment to the Seller of Capacity Charges calculated on Normative Availability of Contracted Capacity for the period of such events in excess of three (3) continuous or non-continuous Months.

c) In case of delay due to Direct Non Natural Force Majeure Event, the Procurer shall be liable to make payments mentioned in (a) and (b) above, after commencement of supply of power, in the form of an increase in Capacity Charges. These amounts shall be paid from the date, being the later of a) the date of cessation of such Direct Non Natural Force Majeure Event and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer from the Seller.

Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid amounts mentioned in (a) and (b) above in a situation where the Force Majeure Event had not occurred.

4.11 In every case referred to in Article 4.9.1 and 4.10.1 hereinabove, the Seller shall undertake to commence supply of the Contracted Capacity, relevant to such date, to the Procurer as soon as reasonably practicable [and in no event later than two (2) Weeks or such longer period as mutually agreed between the Seller and the Procurer after the point at which it is no longer prevented from doing so by the effects of Force Majeure Events or Procurer Event of Default (as applicable). If the Seller is unable to provide supply of the Contracted Capacity in such a situation, then:

a) the Seller shall repay to the Procurer, all sums received by way of Capacity Charge for the deemed supply of power with interest at the same rate as Late Payment Surcharge; and

b) If the Seller fails to provide supply of power to Procurer by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, it shall also pay liquidated damages to the Procurer calculated in accordance with Article 4.8.

4.12 ***Limit on amounts payable due to default***

4.12.1 The Parties expressly agree that the Procurer's only liability for any loss of profits or any other loss of any other kind or description whatsoever (except claims for indemnity under Article 12), suffered by the Seller by reason of the Procurers' failure to meet its obligations under Article 4.3.1 shall be to pay the Seller the amounts specified in Article 4.9 and Article 11.

EMCO Energy Ltd. GMR Bangalore

4.12.2 Similarly, Seller's only liability for any loss suffered by the Procurer of any kind or description whatsoever (except claims for indemnity under Article 12), by reason of the Seller's failure to meet its obligation of providing supply of power on the Scheduled Delivery Date or Revised Scheduled Delivery Date(s), as the case may be, shall be as per Article 4.8 and Article 11.

4.13 ***Transmission Losses***

4.13.1 Transmission losses from the Interconnection Point onwards would be borne by the Procurer and power lost on account of transmission loss would be to the account of the Procurer.

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER, ELEC. D. & N.H. SILVASSA

5 ARTICLE 5: CAPACITY, AVAILABILITY AND DISPATCH

5.1 *Obligation to Supply the Contracted Capacity*

5.1.1 Notwithstanding any Scheduled Outage or Unscheduled Outage of the generating unit(s) and /or of the transmission system, the Seller shall offer for sale the Contracted Capacity to the Procurer at the Interconnection Point and arrange for transmission up to the Injection Point.

5.2 *Allocation of Generation Capacity*

5.2.1 The Seller shall provide thirty six point sixty one percent (36.61 %) of the Power Station's Net Capacity to the Procurer as per the terms of this Agreement.

5.3 *Availability*

5.3.1 The Seller shall comply with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the ABT and Grid Code relating to declaration of Availability and the matters incidental thereto.

5.3.2 In case the Aggregate Contracted Capacity is a part of the Power Station's Net Capacity; in the event of declared capacity being less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the available capacity to the Procurer for dispatch shall be reduced proportionately. However if the declared capacity exceeds the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the excess capacity will be at the disposal of the Seller.

5.4 *Scheduling and Dispatch*

5.4.1 The Seller shall comply with the provisions of the applicable Law regarding Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code relatingto scheduling and Dispatch and the matters incidental thereto.

5.4.2 The Seller further agrees that the Availability entitlement of the Procurer for dispatch over any Settlement Period cannot be offered to any third party other than for conditions under Articles 4.5.2. If the Seller willfully offers the power meant for dispatch to the Procurer to any third party without complying with the conditions specified in Article 4.5.2, the Seller agrees to and acknowledges the Procurer's right to instruct the RLDC / SLDC, as the case may be, not to schedule such power to any third party, after due approval from the Appropriate Commission.

5.5 *Demonstration of Power Station's Net Capacity*

5.5.1 The Procurer may from time to time during the Operating Period, but only if the Available Capacity with respect to the Procurer has not been one hundred percent (100%) of the Aggregate Contracted Capacity even for one continuous period of at least three (3) hours during any last three (3) continuous months, request the relevant Control Centre to assess the Power Station's Net Capacity. Such capacity assessment of the Power Station, by the Control Centre at the request of the Procurer, shall not be done more than once in a continuous period of six (6) Months.

EMCO Energy Ltd. GMR Bangalore

5.5.2 If the Power Station's Net Capacity after such capacity assessment is determined to be less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, then the provisions of Article 5.6.1 shall apply and the Seller shall have a right to demonstrate to the satisfaction of the Control Centre the Power Station's Net Capacity only after a period of six (6) Months from the date of such assessment..

5.5.3 If the Seller wishes to take any unit of the Power Station or the Power Station, out of service for repair before any assessment by the Control Centre, it shall inform the Control Centre in writing before its scheduled start of the repairs and the estimated time required to complete the repairs. The Parties shall then schedule a maintenance outage in accordance with the Grid Code to enable the Seller to carry out those repairs and in such a case, the Procurer requiring the Control Centre to conduct the assessment, shall defer such assessment until such unit or the Power Station is returned to service following that maintenance outage.

5.6 *Derating*

5.6.1 Based on the assessment carried out by the Control Centre, if the Power Station's Assessed Capacity is less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the Seller shall not be permitted to declare the Available Capacity of the Power Station at a level greater than its Assessed Capacity, in which case:

a) The Power Station's Net Capacity shall be reduced to its most recent Assessed Capacity and Quoted Capacity Charges for the Aggregate Contracted Capacity shall be paid with respect to such reduced Power Station's Net Capacity until the next assessment by the concerned Control Centre.

b) Further, the Quoted Non–Escalable Capacity Charge shall be reduced by the following:

Rs. 0.25/kwh x [1 – (Assessed Capacity of the Power Station)/Power Station's Net Capacity)];

c) the Aggregate Contracted Capacity of the Procurer shall be reduced proportionately, and the Availability Factor shall be calculated by reference to the reduced Aggregate Contracted Capacity, in each case with effect from date on which the Procurer first requested the Control Centre to assess the Power Station's Net Capacity.

d) the Capital Cost and each element of the Capital Structure Schedule shall be reduced in proportion to the reduction in the Aggregate Contracted Capacity as a result of that derating.

5.6.2 If at the end of subsequent demonstration of the Power Station's Net Capacity by the Seller at the end of the six Month period referred to in Article 5.5.2, the Assessed Capacity comes out to be still less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the consequences

mentioned in Article 5.6.1 shall apply on such Assessed Capacity for a period of at least one year from such date of demonstration of the Power Station's Net Capacity after which the Seller shall once again have the right to demonstrate the Power Station's Net Capacity. The consequences mentioned in Article 5.6.1 shall be modified based on the most recent Assessed Capacity of the Power Station.

5.6.3 If the Control Centre is unable to assess the Power Station's Net Capacity because of events or circumstances beyond the Seller's reasonable control, the Control Centre shall reschedule an assessment as soon as reasonably practicable.

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. U.T. SILVASSA

6 ARTICLE 6: METERING

6.1 *Meters*

6.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Seller and the Procurer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time.

7 ARTICLE 7: INSURANCES

7.1 *Insurance*

7.1.1 The Seller shall effect and maintain or cause to be effected and maintained during and before the Operating Period, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

7.2 *Application of Insurance Proceeds*

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

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

7.3 *Effect on liability of the Procurer*

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

EMCO Energy Ltd. GMR Bangalore

ENGINEER ELEC. DD SILVASSA

8 ARTICLE 8: BILLING AND PAYMENT

8.1 *General*

8.1.1 From the commencement of supply of power, Procurer shall pay the Seller the monthly Tariff Payment, on or before the Due Date, comprising of Tariff for every Contract Year, determined in accordance with this Article 8 and Schedule 4. All Tariff Payments by the Procurer shall be in Indian Rupees.

Provided however, if the Procurer avails of any Infirm Power from the Power Station, then Procurer shall be liable to pay only Energy Charges (as applicable for the Contract Year in which the Infirm Power is supplied or next Contract Year in case no Energy Charges are mentioned for such Contract Year), for any Infirm Power generated by any unit of the Power Station. The quantum of Infirm Power generated shall be computed from the energy accounting and audit meters installed at the Power Station as per Central Electricity Authority (Installation and Operation of Meters) Regulations 2006 as amended from time to time.

8.2 *Delivery and Content of Monthly Bills/Provisional Bills*

8.2.1 The Seller shall issue to the Procurer a signed Monthly Bill for the immediately preceding Month not later than ten (10) days of the next Month. In case the Monthly Bill for the immediately preceding Month is issued after ten (10) days of the next Month, the Due Date for payment of such Monthly Bill shall be extended by thirty (30) days.

Provided that:

a. if the date of commencement of supply of power falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or

b. if the date of commencement of supply of power falls after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the Delivery Date until the last day of the immediately following Month.

Provided further that if a Monthly Bill is received on or before the second (2nd) day of a Month, it shall be deemed to have been received on the second (2nd) Business Day of such Month.

8.2.2 Each Monthly Bill and Provisional Bill shall include:

i. Availability and REA for the relevant Month for Monthly Bill and RLDC's daily energy account for Provisional Bill;
ii. the Seller's computation of various components of the monthly Tariff Payment in accordance with Schedule 4; and
iii. supporting data, documents and calculations in accordance with this Agreement.

EMCO Energy Ltd. GMR Bangalore

8.3 *Payment of Monthly Bills*

8.3.1 The Procurer shall pay the amount payable under the Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified by the Seller in accordance with Article 8.3.4 below.

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

i) towards Late Payment Surcharge, if any;

ii) towards the earlier unpaid Monthly Bill(s), if any; and

iii) towards the then current Monthly Bill.

8.3.3 All payments required to be made under this Agreement shall only include any deduction or set off for:

i) deductions required by the Law; and

ii) amounts claimed by the Procurer from the Seller, through an invoice duly acknowledged by the Seller, to be payable by the Seller, and not disputed by the Seller within thirty (30) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the Procurer shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) Days period.

Provided further, the maximum amounts that can be deducted or set-off by the Procurer under this Article in a Contract Year shall not exceed Rupees Five (5) Crore only, except under sub Article (i) above.

8.3.4 The Seller shall open a bank account at Bangalore for all Tariff Payments to be made by Procurer to the Seller, and notify Procurer of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. Procurer shall also designate a bank account at Silvassa (the "Procurer's Designated Account") for payments to be made by the Seller (including Supplementary Bills) to Procurer and notify the Seller of the details of such account ninety (90) Days before the Scheduled Delivery Date. The Procurer and the Seller shall instruct their respective bankers to make all payments under this Agreement to the Seller' Designated Account or the Procurer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

8.3.5 In the event of delay in payment of a Monthly Bill by the Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.

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

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. DEPTT. U.T. SILVASSA

a) The Provisional Bill shall be raised by the Seller on the last Business Day of the Month where the Capacity Charges shall be based on the Declared Capacity for the entire Month and the Energy Charges shall be based on the final implemented Scheduled Energy up to 25th day of the Month. Rebate shall be payable at the rate of two point two five percent (2.25%) of the amount (which shall be the full amount due under the Provisional Bill) credited to Seller's account on first day of the Month and Rebate amount shall reduce at the rate of zero point zero five percent (0.05%) for each day, up to fifth (5th) day of the Month.

b) Applicable rate of Rebate at (a) above shall be based on the date on which payment has been actually credited to the Seller's account. Any delay in transfer of money to the Seller's account, on account of public holiday, bank holiday or any other reasons shall be to the account of the Procurer.

c) Two percent (2%) Rebate shall be provided for credit of payment to the Seller's account made within one (1) day of the presentation of Monthly Bill for the Month for which the Provisional Bill was raised earlier.

d) For credit to Seller's account made on other days the Rebate on Monthly Bill shall be as under:

Number of days before Due Date of Monthly Bill	**Rates of Rebate applicable**
29	Two percent (2.00%)
Each day thereafter up to the Due Date	Two percent (2%) less [0.033% x {29 less number of days before Due Date when the payment is made by the Procurer}]

In case of presentation of Monthly Bill beyond the sixth (6th) day of the Month, two percent (2%) Rebate will be applicable only on the day of presentation of Monthly Bill and beyond that Rebate will be applicable as per the table above.

e) Rebate of two point two five percent (2.25%) to two point zero five percent (2.05%) will be available to those Procurer who credit one hundred percent (100%) of the Provisional Bill within first five (5) days of the Month to Seller's account/ designated account and balance amount, if any, based on Monthly Bill (as per REA) within the Month.

f) In the event only part amount of Provisional Bill is credited to the Seller's account, within first five (5) days and the balance amount is credited to the Sellers account during other days of the Month, Rebate will be paid on such part amount, at the rate of two percent (2%) plus zero point zero three three percent (0.033%) per day for the number of days earlier than the 6th day when such part amount is credited to the Sellers' account;

g) The above Rebate will be allowed only to the Procurer who credit to the Seller's account the full Monthly Bill.

h) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess;

i) If the Provisional Bill has not been paid by the date of receipt of the Monthly Bill then such Provisional Bill shall not be payable, provided in case the Provisional Bill has already been paid, then only the difference between the Monthly Bill and Provisional Bill shall be payable.

8.4 ***Payment Mechanism***

Letter of Credit*:*

8.4.1 The Procurer shall provide to the Seller, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Procurer, which may be drawn upon by the Seller in accordance with this Article. The Procurer shall provide the Seller draft of the Letter of Credit proposed to be provided to the Seller six (6) Months before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be. In case distribution business of Electricity Department of Dadra & Nagar Haveli is corporatized, Escrow facility shall be provided as per guidelines issued by Ministry of Power, Govt. of India.

8.4.2 Not later than one (1) Month before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, the Procurer shall through a scheduled bank at Silvassa open a Letter of Credit in favour of the Seller, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

i) for the first Contract Year, equal to one point one (1.1) times the estimated average monthly billing based on Normative Availability;
ii) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the monthly Tariff Payments of the previous Contract Year.

Provided that the Seller shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 8.4.2 otherwise than by reason of drawal of such Letter of Credit by the Seller, the Procurer shall restore such shortfall within seven (7) days.

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

8.4.4 In case of drawal of the Letter of Credit by the Seller, in accordance with Article 8.4, the amount of the Letter of Credit shall be reinstated in accordance with the terms of Article 8.4.11.3.

8.4.5 If the Procurer fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 8.6.7, the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or

instructions from the Procurer, an amount equal to such Monthly Bill or Supplementary Bill or part thereof plus Late Payment Surcharge, if applicable, in accordance with Article 8.3.5 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid by the Procurer;
ii) a certificate from the Seller to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and
iii) calculations of applicable Late Payment Surcharge, if any.

8.4.6 Deleted

8.4.7 The Procurer shall ensure that the Letter of Credit shall be renewed not later than forty five (45) days prior to its expiry.

8.4.8 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Procurer, however, Letter of Credit negotiation charges shall be borne and paid by the Seller.

8.4.9 Where necessary, the Letter of Credit may also be substituted by an unconditional and irrevocable bank guarantee or an equivalent instrument as mutually agreed by the Procurer and the Seller.

8.4.10 Upon fulfilment of the conditions mentioned under Article 8.4.11.2 the Letter of Credit amount as mentioned in Article 8.4.2 shall be changed to one (1) time the average of the Monthly Tariff Payments of the previous Contract Year instead of one point one (1.1) times the average of the Monthly Tariff Payments of the previous Contract Year.

8.4.11 **Collateral Arrangement**

8.4.11.1 In case distribution business of Electricity Department of Dadra & Nagar Haveli is corporatized, Escrow facility shall be provided as per guidelines issued by Ministry of Power, Govt. of India..

8.4.11.2 On the occurrence of all of the following events in respect of a Procurer:

i. A period of not less than twenty-four (24) Months from Delivery Date, has elapsed; and

ii. The Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under this Agreement, a credit rating of 'A' or better, from a SEBI registered Indian credit rating agency, consistently for a period of at least three (3) years; and

iii. Immediately prior to the three (3) year period mentioned in sub-article (ii) above, for a period of at least twelve (12) Months there has been no Procurer Event of Default under Article 11 of this Agreement,

EMCO Energy Ltd. GMR Bangalore

the Procurer shall intimate the Seller in writing of the occurrence of the same and its intention to discontinue the Collateral Arrangement. If the Seller desires to continue with the Collateral Arrangement, it shall intimate the same to the Procurer in writing within thirty (30) days of receipt of intimation from the Procurer and in such case the Seller shall be liable to bear the costs of continuation of the Collateral Arrangement with effect from such date. In case the Seller fails to respond or agrees to discontinue, the Collateral Arrangement shall forthwith cease.

Provided that in case of any of conditions mentioned under (i), (ii) or (iii) in Article 8.4.11.2 ceases to be true, then within ninety (90) days of the occurrence of such event, the Procurer shall reinstate the Collateral Arrangement, at its own cost.

8.4.11.3 If the Letter of Credit is insufficient to pay for the due payments to the Seller or is not replenished for the drawals made, then within a period of seven (7) days from the date such shortfall in the Letter of Credit occurs, the Letter of Credit shall be reinstated to the requisite amount specified in this Agreement, and in the manner specified in the Default Escrow Agreement when provided by the Procurer as per Article 8.4.11.1.

8.5 *Third Party Sales on Default*

8.5.1 Upon the occurrence of an event where the Procurer has not made payment by the Due Date of an Invoice through the Payment Mechanism provided in Article 8.4 of this Agreement, the Seller shall follow the steps as enumerated in Articles 8.5.2 and 8.5.5.

8.5.2 On the occurrence of the event mentioned in Article 8.5.1 and after giving a notice of at least seven (7) days to the Procurer, the Seller shall have the right to offer twenty five (25) per cent of the Contracted Capacity pertaining to Procurer ("Default Electricity") for sale to third-parties.

8.5.3 Deleted.

8.5.4 Deleted.

8.5.5 If the Collateral Arrangement is not fully restored by the Procurer within thirty (30) days of the non-payment by the Procurer of an Invoice by its Due Date, the provisions of Article 8.5.2 shall apply with respect to one hundred per cent (100%) of the Contracted Capacity. Provided that in case the events mentioned in Article 8.4.11.2 (i), (ii) and (iii) are true, then this Article 8.5.5 shall be applicable.

8.5.6 In the case of Article 8.5.5, the Seller shall ensure that sale of power to the shareholder(s) of the Seller or to any direct or indirect Affiliate of the Seller/ the shareholder(s) of the Seller is not at a price less than the Energy Charges.

8.5.7 In case of third party sales as permitted by this Article 8.5, the adjustment of the surplus revenue over Energy Charge (applicable to the Procurer) attributable to such Default Electricity sold, shall be adjusted as under :

a) the surplus up to the Tariff shall be used towards the extinguishment of the subsisting payment liability of the Procurer towards the Seller; and

b) the surplus if any above the Tariff shall be retained by the Seller.

8.5.8 The liability of the Procurer towards making Capacity Charge payments to the Seller even for Default Electricity sold to third parties or remaining unsold during such periods will remain unaffected.

Provided such Capacity Charge payment liability shall cease on the date which occurs on the expiry of a period of three (3) years and one hundred (100) days from the date of occurrence of a Procurer Event of Default under Article 11.2.1 (i), provided if prior to such date, such Procurer Event of Default has not ceased and regular supply of power for a period of at least ninety (90) continuous Days has not occurred.

8.5.9 Sales to any person or Party, other than the Procurer under Article 8.5, shall cease and regular supply of power to the Procurer in accordance with the provisions of this Agreement shall commence and be restored on the later of the two following dates or any date before this date at the option of Seller:

a) the day on which the Procurer pays the amount due to the Seller and renews the Letter of Credit and restores Default Escrow Account (if applicable) as mentioned in Article 8.4.11.1; or

b) the date being "x" days from the date on which the defaulting Procurer pays the amount due to the Seller, where "x" days shall be calculated in accordance with Schedule 2.

8.6 *Disputed Bill*

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

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

i) the details of the disputed amount;

ii) its estimate of what the correct amount should be; and

iii) all written material in support of its claim.

8.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.6.2, the invoicing Party shall revise such Bill within seven (7) days of receiving the Bill Dispute Notice. The disputing Party shall thereafter within seven (7) Days of receiving the revised Bill from the invoicing Party, make the payment thereunder, and if the disputing Party has already made the excess payment, the invoicing Party shall refund to the disputing Party such excess amount within fifteen (15) days of receiving the Bill Dispute Notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

8.6.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party 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.

8.6.5 Upon receipt of the Bill Disagreement Notice by the disputing Party under Article 8.6.4, authorized representative(s) or a director of the board of directors/ member of board of the disputing Party and the invoicing Party shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

8.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 8.6.4, the matter shall be referred to Dispute resolution in accordance with Article 14.

8.6.7 In case of Disputed Bills, it shall be open to the aggrieved Party to approach the Appropriate Commission for Dispute resolution in accordance with Article 14 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.

8.6.8 If a Dispute regarding a Monthly Bill, Provisional Bill or a Supplementary Bill is settled pursuant to Article 8.6 or by the Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 8.6.5 or settled by Dispute resolution mechanism along with interest at the same rate as Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable.

8.6.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurer shall, without prejudice to its/ their 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.

8.7 *Quarterly and Annual Reconciliation*

8.7.1 The Parties acknowledge that all payments made against Monthly Bills, Provisional Bills and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account REA, Tariff adjustment payments,

Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

8.7.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Seller and Procurer shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Seller or Procurer, as the case may be, shall raise a Supplementary Bill for the Tariff adjustment payments for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the Tariff adjustment payments for the relevant quarter/ Contract Year, as may be due as a result of such reconciliation. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 14.

8.8 ***Payment of Supplementary Bill***

8.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:

i) Adjustments required by the Regional Energy Account (if applicable);

ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or

iii) Change in Law as provided in Article 10,

and such Supplementary Bill shall be paid by the other Party.

8.8.2 The Procurer shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day or the Seller shall be eligible to draw such amounts through the Letter of Credit. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurer by the Due Date to concerned Procurer's designated bank account and notify such Procurer of such payment on the same day. For such payments by the Procurer, Rebate as applicable to Monthly Bills pursuant to Article 8.3.6 shall equally apply.

8.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 8.3.5.

8.9 The copies of all notices which are required to be sent as per the provisions of this Article 8, shall be sent by either Party to the other Party.

EMCO Energy Ltd. GMR Bangalore

9 ARTICLE 9 : FORCE MAJEURE

9.1 *Definitions*

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

9.2 *Affected Party*

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

9.2.2 Deleted.

9.2.3 An event of Force Majeure affecting the CTU/ STU or any other agent of the Seller, which has affected the transmission facilities from the Power Station to the Delivery Point, shall be deemed to be an event of Force Majeure affecting Seller.

9.2.4 Any event of Force Majeure affecting the performance of the Seller contractors shall be deemed to be an event of Force Majeure affecting Seller only if the Force Majeure event is affecting and resulting in:

a) late delivery of plant, machinery, equipment, materials, spare parts, Fuel, water or consumables for the Power Station; or

b) a delay in the performance of any of the Seller contractors.

9.2.5 Similarly, any event of Force Majeure affecting the performance of the Procurer's contractor for setting up or operating Interconnection Facilities shall be deemed to be an event of Force Majeure affecting Procurer only if the Force Majeure event is resulting in a delay in the performance of Procurer's contractors.

9.3 *Force Majeure*

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

i. Natural Force Majeure Events

act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,

ii. Non-Natural Force Majeure Events

1. Direct Non-Natural Force Majeure Events attributable to the Procurer

a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality (under the State Government of the Procurer or the Central Government of India) of any material assets or rights of the Seller; or

b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Seller to perform its obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development/ operation of the Power Station , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality (under the State Government of the Procurer or the Central Government of India) which is directed against the supply of power by the Seller to the Procurer, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

2. Direct Non-Natural Force Majeure Events not attributable to the Procurer

a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality (other than those under the State Government of the Procurer) of any material assets or rights of the Seller; or

b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by Seller to perform its obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development / operation of the Power Station , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality (other than those under the State Government(s) of the Procurer or the Central Government of India) which is directed against the supply of power by the Seller to the Procurer, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

3. Indirect Non-Natural Force Majeure Events

a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo;, revolution, riot, insurrection, terrorist or military action; or

b) radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is

EMCO Energy Ltd. GMR Bangalore

brought or has been brought into or near the Power Station by the Affected Party or those employed or engaged by the Affected Party.

c) Industry wide strikes and labor disturbances having a nationwide impact in India.

9.4 ***Force Majeure Exclusions***

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

a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Power Station;

b. Delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 9.2;

c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;

d. Strikes or labour disturbance at the facilities of the Affected Party;

e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and

f. Non-performance caused by, or connected with, the Affected Party's:

i. Negligent or intentional acts, errors or omissions;

ii. Failure to comply with an Indian Law; or

iii. Breach of, or default under this Agreement or any other RFP Documents.

9.5 ***Notification of Force Majeure Event***

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

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

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

9.6 *Duty to Perform and Duty to Mitigate*

9.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 9.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

9.7 *Available Relief for a Force Majeure Event*

9.7.1 Subject to this Article 9:

(a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

(b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.7;

(c) For the avoidance of doubt, it is clarified that no Tariff shall be paid by the Procurer for the part of Contracted Capacity or part thereof affected by a Natural Force Majeure Event affecting the Seller, for the duration of such Natural Force Majeure Event affecting the Seller. For the balance part of the Contracted Capacity, the Procurer shall pay the Tariff to the Seller, provided during such period of Natural Force Majeure Event affecting the Seller, the balance part of the Power Station is declared to be Available for scheduling and dispatch as per ABT for supply of power by the Seller to the Procurer;

In case of a Natural Force Majeure Event **affecting the Procurer** no Tariff shall be paid by the Procurer to the Seller for the duration of such Natural Force Majeure Event affecting the Procurer;

(d) If the average Availability of the Power Station is reduced below eighty percent (80%) of Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of sixty (60) Months, as a result of an Indirect Non Natural Force Majeure Event, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months so long as the daily average Availability of the Power Station continues to be reduced below eighty percent (80%) of Normative Availability as a result of an Indirect Non Natural Force Majeure Event of any kind, the Procurer shall make payments for Debt Service, subject to a maximum of Capacity Charges based on Normative Availability which are due under the Financing Agreements and these amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event and b) the

EMCO Energy Ltd. GMR Bangalore

completion of sixty (60) days from the receipt of the Financing Agreements by the Procurer from the Seller, in the form of an increase in Capacity Charge.

Provided payments for such Debt Service shall be limited to the Debt Service proportional to the Contracted Capacity of the Procurer from the Power Station.

Provided such Capacity Charge increase shall be determined by Appropriate Commission the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid Debt Service in a situation where the Indirect Non Natural Force Majeure Event had not occurred.

Provided that the Procurer will have the above obligation to make payment for the Debt Service only (a) after supply of power from the Power Station affected by such Indirect Non Natural Force Majeure Event has started, and (b) only if in the absence of such Indirect Non Natural Force Majeure Event, the Availability of Power Station would have resulted in Capacity Charges equal to Debt Service.

(e) If the average Availability of the Power Station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of sixty (60) Months, as a result of a Direct Non Natural Force Majeure Event attributable to the Procurer, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months and for so long as the daily average Availability of the Power Station of the Seller continues to be reduced below Normative Availability as a result of a Direct Non Natural Force Majeure Event attributable to the Procurer, the Seller may elect through a written notice to the Procurer, to deem the Availability to be equal to Normative Availability from the end of such two (2) consecutive months or four (4) non consecutive months, regardless of its actual Available Capacity. In such a case, the Procurer shall be liable to make payment of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure Event attributable to the Procurer in the form of an increase in Capacity Charge.

Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid Capacity Charges in a situation where the Direct Non Natural Force Majeure Event attributable to the Procurer had not occurred.

(f) If the average Availability of the Power Station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of sixty (60) Months, as a result of a Direct Non Natural Force Majeure Event not attributable to the Procurer, then, with effect from the end of such two (2)

consecutive months or four (4) non consecutive months and for so long as the daily average Availability of the Power Station of the Seller continues to be reduced below Normative Availability as a result of a Direct Non Natural Force Majeure Event not attributable to the Procurer, the Seller may elect through a written notice to the Procurer, to deem the Availability to be equal to Normative Availability from the end of such two (2) consecutive months or four (4) non consecutive months, regardless of its actual Available Capacity. In such a case, the Procurer shall be liable to make payment for Debt Service, subject to a maximum of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure Event not attributable to the Procurer in the form of an increase in Capacity Charge.

Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid Capacity Charges in a situation where the Direct Non Natural Force Majeure Event not attributable to the Procurer had not occurred.

(g) Deleted.

9.8 ***Additional Compensation and Procurer's Subrogation***

9.8.1 If the Seller is entitled, whether actually or contingently, to be compensated by any person (other than the Procurer) as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer) for which it has received compensation from the Procurer pursuant to this Article 9, including without limitation, payments made which payments would not have been made in the absence of Article 4.9.1, the Procurer shall be fully subrogated to the Seller's rights against that person to the extent of the compensation paid by the Procurer to the Seller.

Provided that in case the Seller has actually received compensation from any person other than the Procurer as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer), then the Seller shall forthwith refund the compensation received by it from the Procurer but only to the extent of the compensation received by the Seller from any person other than the Procurer.

EMCO Energy Ltd. GMR Bangalore

10 ARTICLE 10: CHANGE IN LAW

10.1 *Definitions*

In this Article 10, the following terms shall have the following meanings:

10.1.1 "Change in Law"[18] means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the Seller or any income to the Seller:

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

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.

10.2 *Application and Principles for computing impact of Change in Law*

10.2.1 While determining the consequence of Change in Law under this Article 10, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 10, the affected Party to the same economic position as if such Change in Law has not occurred.

10.3 *Relief for Change in Law*

10.3.1 During Construction Period

As a result of any Change in Law, the impact of increase/decrease of Capital Cost of the Power Station in the Tariff shall be governed by the formula given below:

[18] Shall be defined by the Procurer. For valid reason, the Procurer may choose different principles at the time of issuing the RFP Documents.

EMCO Energy Ltd. GMR Bangalore

For every cumulative increase/ decrease of each Rupees One Lakh Twenty Five Thousand (Rs. 1.25 Lakh) in the Capital Cost during the Construction Period, the increase/ decrease in Non Escalable Capacity Charges shall be an amount equal to zeo point two six seven percent (0.267 %) of the Non Escalable Capacity Charges. In case of Dispute, Article 14 shall apply.

It is clarified that the above mentioned compensation shall be payable to either Party, only with effect from the date on which the total increase/ decrease exceeds amount of Rupees One Lakh Twenty Five Thousand (Rs. 1.25 Lakh) in the per MW capital cost, in relation to the Installed Capacity.

10.3.2 During Operating Period

The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only if the decrease in revenue or increase in expenses of the Seller is in excess of an amount equivalent to 1% of the value of the Letter of Credit in aggregate for the relevant Contract Year.

10.3.3 For any claims made under Articles 10.3.1 and 10.3.2 above, the Seller shall provide to the Procurer and the Appropriate Commission documentary proof of such increase/ decrease in cost of the Power Station or revenue/ expense for establishing the impact of such Change in Law.

10.3.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 10.3.1 and 10.3.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to right of appeal provided under applicable Law.

10.4 ***Notification of Change in Law***

10.4.1 If the Seller is affected by a Change in Law in accordance with Article 10.1 and the Seller wishes to claim relief for such a Change in Law under this Article 10, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

10.4.2 Notwithstanding Article 10.4.1, the Seller shall be obliged to serve a notice to the Procurer under this Article 10.4.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material.

Provided that in case the Seller has not provided such notice, the Procurer shall have the right to issue such notice to the Seller.

10.4.3 Any notice served pursuant to this Article 10.4.2 shall provide, amongst other things, precise details of:

(a) the Change in Law; and

(b) the effects on the Seller.

EMCO Energy Ltd. GMR Bangalore

10.5 *Tariff Adjustment Payment on account of Change in Law*

10.5.1 Subject to Article 10.2, the adjustment in monthly Tariff Payment shall be effective from:

(i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or

(ii) the date of order/ judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

10.5.2 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 8.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.

11 ARTICLE 11: EVENTS OF DEFAULT AND TERMINATION

11.1 *Seller Event of Default*

11.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Procurer of its obligations under this Agreement or a Procurer Event of Default, shall constitute a Seller Event of Default:

(i) the failure to commence supply of power to the Procurer up to the Contracted Capacity, relevant to the Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date, as the case may be, by the end of twelve (12) Months, or

(ii) after the Delivery Date, the interruption of power supply by the Seller for a continuous period of two (2) Months and such default is not rectified within thirty (30) Days from the receipt of first notice from the Procurer in this regard, or

(iii) After the Delivery Date, the Seller fails to achieve Normative Availability for a period of twelve (12) consecutive or non-consecutive Months within any continuous period of thirty six (36) Months; OR

(iv) the Seller fails to make any payment (a) of an amount exceeding Rupees One (1) Crore in aggregate required to be made to Procurer under this Agreement, within three (3) Months after the Due Date of undisputed invoice(s) /demand raised by the said Procurer on the Seller or (b) of an amount up to Rupees One (1) Crore required to be made to Procurer under this Agreement within six (6) Months after the Due Date of undisputed invoice(s)/ demand; or

(v) any of the representations and warranties made by the Seller in Schedule 7 of this Agreement; being found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the undertakings submitted by the Successful Bidder at the time of submission of the Bid being found to be breached or inaccurate, including but not limited to undertakings from its Parent Company/ Affiliates related to the minimum equity obligation and submission of the Contract Performance Guarantee;

EMCO Energy Ltd. GMR Bangalore

Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurer shall give a notice to the Seller in writing of at least thirty (30) days, or

(vi) if

a) the Seller assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Station in contravention of the provisions of this Agreement; or

b) the Seller transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer

(i). is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or

(ii). is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;

(vii) if (a) the Seller becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Seller, or (c) the Seller goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the Seller will not be a Seller Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company continues to **meet** the Qualification Requirements in terms of the RFP till six (6) months after commencement of supply of power by the Seller , and retains creditworthiness similar to the Seller and expressly assumes all obligations of the Seller under this Agreement and is in a position to perform them; or

(viii) the Seller repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from the Procurer in this regard; or

(ix) except where due to any Procurer's failure to comply with its material obligations, the Seller is in breach of any of its material obligations pursuant to this Agreement or of any of the RFP Documents where the Procurer and Seller are parties, and such material breach is not rectified by the Seller within thirty (30) days of receipt of first notice in this regard given by the Procurer; or

(x) any direct or indirect change in the shareholding of the Seller in contravention of the terms of this Agreement; or

(xi) failure to renew or replace the Contract Performance Guarantee, as per the terms of this Agreement; or

EMCO Energy Ltd. GMR Bangalore

(xii) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Seller.

11.2 *Procurer Event of Default*

11.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Seller of its obligations under this Agreement or a Seller Event of Default, shall constitute the Event of Default on the part of defaulting Procurer:

(i) a defaulting Procurer fails to meet any of its obligations, as specified in Article 4.3; or

(ii) a defaulting Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly/ Supplementary Bill for a period of ninety (90) days after the Due Date and the Seller is unable to recover the amount outstanding to the Seller through the Collateral Arrangement and Letter of Credit; or

(iii) the defaulting Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Seller in this regard; or

(iv) except where due to any Seller's failure to comply with its obligations, the defaulting Procurer is in material breach of any of its obligations pursuant to this Agreement or of any of the other RFP Documents where the Procurer and the Seller are Parties, and such material breach is not rectified by the defaulting Procurer within thirty (30) days of receipt of notice in this regard from the Seller to the Procurer; or

(v) any representation and warranties made by the Procurer in Schedule 7 of this Agreement being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Seller shall give a notice to the Procurer in writing of at least thirty (30) days; or

(vi) if

- a Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
- any winding up or bankruptcy or insolvency order is passed against the Procurer, or
- a Procurer goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

EMCO Energy Ltd. GMR Bangalore

9419

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

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

11.3 *Procedure for cases of Seller Event of Default*

11.3.1 Upon the occurrence and continuation of any Seller Event of Default under Article 11.1, the Procurer shall have the right to deliver to the Seller a notice with a copy to the Appropriate Commission and the Lenders' Representative of their intention to terminate this Agreement (Procurer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

11.3.2 Following the issue of Procurer Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

11.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

11.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Procurers may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Seller with a copy to the Appropriate Commission. A copy of the Termination Notice shall be given to the Lenders' Representative. The Lenders may exercise or the Procurer may require the Lenders to exercise their substitution rights and other rights provided to them, if any, under Financing Agreements and the Procurer would have no objection to the Lenders exercising their rights if it is in consonance with provisions of Schedule 12. Alternatively, in case the Lenders do not exercise their rights as mentioned herein above, the Capacity Charge of the Seller shall be reduced by twenty percent (20%) for the period of Seller Event of Default.

11.3.5 Further, in addition to the reduction in Capacity Charges as per the provision in Article 11.3.4, the Seller shall be liable to pay to the Procurer, charges equivalent to twelve (12) months Capacity Charges calculated at Normative Availability. Such payment shall be made by the Seller to the Procurer within thirty (30) days of the termination of the Agreement. In case of inability of the Seller to make such payment within the stipulated time period of thirty (30) days, the Procurer shall have the right to encash the Contract Performance Guarantee, if any available, as on that date and appropriate the proceeds of such encashment towards the payment due from the Seller. Any amount remaining unpaid on the part of the Seller shall be considered as a

material breach and the Procurer shall have the right to enforce such claim as per the provisions of the Law.

11.4 *Termination for Procurer Event of Default*

11.4.1 Upon the occurrence and continuation of any Procurer Event of Default pursuant to Article 11.2.1(ii) , the Seller shall follow the remedies provided under Article 8.5.2 or Article 8.5.3 or Article 8.5.5, as the case may be.

11.4.2 Without in any manner affecting the rights of the Seller under Article 11.4.1, on the occurrence of any Procurer Event of Default specified in Article 11.2 the Seller shall have the right to deliver to the Procurer, a Seller Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

11.4.3 Following the issue of a Seller Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

11.4.4 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

11.4.5 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Procurer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Seller shall be free to sell the Contracted Capacity and corresponding available capacity of the Procurer committing Procurer Event of Default to any third party of the Seller's choice.

Provided such Procurer shall have the liability to make payments for Capacity Charges based on Normative Availability to the Seller for the period upto the Expiry Date, subject to maximum of three (3) years from the eighth (8) day after the expiry of the Consultation Period.

Provided further that in such period, in case the Seller is able to sell electricity to any third party at a price which is in excess of the Energy Charges, then such excess realization will reduce the Capacity Charge payments due from such Procurer.

For the avoidance of doubt, the above excess adjustment would be applied on a cumulative basis for such period. During such period, the Seller shall use its best effort to sell the Contracted Capacity and corresponding available capacity of Procurer or capable of being generated to such third parties at the most reasonable terms available in the market at such time, having due regard to the circumstances at such time and the pricing of electricity in the market at such time.

Provided further, the Seller shall ensure that sale of power to the shareholders of the Seller or any direct or indirect Affiliate of the Seller/ shareholders of the Seller, is not at a price less than the Tariff, without obtaining the prior written consent of such Procurer. Such request for consent would be responded to within a maximum period

EMCO Energy Ltd. GMR Bangalore

of three (3) days failing which it would be deemed that the Procurer has given his consent.

Provided further that at the end of such period, this Agreement shall automatically terminate and thereafter, the Procurer shall have no further Capacity Charge liability towards the Seller.

Provided further, the Seller shall have the right to terminate this Agreement with respect to the Procurer even before the expiry of such period provided on such termination, the future Capacity Charge liability of the Procurer shall cease immediately.

11.5 *Termination due to Force Majeure*

11.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.7.3, either Party shall have the right to cause termination of the Agreement. In such an event, subject to the terms and conditions of the Financing Agreements, this Agreement shall terminate on the date of such Termination Notice. In case of such termination, the Contract Performance Guarantee shall be returned to the Seller as per the provisions of Article 3.8.

12 ARTICLE 12: LIABILITY AND INDEMNIFICATION

12.1 *Indemnity*

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

a) any and all third party claims, actions, suits or proceedings against the Procurer for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Seller of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer, its contractors, servants or agents; and

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurer from third party claims arising by reason of:

(i) breach by the Seller of any of its obligations under this Agreement, (provided that this Article 12 shall not apply to such breaches by the Seller, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurer, its contractors, servants or agents, or

(ii) any of the representations or warranties of the Seller under this Agreement being found to be inaccurate or untrue.

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

a) any and all third party claims, actions, suits or proceedings against the Seller, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Procurer of any of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents; and

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the Seller from third party claims arising by reason of

(i) a breach by Procurer of any of its obligations under this Agreement (Provided that this Article 12 shall not apply to such breaches by Procurer, for which specific remedies have been provided for under this Agreement.), except to the extent that any such Indeminifiable Losses have arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents, or

EMCO Energy Ltd. GMR Bangalore

(ii) any of the representations or warranties of the Procurer under this Agreement being found to be inaccurate or untrue.

12.2 ***Monetary Limitation of Liability***

12.2.1 A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 12 for any indemnity claims made in a Contract Year only up to an amount of only upto an amount equivalent to half percent (0.5%) of the average annual tariff payment for all the contracts years up to the contract year in which the indemnity claim is made.

12.3 ***Procedure for claiming Indemnity***

12.3.1 **Third party claims**

a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 12.1.1(a) or 12.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 12.1.1(a) or 12.1.2 (a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

i) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 12.3.1 (b) below; and

ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

b. The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be Indemnified under Article 12.1.1(a) or 12.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

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

EMCO Energy Ltd. GMR Bangalore

12.4 *Indemnifiable Losses*

12.4.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 12.1.1(b) or 12.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 12.4, such event shall constitute a payment default under Article 11.

12.5 *Infringment of Intellectual Property Rights*

12.5.1

a) The Seller shall, subject to the Procurer compliance with Article 12.5.1 b), indemnify and hold harmless the Procurer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Procurer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the setting up of the Power Station by the Seller.

   Such indemnity shall not cover any use of the Power Station or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Agreement, any infringement resulting from the misuse of the Power Station or any part thereof, or any products produced in association or combination with any other equipment, plant or materials not supplied by the Seller.

b) If any proceedings are brought or any claim is made against the Procurer arising out of the matters referred to in Article 12.5.1 (a), the Procurer shall promptly give the Seller a notice thereof, and the Seller shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Seller shall promptly notify the Procurer of all actions taken in such proceedings or claims.

c) If the Seller fails to notify the Procurer within twenty-eight (28) days after receipt of such notice from the Procurer under Article 12.5.1 b) above, that it intends to attend any such proceedings or claim, then the Procurer shall be free to attend the same on their own behalf at the cost of the Seller. Unless the Seller has so failed to notify the Procurer within the twenty eight (28) days period, the Procurer shall make no admission that may be prejudicial to the defence of any such proceedings or claims.

d) The Procurer shall, at the Seller's request, afford all available assistance to the Seller in attending to such proceedings or claim, and shall be reimbursed by the Seller for all reasonable expenses incurred in so doing.

EMCO Energy Ltd. GMR Bangalore

9414

12.5.2

a) The Procurer, subject to the Seller's compliance with Article 12.5.2 (b) shall indemnify and hold harmless the Seller and its employees, officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, which the Seller may suffer as a result of any infringement by the Procurer or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered..

b) If any proceedings are brought or any claim is made against the Seller arising out of the matters referred to in Article 12.5.2 (a) the Seller shall promptly give the Procurer a notice thereof, and the Procurer shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Procurer shall promptly notify the Seller of all actions taken in such proceedings or claims.

c) If the Procurer fails to notify the Seller within twenty-eight (28) days after receipt of such notice from the Seller under Article 12.5.2 (b) above, that it intends to attend any such proceedings or claim, then the Seller shall be free to attend the same on its own behalf at the cost of the Procurer. Unless the Procurer has so failed to notify the Seller within the twenty (28) days period, the Seller shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

d) The Seller shall, at the Procurer request, afford all available assistance to the Procurer in attending to such proceedings or claim, and shall be reimbursed by the Procurer for all reasonable expenses incurred in so doing.

12.6 *Limitation on Liability*

12.6.1 Except as expressly provided in this Agreement, neither the Seller nor Procurer nor its respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the Procurer, the Seller or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

12.6.2 Procurer shall have no recourse against any officer, director or shareholder of the Seller or any Affiliate of the Seller or any of its officers, directors or shareholders for such claims excluded under this Article. The Seller shall have no recourse against any officer, director or shareholder of Procurer, or any Affiliate of Procurer or any of its officers, directors or shareholders for such claims excluded under this Article.

EMCO Energy Ltd. GMR Bangalore

12.7 *Duty to Mitigate*

12.7.1 The Parties shall endevour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 12.

13 ARTICLE 13: ASSIGNMENTS AND CHARGES

13.1 *Assignments*

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

Provided that, such consent shall not be withheld if the Procurer 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 distribution system of such Procurer and /or such transferee is a successor entity of the Procurer; and

(b) this Agreement and the other RFP Documents shall continue to remain valid and binding on such successor.

13.1.2 Seller shall be entitled to assign its rights and obligations under this Agreement in favor of the Selectee duly appointed pursuant to the terms of Schedule 12 of this Agreement.

13.2 *Permitted Charges*

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

13.2.2 However, the Seller may create any encumbrance over all or part of the Receivables, Payment Mechanism or the RFP Documents in favour of the Lenders or the Lender's Representative on their behalf, as security for:

(a) amounts payable under the Financing Agreements; and

(b) any other amounts agreed by the Parties,

Provided that:

I the Lenders or the Lender's Representative on their behalf shall have entered into the Financing Agreements and agreed upon in writing to the provisions of Schedule 12 of this Agreement; and

II any encumbrances granted by the Seller in accordance with this Article 13.2.2 shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the Seller acting for itself and as trustee of the Procurer to release from such encumbrances all of the right, title and interest to additional compensation so as to enable the Procurer to claim its right of subrogation. For the purposes of this Article, additional compensation shall mean the compensation that the Seller is entitled, whether actually or contingently, to receive from the Procurer as well as compensated by any person other than the Procurer for the same event.

13.2.3 Article 13.1.2 does not apply to :

a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of supply of power by the Seller;

b) pledges of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of supply of power by the Seller; or

c) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of supply of power by the Seller.

EMCO Energy Ltd. GMR Bangalore

14 ARTICLE 14: GOVERNING LAW AND DISPUTE RESOLUTION

14.1 *Governing Law*

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

14.2 *Amicable Settlement and Dispute Resolution*

14.2.1 *Amicable Settlement*

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

(i) a description of the Dispute;

(ii) the grounds for such Dispute; and

(iii) all written material in support of its claim.

14.2.1.2 The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 14.2.1.1, furnish:

(i) counter-claim and defences, if any, regarding the Dispute; and

(ii) all written material in support of its defences and counter-claim.

14.2.1.3 Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 14.2.1.1 if the other Party does not furnish any counter claim or defence under Article 14.2.1.2 or thirty (30) days from the date of furnishing counter claims or defence by the other Party, 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 from the later of the dates mentioned in this Article 14.2.1.3, the Dispute shall be referred for dispute resolution in accordance with Article 14.3.

14.3 *Dispute Resolution*

14.3.1 **Dispute Resolution by the Appropriate Commission**

14.3.1.1 Where any Dispute (i) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (ii) relates to any matter agreed to be referred to the Appropriate Commission under Articles 4.9.1, 10.3 and 15.3 *or Clause 12.9.4 of Schedule 12 hereof*, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

EMCO Energy Ltd. GMR Bangalore

14.3.1.2 The obligations of the Procurer under this Agreement towards the Seller shall not be affected in any manner by reason of inter-se disputes amongst the Procurer.

14.3.2 **Dispute Resolution through Arbitration**

14.3.2.1 If the Dispute arises out of or in connection with any claims not covered in Article 14.3.1.1, 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. In the event of such Dispute remaining unresolved as referred to in Article 14.2.1.3 hereof, any party to such Dispute may refer the matter to Registrar under the Rules of the Indian Council of Arbitration.

i) The Arbitration Tribunal shall consist of three (3) arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules
ii) The place of arbitration shall be Silvassa, Dadra & Nagar Haveli. 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 provisions of this Article shall survive the termination of this PPA for any reason whatsoever.

14.4 ***Parties to Perform Obligations***

14.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 14.3 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.

EMCO Energy Ltd. GMR Bangalore

15 ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 Deleted.

15.2 Minimum Equity holding/ Equity Lock-In

15.2.1 The minimum shareholding requirements specified in this Article shall apply to all of the entity/ entities which have made equity investment in the Seller and where the Seller is different from the Successful Bidder .

15.2.2 The aggregate equity share holding of the Successful Bidder in the issued and paid up equity share capital of the Seller shall not be less than the following:

a) Fifty-one percent (51%) from the Effective Date up to a period of two (2) years after commencement of supply of power; and

b) Twenty-six (26%) for a period of three (3) years thereafter.

15.2.3 All investors of the Seller, except the Bidding Company, shall be allowed to divest their equity as long as the other remaining investors hold the minimum equity specified in Article 15.2.2.

15.2.4 Deleted.

15.2.5 In case equity in the Seller is held by the Affiliate(s), Parent Company or Ultimate Parent Company, such Affiliate(s), Parent Company or Ultimate Parent Company shall be permitted to transfer its shareholding in the Seller to another Affiliate or Parent Company or Ultimate Parent Company. If any such shareholding entity, qualifying as an Affiliate /Parent Company/ Ultimate Parent Company, is likely to cease to meet the criteria to qualify as an Affiliate /Parent Company/ Ultimate Parent Company, the shares held by such entity shall be transferred to another Affiliate/ Parent Company/ Ultimate Parent Company.

15.2.6 All transfers of shareholding of the Seller by any of the entities referred to above, shall be after prior written permission from the Procurer.

15.2.7 For computation of effective Equity holding, the Equity holding of the Successful Bidder or its Ultimate Parent Company in such Affiliate(s) or Parent Company and the equity holding of such Affiliate(s) or Ultimate Parent Company in the Seller shall be computed in accordance with the example given below:

If the Parent Company or the Ultimate Parent Company of the Successful Bidder A directly holds thirty percent (30%) of the equity in the Seller , then holding of Successful Bidder A in the Seller shall be thirty percent (30%);

If Successful Bidder A holds thirty percent (30%) equity of the Affiliate and the Affiliate holds fifty percent (50%) equity in the Seller, then, for the purposes of ascertaining the minimum equity/ equity lock-in requirements specified above, the effective holding of Bidder A in the Seller shall be fifteen percent (15%). (i.e., 30%* 50%)

EMCO Energy Ltd. GMR Bangalore

15.2.8 The provisions as contained in this Article 15.2 shall override the terms of the consortium agreement submitted as part of the Bid.

15.2.9 Deleted.

15.3 ***Amendment***

15.3.1 This Agreement may only be amended or supplemented by a written agreement between the Parties and after obtaining the approval of the Appropriate Commission, where necessary.

15.4 ***Third Party Beneficiaries***

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

15.5 ***Waiver***

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

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

15.6 ***Entirety***

15.6.1 This Agreement and the Schedules are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

15.6.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or supply of power up to the Contracted Capacity under this Agreement to the Procurer by the Seller shall stand superseded and abrogated.

15.7 ***Confidentiality***

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

a) to their professional advisors;

b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or

EMCO Energy Ltd. GMR Bangalore

c) disclosures required under Law.

without the prior written consent of the other Parties.

15.7.2 Notwithstanding the provisions under Article 15.7.1, the Seller agrees and acknowledges that the Procurer may at any time, disclose the terms and conditions of the Agreement and the other RFP Documents to any person, to the extent stipulated under the Law or the Competitive Bidding Guidelines.

15.8 ***Affirmation***

15.8.1 The Seller and Procurer, both affirm that:

a) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and

b) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and the Seller and Procurer hereby undertake not to engage in any similar acts during the Term of Agreement.

15.9 ***Severability***

15.9.1 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.

15.10 ***Relationship of the Parties***

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership or agency or any such other relationship between the Parties or to impose any partnership obligation or liability upon either Party and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

15.11 ***Counterparts***

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

15.12 ***Notices***

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

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

EMCO Energy Ltd. GMR Bangalore

Address	: EMCO Energy Limited IBC Knowledge Park, Phase – II, D-Block, 9th Floor 4 / 1 Bannerghatta Road Bangalore – 560 029
Attention	: Sanjay N. Barde
Email	: barde.SN@gmrgroup.in
Fax. No.	: 080-40432965
Telephone No.	: 080-40432746

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

(i) Electricity Department, UT of Dadra and Nagar Haveli

Address	: Office of Executive Engineer Vidhyut Bhavan, Opp. Secretariat 66 KV Road, Amli Silvassa - 396210 U.T. of Dadra and Nagar Haveli
Attention	: Harshad. M. Patel
Email	: eeelect_dnh@yahoo.co.in; eeelectdnh@rediffmail.com
Fax. No.	: (91) (260) - 2642338
Telephone No.	: (91) (260) - 2642338

15.12.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

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

15.13 *Language*

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

EMCO Energy Ltd. GMR Bengalore

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

15.14 *Breach of Obligations*

15.14.1 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.

15.15 *Nomination Restriction*

15.15.1 Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to the right of the Procurer to nominate a third Party to receive benefits under this Agreement, such third Party shall have a financial standing comparable to that of the Procurer in question.

15.16 *Commercial Acts*

15.16.1 The Procurer and Seller unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement and any other RFP Documents to which it is a Party constitute private and commercial acts rather than public or governmental acts.

15.17 *Restriction of Shareholders / Owners' Liability*

15.17.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 1956.

15.18 *Taxes and Duties*

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

15.18.2 Procurer shall be indemnified and held harmless by the Seller against any claims that may be made against Procurer in relation to the matters set out in Article 15.18.1.

15.18.3 Procurer shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Seller by the Procurer on behalf of Seller or its personnel, provided the Seller has consented in writing to Procurer for such work, which consent shall not be unreasonably withheld.

EMCO Energy Ltd. GMR Bangalore

15.19 *No Consequential or Indirect Losses*

15.19.1 The liability of the Seller and the Procurer shall be limited to that explicitly provided in this Agreement.

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

15.20 *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.

15.21 *Order of priority in application*

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

- applicable Law, rules and regulations framed thereunder,
- this Agreement

15.22 *Independent Entity*

15.22.1 The Seller shall be an independent entity performing its obligations pursuant to the Agreement.

15.22.2 Subject to the provisions of the Agreement, the Seller shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Seller or contractors engaged by the Seller in connection with the performance of the Agreement shall be under the complete control of the Seller and shall not be deemed to be employees, representatives, contractors of Procurer and nothing contained in the Agreement or in any agreement or contract awarded by the Seller shall be construed to create any contractual relationship between any such employees, representatives or contractors and the Procurer.

15.23 Fraudulent and Corrupt Practices

15.23.1 The Seller and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the Procurer may terminate the Agreement without being liable in any manner whatsoever to the Seller, if it determines that the Seller has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process. In such an event, the Procurer shall forfeit the bid bond, without prejudice to any other right or remedy that may be available to the Procurer hereunder or subsistence otherwise.

EMCO Energy Ltd GMR Bangalore

15.23.2 Without prejudice to the rights of the Procurer under Article 15.23.1 hereinabove and the rights and remedies which the Procurer may have under this Agreement, if a Seller is found by the Procurer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of LOI or after the execution of the PPA, the Procurer may terminate the Agreement without being liable in any manner whatsoever to the Seller. Further, in such an event, the Procurer shall forfeit the Contract Performance Guarantee.

15.23.3 Further, the Seller shall not be eligible to participate in any tender or RFP issued by the Procurer during a period of 2 (two) years from the date such Seller is found by the Procurer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

15.23.4 For the purposes of this Article 15.23, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) **"corrupt practice"** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Procurer who is or has been associated or dealt in any manner, directly or indirectly with the Bid process or the LOI or has dealt with matters concerning the PPA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Procurer, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LOI or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the Power Station or the LOI or the PPA, who at any time has been or is a legal, financial or technical adviser of the Procurer in relation to any matter concerning the Project;

(b) "**fraudulent practice**" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;

(c) "**coercive** practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bid process;

(d) "**undesirable** practice" means (i) establishing contact with any person connected with or employed or engaged by the Procurer with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a conflict of interest; and

(e) "**restrictive practice**" means forming a cartel or arriving at any understanding or arrangement among bidders with the objective of restricting or manipulating a full and fair competition in the Bid process

15.24 ***Compliance with Law***

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

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

21/3/2013.

Executive Engineer
Electricity Department
Dadra & Nagar Haveli,
Silvassa.

For and on behalf of
Procurer

Name: Harshad M. Patel
Designation: Executive Engineer
Address:
Office of Executive Engineer
Vidhyut Bhavan, Opp. Secretariat
66 KV Road, Amli
Silvassa - 396210
U.T. of Dadra & Nagar Haveli

EXECUTIVE ENGINEER ELEC. DPT. D.N.H. SILVASSA

Signature with seal

Witness:
1. R.B. Chauhal, DE(Comml.) 21/03/2013
2. Sheetal C. Pandya
Acctt. (Comml.) Pandya 21/3/13

For EMCO Energy Ltd.

21/03/13

Authorised Signatory

For and on behalf of
Seller

Name: Sanjay N. Barde
Designation: President
Address:
EMCO Energy Limited
IBC Knowledge Park,
Phase-2, D Block, 9th Floor,
4/1 Bannerghatta Road,
Bangalore-560029

EMCO Energy Ltd. GMR Bangalore

Signature with seal

Witness:
1. Pradnya Kulkarni GM – BD 21/3/13
2. Chandresh V. Dobariya
Director, Paracon Energy
Solution Pvt. Ltd. 21/3/2013

0/400

1 SCHEDULE 1: NAMES AND DETAILS OF THE PROCURER

Sl. No.	Name of the Procurer	Address of the Registered Office of Procurer	Law under which incorporated	Contracted Capacity (MW)	Delivery Point[4]
1	Electricity Department of Silvassa	Office of Executive Engineer Vidhyut Bhavan, Opp. Secretariat 66 KV Road, Amli Silvassa - 396210 U.T. of Dadra & Nagar Haveli	---NA---	200	AMBHETI 400/220 KV SUBSTATION OF PGCIL, VAPI, GUJARAT

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. DEPTT. U.T. SILVASSA

5 Procurer / Authorized Representative to insert the details of the Delivery Point(s) including the names of the place, district and State in which the Delivery Point(s) is located

2 SCHEDULE 2: CALCULATION OF 'X' DAYS

(Refer Article 8.5.9)

Percentage of Monthly Invoice which is the subject of default under Article 8.4 as notified in the Notice (issued under Article 8.5.2) relatable to the present occurrence	Number of times a Notice has been issued under Article 8.5.2 to the defaulting Procurer prior to present occurrence			
	1st time	2nd time	3rd time	4th time and onwards
Less than 25%	x = 20 days	x = 25 days	x = 40 days	x = 60 days
25% to 30%	x = 20 days	x = 30 days	x = 45 days	x = 65 days
More than 30% to 35%	x = 20 days	x = 35 days	x = 50 days	x = 70 days
More than 35% to 40%	x = 20 days	x = 40 days	x = 55 days	x = 75 days
More than 40%	x = 20 days	x = 45 days	x = 60 days	x = 90 days





3 SCHEDULE 3: AVAILABILITY FACTORS

3.1 The following matters shall be determined as per the provisions of the Grid Code and ABT:

a) Availability declaration and calculation of Availability or Availability Factor;

b) Requirement for spinning reserves;

c) Procedure for revision of Availability;

d) Consequences of failure to demonstrate capacity or misdeclarations of capacity;

e) Scheduling and Dispatch; and

f) Other matters which may be related to Availability or Availability Factor.

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. SILVASSA

4 SCHEDULE 4: TARIFF

4.1 *General*

i) The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.

ii) The Tariff shall be paid in two parts comprising of Capacity Charge and Energy Charge as mentioned in Schedule 8 of this Agreement.

iii) For the purpose of payments, the Tariff will be Quoted Tariff as specified in Schedule 8, duly escalated as provided in Schedule 6 for the applicable Contract Year .

iv) The full Capacity Charges shall be payable based on the Contracted Capacity at Normative Availability and Incentive shall be provided for Availability beyond eighty five percent (85 %) as provided in this Schedule. In case of Availability being lower than the Normative Availability, the Capacity Charges shall be payable on proportionate basis in addition to the penalty to be paid by the Seller as provided in this Schedule.

v) deleted.

4.2 *Monthly Tariff Payment*

4.2.1 Components of Monthly Tariff Payment

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

i) Monthly Capacity Charge payment in accordance with Clause 4.2.2 of Schedule 4;

ii) Monthly Energy Charge for Scheduled Energy in accordance with Clause 4.2.3 of Schedule 4;

iii) Incentive determined in accordance with Clause 4.2.4 of Schedule 4 (applicable on a cumulative basis and included in each Monthly Bill);

iv) Penalty determined in accordance with Clause 4.2.5 of Schedule 4 (applicable on a cumulative basis and included in each Monthly Bill);

4.2.2 <u>Monthly Capacity Charge Payment (Applicable for all categories of power generation source)</u>

4.2.2.1 The Monthly Capacity Charge payment for any Month m in a Contract Year n shall be calculated based on the tariff quoted by the Seller as below:

If CAA >= NA,

$$FCm = \sum_j (NA * AFCyn * CC * L * Ncontract / 24) - \sum C(m-1)$$

Else:

$$FCm = \sum_j (AFCyn * AA * CC * L * Ncontract / 24) - \sum C(m-1)$$

where:

a) FCm is the Capacity Charge payment for the Month m (in Rupees)

b) $\sum j$ is the summation of all the relevant values separately for each Settlement Period from the start of the Contract Year "n" in which Month "m" occurs up to and including Month "m"

c) AFCyn is the Capacity Charge and is sum of a) Payable Escalable Capacity Charges AEFCyn and b) Payable Non Escalable Capacity Charges ANEFCyn for the Month "m" in the Contract Year "n" (in Rs/ kWh) in which such month "m" occurs and computed as mentioned hereunder;

d) AEFCyn is the Payable Escalable Capacity Charges for Month "m" in the Contract Year "n", expressed in Rs/ kWh and is equal to the Quoted Escalable Capacity Charges as provided in Schedule 8 for the first Contract Year and for subsequent Contract Years duly escalated by the following formula:

AEFCyn = QAEFCyn * p/q

where,

i. QAEFCyn is the Quoted Escalable Capacity Charges (in Rs/ kWh) shall be taken as at the end of the previous Contract Year (n-1);

ii. p is the Escalation Index as per Schedule 6 at the beginning of the Month "m"(expressed as a number);

iii. q is the Escalation Index as per Schedule 6 (expressed as a number);

e) ANEFCyn is the Payable Non Escalable Capacity Charges for the Month "m", expressed in Rupees/kWh and is equal to the Quoted Non Escalable Capacity Charges for the Contract Year in which such Month "m" occurs, as provided in Schedule 8;

f) CAA is the cumulative Availability, as per REA, from the first day of the Contract Year "n" in which Month "m" occurs up to and including Month "m" (expressed in percentage);

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. DEPTT. SILVASSA

g) AA is the Availability, as per REA, in the relevant Settlement Period (expressed as a percentage of Contracted Capacity in such Settlement Period), expressed as a percentage;

h) CC is the Contracted Capacity in the relevant Settlement Period (expressed in kW);

i) L is the number of minutes in relevant Settlement Period, as divided by total number of minutes in one hour, (expressed as hours);

j) Ncontract is the number of hours of power supply in a day, contracted as per the PPA (24 in the case of base load and seasonal load requirement);

k) NA Normative Availability; and

l) $\sum C(m-1)$ is the cumulative Capacity Charge payable from the first day of the Contract Year "n" in which Month "m" occurs up to and including Month "m-1" but not including Month "m", (in Rupees).

Provided, no Monthly Capacity Charges shall be paid for the Settlement Period during which the RLDC has not allowed the operation of the Power Station due to "Seller's" failure to operate it as per the provisions of Grid Code and such Settlement Period shall not be considered during calculation of Monthly Capacity Charge payment.

4.2.3 Monthly Energy Charges

4.2.3.1 The Monthly Energy Charges to be paid to the Seller shall be determined considering the supply from the type of plant, as detailed hereunder:

4.2.3.2 The Monthly Energy Charges (in Rupees) for Month "m" shall be calculated as under:

MEPm = AEOm * MEPn

where:

a) MEPm is the Monthly Energy Charges for Month m (in Rs.);

b) AEOm is the Scheduled Energy for the Month m (in kWh); and

c) MEPn is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEPn is the sum of the following: (i) Payable Escalable Energy Charges (MEEPn), (ii) Payable Escalable Inland Transportation Charges (MEITPn), (iii) Payable Non Escalable Energy Charges (MNEEPn) and (iv) Payable Non Escalable Inland Transportation Charges (MNEITPn) for the Contract Year "n" in which Month "m" occurs and computed as mentioned hereunder:

where:

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. DNH SILVASSA

MEEPn = QMEEPn * p(EE)/q(EE)

MEITPn = QMEITPn * p(ET)/q(ET)

where:

a) QMEEPn for the first Contract Year in which month "m" occurs is the Quoted Escalable Energy Charges as per Schedule 8 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);

b) QMEITPn for the first Contract Year in which month "m" occurs is the Quoted Escalable Inland Transportation Charges as per Schedule 8 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);

c) p(EE) is the Escalation Index as per Schedule 6 at the beginning of Month "m" (expressed as a number);

d) q(EE) is the Escalation Index as per Schedule 6 (expressed as a number);

e) p(ET) is the Escalation Index for Inland Transportation Charges as per Schedule 6 at the beginning of Month "m" (expressed as a number);

f) q(ET) is the Escalation Index for Inland Transportation Charges as per Schedule 6 (expressed as a number);

g) MNEEPn is the Payable Non Escalable Energy Charges of the Contract Year "n" in which Month "m" occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year "n" in which Month "m" occurs, as provided in Schedule 8; and

h) MNEITPn is the Payable Non Escalable Inland Transportation Charges of the Contract Year "n" in which Month "m" occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Inland Transportation Charges of the Contract Year "n" in which Month "m" occurs, as provided in Schedule 8.

4.2.3.3 Deleted.

4.2.3.4 Deleted.

4.2.3.5 Deleted.

4.2.3.6 Deleted.

4.2.4 **Contract Year Energy Incentive Payment**

4.2.4.1 If and to the extent the Availability in a Contract Year exceeds Normative Availability, an incentive at the rate of forty (40%) of the Quoted Non Escalable Capacity Charges (in Rs./kWh) for such Contract Year mentioned in Schedule 8 subject to a maximum of twenty five (25) paisa /kWh, shall be allowed on the

EMCO Energy Ltd. CARE Bangalore

energy (in kWh) corresponding to the Availability in excess of eighty five percent (85 %).

4.2.5 **Contract Year Penalty for Availability below eighty percent (80 %) during the Contract Year**

4.2.5.1 In case the Availability for a Contract Year is less than eighty percent (80 %), the Seller shall pay a penalty at the rate of twenty percent (20%) of the simple average Capacity Charge (in Rs./kWh) for all months in the Contract Year applied on the energy (in kWh) corresponding to the difference between eighty percent (80 %) and Availability during such Contract Year.

4.3 ***Deviation from the Schedule***

4.3.1 Variation between Scheduled Energy and actual energy at the Interconnection Point shall be accounted for through Unscheduled Interchange (UI) as per provisions of the Grid Code and ABT.

4.4 ***Transmission/Wheeling Charges and RLDC/ SLDC Charges***

4.4.1 The payment of Transmission Charges / Wheeling Charges to the CTU/ STU, from the Injection Point to the Delivery Point shall be paid by the Seller.

4.4.2 The payment of the RLDC/ SLDC charges shall be the responsibility of the Seller.

4.5 ***Penalty and rights relating to minimum guaranteed quantity of Fuel***

4.5.1 In case "Seller" has to pay penalty to the fuel supplier for not purchasing the minimum guaranteed quantity of Fuel mentioned in the Fuel Supply Agreement and if during that Contract Year, Availability of the Power Station of the Seller is greater than the Minimum Offtake Guarantee but "the Procurer" has scheduled energy corresponding to such Minimum Off-take Guarantee during that Contract Year, then Seller will raise an invoice for the lower of the following amounts, on the Procurer, :

i) penalty paid to the fuel supplier under the Fuel Supply Agreement in that Contract Year, along with documentary proof for payment of such penalty, or

ii) an amount corresponding to twenty percent (20%) of cumulative Monthly Capacity Charge Payment (in Rs.) made by the Procurer for all the months in that Contract Year multiplied by (1- X/Y) where:

X is the Scheduled Energy during the Contract Year (in kWh); and

Y is the Scheduled Energy corresponding to Minimum Offtake Guarantee for the Procurer during the Contract Year (in kWh).

Provided, within ten (10) days of the end of each Month after the Delivery Date, the Seller shall provide a statement to the Procurer, providing a comparison of the cumulative Scheduled Energy for all previous Months during the Contract Year with the Minimum Offtake Guarantee of the Procurer. Further, such statement shall also list out the deficit, if any, in the Fuel offtake under the Fuel Supply Agreement, due to cumulative dispatch being less than the Minimum Offtake Guarantee. In case of a

Fuel offtake deficit, within a period of fifteen (15) days from the date of receipt of the above statement from the Seller and after giving a prior written notice of at least seven (7) days to the Seller, the concerned Procurer shall have the right to avail such deficit at the same price at which such deficit fuel was available to the Seller under the Fuel Supply Agreement and to sell such deficit to third parties. In case the Procurer exercises such right to avail Fuel equivalent to such deficit, there shall be no liability on the Procurer for payment of penalty on account of Minimum Offtake Guarantee.

4.6 ***Tariff for the period prior to date of commencement of supply of power***

4.6.1 The Tariff for the period prior to date of commencement of supply of power shall be the Quoted Tariff of the first Contract Year with escalation for relevant period only for energy charge.

4.7 ***Settlement of Bills***

4.7.1 The penalty of actual Availability shortfall during the Contract Year, deviation from the schedule, Transmission Charges and RLDC/ SLDC Charges, and penalty to be paid to fuel supplier will be settled as detailed in Clauses 4.2.2, 4.2.5, 4.3, 4.4 and 4.5 of this Schedule.

4.7.2 Notwithstanding anything contained in this agreement, no separate reimbursement shall be allowed for the cost of the secondary fuel.

EMCO Energy Ltd. GMR Bangalore

5 SCHEDULE 5: DETAILS OF GENERATION SOURCE AND SUPPLY OF POWER

(A) Details of generation source [to be reproduced exactly as in Format 4.13 of the Selected Bid of the Seller]

(Note: In case of Seller being an Trading Licensee, details in this format is to be furnished by the Bidder in relation to the supplier of power with whom the power purchase agreement has been executed by the Trading Licensee)

<table>
<tr><th>Sl. No</th><th>Particulars</th><th colspan="4">Details (as per Format 4.13 of the Selected Bid of Seller)</th></tr>
<tr><td>1.</td><td>Location of power station (Specify place, district and state)</td><td colspan="4">Warora, District – Chandrapur, Maharashtra</td></tr>
<tr><td rowspan="8">2.</td><td rowspan="8">No. of existing/ proposed units and installed capacity of each unit (in MW)</td><td colspan="4">Existing</td></tr>
<tr><td>Sl. No.</td><td>No. of Units</td><td>Installed Capacity</td><td>COD</td></tr>
<tr><td>1.</td><td>.....</td><td>.....</td><td>.....</td></tr>
<tr><td>2.</td><td>.....</td><td>.....</td><td>.....</td></tr>
<tr><td>.....</td><td>.....</td><td>.....</td><td>.....</td></tr>
<tr><td colspan="4">Proposed</td></tr>
<tr><td>Sl. No.</td><td>No. of Units</td><td>Installed Capacity</td><td>Expected COD</td></tr>
<tr><td>1.</td><td>1st Unit</td><td>300 MW</td><td>Oct - 12</td></tr>
<tr><td>2.</td><td>2nd Unit</td><td>300 MW</td><td>Dec - 12</td></tr>
<tr><td>3.</td><td>Primary Fuel</td><td colspan="4">Domestic Coal</td></tr>
<tr><td>4.</td><td>Dates of last major R&M (unit-wise)</td><td colspan="4">Applicable for existing units
S No. Date
---Not Applicable</td></tr>
<tr><td>5.</td><td>Duration of Fuel Supply Agreement(s) (FSA)</td><td colspan="4">---Not Applicable---</td></tr>
<tr><td>6.</td><td>Quantum of power contracted with other purchasers, if any (in MW)</td><td colspan="4">200 MW with MSEDCL</td></tr>
<tr><td>7.</td><td>Details of surplus capacity (in MW)</td><td colspan="4">310 MW</td></tr>
</table>

(B) Details of primary fuel [to be reproduced exactly as in Format 4.13 of the Selected Bid of the Seller]

S. No	Particulars	Details (to be furnished by the Bidder)
1	Primary fuel **(Insert as applicable: "Domestic coal/ Imported coal/ Domestic (pipeline) gas/ Imported gas (R-LNG)")**	Domestic Coal
2	Fuel source **(Insert as applicable: "Coal India Limited (CIL) coal linkage/ domestic captive coal mine/ imported coal/ domestic (pipeline) gas/ imported gas (R-LNG)")**	CIL (Coal Linkage)
3	Fuel grade **(Applicable only in case of coal)**	F Grade
4	**Name of the CIL subsidiary from which coal is proposed to be sourced or name and location of the captive coal mine (as**	SECL

	applicable)	
6	**Bidder to insert the applicable price mechanism, based on whether the primary fuel is covered under:** 1. **Administered Price Mechanism ("APM"); or** 2. **Controlled and notified by an independent Regulator; or** 3. **Controlled and notified by the Government of India or Government of India Instrumentality.** **(Applicable only for gas)**	As notified by CIL from time to time along with other taxes and duties ---Not Applciable---

(C) Details of Power Supply

Sr. No	Particulars	
1.	Nature of Load	Base Load
2.	Duration of Power Supply	---Not Applicable---

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER E.L.D.C. D&N SILVASSA

6 SCHEDULE 6: ESCALATION INDEX

6.1.1 The index ("Escalation Index") to be applied for escalation of Quoted Escalable Capacity Charges, Quoted Escalable Energy Charges, Quoted Escalable Inland Transportation Charges, Quoted Escalable Overseas Transportation Charges and Quoted Escalable Fuel Handling Charges shall be computed by assuming that as on the date of the Bid Deadline i.e., 8th June 2012 (for Quoted Escalable Energy Charges, Quoted Escalable Inland Transportation Charges, Quoted Escalable Overseas Transportation Charges and Quoted Escalable Fuel Handling Charges) and Scheduled Delivery Date (for Quoted Escalable Capacity Charges) or Revised Scheduled Delivery Date, as the case may be, the value of such Escalation Index is 100. Thereafter for each Month after the Bid Deadline (for Quoted Escalable Energy Charges, Quoted Escalable Inland Transportation Charges, Quoted Escalable Overseas Transportation Charges and Quoted Escalable Fuel Handling Charges) and Scheduled Delivery Date (for Quoted Escalable Capacity Charges) or Revised Scheduled Delivery Date, as the case may be, the value of the Escalation Index shall be computed by applying the per annum inflation rate specified by CERC for payment of Escalable (or indexed) Capacity Charge and Escalable Energy Charge, as per the provisions of this Agreement.

6.1.2 For the avoidance of doubt, it is clarified that if the prevailing inflation rate for Quoted Escalable Energy Charges specified by CERC is 4.7% per annum, then at the end of the first Month after the Bid Deadline, the value of the Escalation Index shall be 100.3917 [i.e. 100 * (1 + 0.047/12)]. The value of the Escalation Index at the end of the N^{th} Month after the Bid Deadline shall be calculated as: 100 * (1 + N*0.047/ 12) for Quoted Escalable Energy Charges.. The value of the inflation rate shall be modified as and when specified by the CERC and the base value (100 in this case) shall be modified at the beginning of each Contract Year to be the Escalation Index at the end of the previous Contract Year. The value of the Escalation Index shall be calculated up to the fourth decimal point.

6.1.3 The different per annum escalation rates will be specified by CERC for the following, which shall be revised only at the end of every six months:

a) Quoted Escalable Capacity Charges;

b) Quoted Escalable Energy Charges separately for captive-coal based, linkage based coal, imported coal, domestic (pipeline) gas and imported R-LNG;

c) Quoted Escalable Inland Transportation Charges (except for hydro plants);

d) Quoted Escalable Overseas Transportation Charges, separately for imported coal and imported R-LNG; and

e) Quoted Escalable Fuel Handling Charges, separately for imported coal and imported R-LNG.

6.1.4 In case due to any reason, CERC discontinues the publication of any of the inflation rate(s) mentioned above, the Procurer and the Seller shall replace the above inflation

EMCO Energy Ltd. GMR Bangalore

rate(s) with inflation rate(s) which shall be computed on the same basis as was being used by CERC to estimate their notified inflation rate.





7 SCHEDULE 7: REPRESENTATION AND WARRANTIES

7.1 *Representations and Warranties by the Procurer*

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

7.1.1

i) The Procurer has all requisite powers and has been duly authorized to execute and consummate this Agreement;

ii) This Agreement is enforceable against the Procurer in accordance with its terms;

iii) The consummation of the transactions contemplated by this Agreement on the part of the Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Procurer is a party or to which the Procurer is bound, which violation, default or power has not been waived;

iv) The Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Procurer;

v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Procurer's knowledge, threatened in writing against the Procurer 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 comply with its obligations under this Agreement.

vi) The quantum of Contracted Capacity of Procurer does not exceed the projected additional demand forecast for the next three (3) years, as required under the Bidding Guidelines. In case the quantum of Contracted Capacity of Procurer exceeds the additional demand forecast for the next three (3) years, the Procurer has already obtained the approval of the Appropriate Commission for the quantum of power proposed to be procured, as required under Para 3.1(i) of the Bidding Guidelines.

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

7.2 *Representation and Warranties of the Seller*

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

EMCO Energy Ltd. GMR Bangalore

i) The Seller has all requisite power and has been duly authorized to execute and consummate this Agreement;

ii) This Agreement is enforceable against the Seller in accordance with its terms;

iii) The consummation of the transactions contemplated by this Agreement on the part of the Seller will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Seller is a party or to which the Seller is bound which violation, default or power has not been waived;

iv) The Seller is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Seller;

v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Seller's knowledge, threatened in writing against the Seller 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 supply power or to comply with its obligations under this Agreement.

vi) The Seller/ Successful Bidder has neither made any statement nor provided any information in his Bid, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made in the Bid are true and accurate and there is no breach of the same.

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

7.2.3 In the event that any of the representations and warranties made by the Seller in the Article above not true or are incorrect, the occurrence of such event would amount to a Seller Event of Default under Article 11.1 of this Agreement and the Procurer shall have the right to terminate this Agreement in accordance with Article 11 of this Agreement.

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. DEPTT. SILVASSA

8 SCHEDULE 8: QUOTED TARIFF

Price Bid Form

Current Tender Details

IFB / Tender Notice No : 14/2011-12

Tender ID: 77316

Name of Work : Medium Term procurement of 200 MW power under Case – 1 bidding procedure through tariff based competitive bidding (as per Bidding Guidelines, issued by the Government of India, for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees) for meeting the base load requirements of Electricity Department of UT of Dadra & Nagar Haveli in India for Seven years.

ECV (INR): 0

Last Date & Time For Submission of Bid: 08/06/2012 14:00:00

Type Of Tender: open

1st Oct-12 ; 31st March-13

Price Bid Quoted Non Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)

Get Ranking

Requirement	Abhijeet MADC Nagpur Energy Private Ltd.	Bharat Aluminium Company Ltd	EMCO Energy Limited
1st Oct-12 ; 31st March-13			
--Quoted Non Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	1.4400	1.320	2.813
--Quoted Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	0	0.250	0.234
--Quoted Non Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 6 ,7)	0	0	0
--Quoted Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 7)	1.6160	2.25	0.696
--Quoted Non Escalable Energy Charges ((USD/ kWh) for Scenario 3, 4,5,7)	0	0	0
--Quoted Escalable Energy Charges ((USD/ kWh) for Scenario 4,5,7)	0	0	0
--Quoted Non Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0	0	0
--Quoted Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0.5470	0	0.691
--Quoted Non Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Non Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
01-Apr-13 ; 31st March-14			
--Quoted Non Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	1.4911	1.320	2.399
--Quoted Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	0	0.25	0.234
--Quoted Non Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 6 ,7)	0	0	0
--Quoted Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 7)	1.616	2.25	0.696
--Quoted Non Escalable Energy Charges ((USD/ kWh) for			

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. SILVASSA

96

Scenario 3, 4,5,7)	0	0	0
--Quoted Escalable Energy Charges ((USD/ kWh) for Scenario 4,5,7)	0	0	0
--Quoted Non Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0	0	0
--Quoted Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0.547	0	0.691
--Quoted Non Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Non Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
01-Apr-14 ; 31st March-15			
--Quoted Non Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	1.4469	1.320	2.527
--Quoted Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	0	0.25	0.234
--Quoted Non Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 6 ,7)	0	0	0
--Quoted Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 7)	1.616	2.25	0.696
--Quoted Non Escalable Energy Charges ((USD/ kWh) for Scenario 3, 4,5,7)	0	0	0
--Quoted Escalable Energy Charges ((USD/ kWh) for Scenario 4,5,7)	0	0	0
--Quoted Non Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0	0	0
--Quoted Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0.547	0	0.691
--Quoted Non Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Non Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
01-Apr-15 ; 31st March-16			
--Quoted Non Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	1.3934	1.320	2.779
--Quoted Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	0	0.25	0.234
--Quoted Non Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 6 ,7)	0	0	0
--Quoted Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 7)	1.616	2.25	0.696
--Quoted Non Escalable Energy Charges ((USD/ kWh) for Scenario 3, 4,5,7)	0	0	0
--Quoted Escalable Energy Charges ((USD/ kWh) for Scenario 4,5,7)	0	0	0
--Quoted Non Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0	0	0
--Quoted Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0.547	0	0.691
--Quoted Non Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Non Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
01-Apr-16 ; 31st March-17			

EMCO Energy Ltd. GMR Bangalore

--Quoted Non Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	1.3305	1.320	2.942
--Quoted Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	0	0.25	0.234
--Quoted Non Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 6 ,7)	0	0	0
--Quoted Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 7)	1.616	2.25	0.696
--Quoted Non Escalable Energy Charges ((USD/ kWh) for Scenario 3, 4,5,7)	0	0	0
--Quoted Escalable Energy Charges ((USD/ kWh) for Scenario 4,5,7)	0	0	0
--Quoted Non Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0	0	0
--Quoted Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0.547	0	0.691
--Quoted Non Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Non Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
01-Apr-17 ; 31st March-18			
--Quoted Non Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	1.2625	1.320	2.783
--Quoted Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	0	0.25	0.234
--Quoted Non Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 6 ,7)	0	0	0
--Quoted Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 7)	1.616	2.25	0.696
--Quoted Non Escalable Energy Charges ((USD/ kWh) for Scenario 3, 4,5,7)	0	0	0
--Quoted Escalable Energy Charges ((USD/ kWh) for Scenario 4,5,7)	0	0	0
--Quoted Non Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0	0	0
--Quoted Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0.547	0	0.691
--Quoted Non Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Non Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
01-Apr-18 ; 31st March-19			
--Quoted Non Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	1.1927	1.320	2.731
--Quoted Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	0	0.25	0.234
--Quoted Non Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 6 ,7)	0	0	0
--Quoted Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 7)	1.616	2.25	0.696
--Quoted Non Escalable Energy Charges ((USD/ kWh) for Scenario 3, 4,5,7)	0	0	0
--Quoted Escalable Energy Charges ((USD/ kWh) for Scenario 4,5,7)	0	0	0
--Quoted Non Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0	0	0
--Quoted Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0.547	0	0.691

EMCO Energy Ltd. GMR Bangalore

98

--Quoted Non Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Non Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
01-Apr-19 ; 30th Sep-19			
--Quoted Non Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	1.1225	1.320	2.968
--Quoted Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	0	0.25	0.234
--Quoted Non Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 6 ,7)	0	0	0
--Quoted Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 7)	1.616	2.25	0.696
--Quoted Non Escalable Energy Charges ((USD/ kWh) for Scenario 3, 4,5,7)	0	0	0
--Quoted Escalable Energy Charges ((USD/ kWh) for Scenario 4,5,7)	0	0	0
--Quoted Non Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0	0	0
--Quoted Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	0.547	0	0.691
--Quoted Non Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Non Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0
--Quoted Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	0	0	0

Levellised Tariff as per CERC Norms (Rs./ kWh)

Levellised Tariff as per CERC Norms (Rs./ kWh) | Get Ranking

Requirement	Abhijeet MADC Nagpur Energy Private Ltd.	Bharat Aluminium Company Ltd	EMCO Energy Limited
Levellised Tariff as per CERC Norms (Rs./ kWh)	4.974	5.156	4.618

Previous | Export To Excel | Print

Committee Members

First Name	User Name
Mr. Harshad M. Patel	dnhelehmp

Server Time : 03/07/2012 15:17:56

EMCO Energy Ltd. GMR Bangalore

9 SCHEDULE 9: CONTRACT PERFORMANCE GUARANTEE

IDBI BANK

No. 419401

Branch:-IDBI Bank Ltd, Shakti Comfort Towers, 102 K.H. Road, Bangalore 560027.

To,
Executive Engineer (Power), Electricity Department,
Vidyut Bhawan (Opposite Secretariat),
Dadra & Nagar Haveli, Silvasa

Dear Sir/Madam,

Bank Guarantee No: 120377IBGP00741
Bank Guarantee Amount: Rs.60,00,00,000/-
Effective From: 08.09.2012 to 14.01.2013
Last Date for Lodgment of Claim: 13.02.2013

This deed of guarantee executed by IDBI Bank Ltd, a company constituted under the Companies Act 1956 and deemed to be a banking company under the Banking Regulation Act.1949, having its Registered Office and Head Office at IDBI Tower, WTC Complex, Cuffe parade, Mumbai-400005 and among other places a branch IDBI Bank Ltd, 102, K.H. Road Bangalore 560027 (hereinafter referred to as "the Guarantor Bank") in favour of Executive Engineer (Power), Electricity Department, Vidyut Bhawan (Opposite Secretariat), Dadra & Nagar Haveli, Silvasa (Hereinafter called Procurer) for an amount not exceeding for Rs 60,00,00,000.00 (Rupees Sixty Crore Only) at the request of EMCO Energy Limited (Hereinafter called the "Applicant").

This Guarantee is issued subject to the condition that the liability of the bank under this Guarantee is limited to maximum for Rs 60,00,00,000.00 (Rupees Sixty Crore Only) and the Guarantee shall remain in full force up to 14.01.2013 (expiry date) and cannot be invoked otherwise than by a written demand under this Guarantee served on the Bank on or before the ~~14.02.2013~~ 13.02.2013 (last claim date).

Prakruthi D
प्रकृति देरैबैल
Prakruthi Derebail
ईआईएन/EIN : 633321

The Procurer in its own interest is advised to seek a confirmation of the issuance of this Guarantee from the controlling office/Head Office i.e. IDBI Bank Limited, IDBI Tower, 8th Floor, Trade Finance department, WTC Complex, Cuffe Parade, Mumbai - 400005 by enclosing a copy of the same.

This Guarantee consists of four pages including this page.

Authorised Signatory
प्रदीप .सी
Pradeep .C
ईआईएन/EIN : 101323

contd

Y. Sandhya
Authorised Signatory
वाई. संध्या बाई /Y. Sandhya Bai
उप महा प्रबंधक/Dy. General Manager
आईडीबीआई बैंक लिमिटेड/IDBI Bank Limited
EC : 28746

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. DEPT. U.T. OF D.N.H. SILVASSA

100

C/380

C/696

INDIA NON JUDICIAL

Government of Karnataka

e-Stamp

सत्यमेव जयते

Certificate No.	:	IN-KA67687556299380K
Certificate Issued Date	:	08-Sep-2012 01:43 PM
Account Reference	:	NONACC (BK)/ kaidbbk02/ BANGALORE/ KA-BA
Unique Doc. Reference	:	SUBIN-KAKAIDBBK0205925375750482K
Purchased by	:	IDBI BANK LIMITED
Description of Document	:	Article 12 Bond
Description	:	BANK GUARANTEE
Consideration Price (Rs.)	:	0 (Zero)
First Party	:	IDBI BANK LIMITED
Second Party	:	ELECTRICITY DEPARTMENT UT OF DADRA AND NAGAR HAVEL
Stamp Duty Paid By	:	IDBI BANK LIMITED
Stamp Duty Amount(Rs.)	:	200 (Two Hundred only)

For IDBI BANK LIMITED

Authorised Signatory
K.H Road Bangalore - 27

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

This is an integral part of the Bank Guarantee No.: 1203771BGP00741

For Rs 60,00,00,000/-

Executed on 08/09/12 at Bangalore

By IDBI Bank Ltd. at 102 K.H. Road, Bangalore - 27

on Behalf of EMCO Energy Ltd

EMCO Energy Ltd. GMR Bangalore

कृते आईडीबीआई बैंक लिमिटेड
For IDBI BANK LTD.

प्राधिकृत हस्ताक्षरकर्ता
Authorised Signatory

प्रदीप .सी
Pradeep .C
ईआईएन/EIN : 101323

कृते आईडीबीआई बैंक लिमिटेड
For IDBI BANK LTD.
Y. Sandhya

वाई. संध्या बाई /Y. Sandhya Bai प्राधिकृत हस्ताक्षरकर्ता
Authorised Signatory
उप महा प्रबंधक/Dy. General Manager
आईडीबीआई बैंक लिमिटेड/IDBI Bank Limited
EC : 28746

101

C/16

BANK GUARANTEE

Bank Guarantee No: 120377IBGP00741
Bank Guarantee Amount: Rs.60,00,00,000/-
Effective From: 08.09.2012 to 14.01.2013
Last Date for Lodgment of Claim: 13.02.2013

To,
Executive Engineer (Power), Electricity Department,
Vidyut Bhawan (Opposite Secretariat),
Dadra & Nagar Haveli, Silvasa

In consideration of the EMCO Energy Limited, having its registered office at 701/704, 7th Floor, Naman Cenre, A-Wing, BKC (Bandra Kurla Complex), Bandra Mumbai- 4300051 agreeing to undertake the obligations under the PPA and the other RFP Documents and Electricity Department UT of Dadra & Nagar Haveli (herein after referred to as Procurer), agreeing to execute the RFP Documents with the Successful Bidder for procurement of power on Long Term basis through tariff based competitive bidding process for meeting the requirements of the Procurer, the IDBI Bank Limited, a company constituted under the Companies Act 1956 and deemed to be a banking company under the Banking Regulations Act 1949 having its Registered office at IDBI Towers, WTC complex, Cuffe Parade, Mumbai 400 005, and branch office at 102, K H road, Bangalore- 560 027 (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer at Silvassa forthwith on demand in writing from the Procurer *or* any Officer authorized by it in this behalf, any amount up to and not exceeding Rs 60,00,00,000.00 (Rupees Sixty Crore Only) [Insert the amount of the bank guarantee computed on the basis of thirty (30) lakhs/MW with respect to the Contracted Capacity of the Procurer as per the terms of PPA] on behalf of M/s. EMCO Energy Limited.

This guarantee shall be valid and binding on the Guarantor Bank up to and including 14.01.2013 and shall in no event not be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs 60,00,00,000.00 (Rupees Sixty Crore Only) Our Guarantee shall remain in force until 14.01.2013 The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

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

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, EMCO Energy Limited and/or any other person. The Guarantor Bank shall not require the Procurer to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Silvassa shall have exclusive jurisdiction.

कृते आईडीबीआई बैंक लिमिटेड
For IDBI BANK LTD.

प्राधिकृत हस्ताक्षरकर्ता
Authorised Signatory

EMCO Energy Ltd. GMR Bangalore

120377IBGP00741

प्रदीप .सी
Pradeep .C
ईआईएन/EIN : 101323

कृते आईडीबीआई बैंक लिमिटेड
For IDBI BANK LTD.

Y. Sandhya

वाई. संध्या बाई /Y. Sandhya Bai
उप महा प्रबंधक/Dy. General Manager
आईडीबीआई बैंक लिमिटेड/IDBI Bank Limited
EC : 28746

प्राधिकृत हस्ताक्षरकर्ता
Authorised Signatory

102

q378

d169

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

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

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

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

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

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs 60,00,00,000.00 (Rupees Sixty Crore Only) and it shall remain in force until 14.01.2013 with an additional claim period of thirty (30) days thereafter i.e 13.2.2013. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by EMCO Energy Limited. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer serves upon us a written claim or demand at our counters i.e. at IDBI Bank Limited, Plot No. 1, Amli,Silvassa Vapi Road, Silvassa, Pin : 396230 Dadra & Nagar Haveli (U.T.), Maharashtra failing which all your rights under the guarantee shall be forfeited and we shall be relieved and discharged from all liabilities thereafter.

कृते आईडीबीआई बैंक लिमिटेड
For IDBI BANK LTD.

प्राधिकृत हस्ताक्षरकर्ता
Authorised Signatory

प्रदीप .सी
Pradeep .C
ईआईएन/EIN : 101323

कृते आईडीबीआई बैंक लिमिटेड
For IDBI BANK LTD.

वाई. संध्या बाई /Y. Sandhya Bai
उप महा प्रबंधक/Dy. General Manager
आईडीबीआई बैंक लिमिटेड/IDBI Bank Limited
EC : 28746

प्राधिकृत हस्ताक्षरकर्ता
Authorised Signatory

EMCO Energy Ltd. GMR Bangalore

120377IBGP00741

INDIA NON JUDICIAL

Government of Karnataka

e-Stamp

सत्यमेव जयते

Certificate No.	:	IN-KA26955431208720L
Certificate Issued Date	:	21-Jan-2013 10:25 AM
Account Reference	:	NONACC (BK)/ kaidbbk02/ BANGALORE/ KA-BA
Unique Doc. Reference	:	SUBIN-KAKAIDBBK0221065328595715L
Purchased by	:	IDBI BANK LIMITED
Description of Document	:	Article 12 Bond
Description	:	BANK GUARANTEE
Consideration Price (Rs.)	:	0 (Zero)
First Party	:	IDBI BANK LIMITED
Second Party	:	ELECTRICITY DEPT UT OF DADAR AND NAGAR HAVELI
Stamp Duty Paid By	:	IDBI BANK LIMITED
Stamp Duty Amount(Rs.)	:	200 (Two Hundred only)

For IDBI BANK LIMITED

Authorised Signatory
K.H Road Bangalore - 27

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

This is an integral part of the Bank Guarantee No.: 120377IB4P00741

For Rs 60,00,00,000/-

Executed on 21/01/13 at Bangalore

By IDBI Bank Ltd. at 102 K.H. Road, Bangalore - 27

on Behalf of EMCO Energy Ltd.

EXECUTIVE ENGINEER ELEC. DEPT. SILVASSA

EMCO Energy Ltd. GMR Bangalore

कृते आईडीबीआई बैंक लिमिटेड
For IDBI BANK LTD.

प्राधिकृत हस्ताक्षरकर्ता
Authorised Signatory

धन्या राकेश
Dhanya Rakesh
ई.आई.एन/EIN : 621307

आईडीबीआई बैंक लिमिटेड TRADE FINANCE K.H. Road Bangalore IDBI BANK LIMITED

कृते आईडीबीआई बैंक लिमिटेड
For IDBI BANK LTD.

प्राधिकृत हस्ताक्षरकर्ता
Authorised Signatory

Statuatory Alert:

1. The authenticity of this Stamp Certificate can be verified at www.shcilestamp.com
2. The Contact Details of ACCs, SHCIL Offices and SROs are available on the Web site "www.shcilestamp.com"

104

376

From,
IDBI Bank Ltd,
Shakti Comfort Towers,
102, KH Road,
Bangalore- 560027

To,
Executive Engineer (Power),
Electricity Department,
Vidyut Bhawan (Opposite Secretariat),
Dadra & Nagar Haveli, Silvasa

Dear Sir,

Amendment No.1 dated 21.01.2013

At the request of M/s. EMCO Energy Limited, the Bank Guarantee No. 120377IBGP00741 dated 08.09.2012 for Rs 60,00,00,000.00 (Rupees Sixty Crore Only) issued by IDBI Bank Ltd, Bangalore favoring you. This amendment should be attached to the original Bank Guarantee.

Bank Guarantee No. 120377IBGP00741 dated 08.09.2012 stands modified as follows:-

1. The expiry date of the Bank guarantee to be read as "31.03.2013" instead of existing.

2. The last date for lodgment of claim of the Bank guarantee to be read as "30.04.2013" instead of existing.

All other terms and conditions of the original guarantee remain unchanged.

Notwithstanding anything contained hereinabove:

a. Our liability under this bank guarantee shall not exceed Rs 60,00,00,000.00 (Rupees Sixty Crore Only).

b. This Bank Guarantee shall be valid up to 31.03.2013 and

c. Unless a demand or claim under this guarantee is made on or before 30.04.2013 at our counters i.e. at IDBI Bank Limited, Plot No. 1, Amli,Silvassa Vapi Road, Silvassa, Pin : 396230 Dadra & Nagar Haveli (U.T.), Maharashtra all your rights under the said Guarantee shall be forfeited and we shall be relieved and discharged from all liabilities thereafter.

Dated 21st January 2013 at Bangalore.

कृते आईडीबीआई बैंक लिमिटेड
For IDBI BANK LTD.

प्राधिकृत हस्ताक्षरकर्ता
Authorised Signatory

धन्या राकेश
Dhanya Rakesh
ई.आई.एन/EIN : 621307

EMCO Energy Ltd. GMR Bangalore

कृते आईडीबीआई बैंक लिमिटेड
For IDBI BANK LTD.

प्राधिकृत हस्ताक्षरकर्ता
Authorised Signatory

अपर्णा विनोद
Aparna Vinod
ई.आई.एन/EIN : 32204

EXECUTIVE ENGINEER ELEC. DEPT. SILVASSA

आईडीबीआई बैंक लिमिटेड TRADE FINANCE KH Road Bangalore IDBI BANK LIMITED

105

10. SCHEDULE 10 : SELELTED BID

Price Bid

Current Tender Details

IFB / Tender Notice No : 14/2011-12

Tender ID: 77316

Name of Work : Medium Term procurement of 200 MW power under Case – 1 bidding procedure through tariff based competitive bidding (as per Bidding Guidelines, issued by the Government of India, for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees) for meeting the base load requirements of Electricity Department of UT of Dadra & Nagar Haveli in India for Seven years.

ECV (INR): 0

Last Date & Time For Submission of Bid: 08/06/2012 14:00:00

Type Of Tender: open

Company Name : Abhijeet MADC Nagpur Energy Private Ltd.

Price Bid

Commencement Date of Contract Year	End Date of Contract Year	Quoted Non Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	Quoted Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	Quoted Non Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 6 ,7)	Quoted Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 7)	Quoted Non Escalable Energy Charges ((USD/ kWh) for Scenario 3, 4,5,7)	Quoted Escalable Energy Charges ((USD/ kWh) for Scenario 4,5,7)	Quoted Non Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	Quoted Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	Quoted Non Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	Quoted Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	Quoted Non Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	Quoted Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)
1st Oct-12	31st March-13	1.4400	0	0	1.6160	0	0	0	0.5470	0	0	0	0
01-Apr-13	31st March-14	1.4911	0	0	1.616	0	0	0	0.547	0	0	0	0
01-Apr-14	31st March-15	1.4469	0	0	1.616	0	0	0	0.547	0	0	0	0
01-Apr-15	31st March-16	1.3934	0	0	1.616	0	0	0	0.547	0	0	0	0
01-Apr-16	31st March-17	1.3305	0	0	1.616	0	0	0	0.547	0	0	0	0
01-Apr-17	31st March-18	1.2625	0	0	1.616	0	0	0	0.547	0	0	0	0
01-Apr-18	31st March-19	1.1927	0	0	1.616	0	0	0	0.547	0	0	0	0
01-Apr-19	30th Sep-19	1.1225	0	0	1.616	0	0	0	0.547	0	0	0	0

Levellised Tariff as per CERC Norms (Rs./ kWh)

Levellised Tariff as per CERC Norms (Rs./ kWh)	4.974

-- END OF SUPPLIER FORM DATA --

Company Name : Bharat Aluminium Company Ltd

Price Bid

Commencement Date of Contract Year	End Date of Contract Year	Quoted Non Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	Quoted Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	Quoted Non Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 6 ,7)	Quoted Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 7)	Quoted Non Escalable Energy Charges ((USD/ kWh) for Scenario 3, 4,5,7)	Quoted Escalable Energy Charges ((USD/ kWh) for Scenario 4,5,7)	Quoted Non Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	Quoted Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	Quoted Non Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	Quoted Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	Quoted Non Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	Quoted Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)
1st Oct-12	31st March-13	1.320	0.250	0	2.25	0	0	0	0	0	0	0	0
01-Apr-13	31st March-14	1.320	0.25	0	2.25	0	0	0	0	0	0	0	0
01-Apr-14	31st March-15	1.320	0.25	0	2.25	0	0	0	0	0	0	0	0
01-Apr-15	31st March-16	1.320	0.25	0	2.25	0	0	0	0	0	0	0	0
01-Apr-16	31st March-17	1.320	0.25	0	2.25	0	0	0	0	0	0	0	0
01-Apr-17	31st March-18	1.320	0.25	0	2.25	0	0	0	0	0	0	0	0
01-Apr-18	31st March-19	1.320	0.25	0	2.25	0	0	0	0	0	0	0	0
01-Apr-19	30th Sep-19	1.320	0.25	0	2.25	0	0	0	0	0	0	0	0

Levellised Tariff as per CERC Norms (Rs./ kWh)

Levellised Tariff as per CERC Norms (Rs./ kWh)	5.156

-- END OF SUPPLIER FORM DATA --

Company Name : EMCO Energy Limited

EMCO Energy Ltd. GMR Bangalore

EXECUTIVE ENGINEER ELEC. DEPTT. SILVASSA

Price Bid

Commencement Date of Contract Year	End Date of Contract Year	Quoted Non Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	Quoted Escalable Capacity Charges ((Rs./ kWh) for Scenario 1,2,3,4,5,6,7)	Quoted Non Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 6 ,7)	Quoted Escalable Energy Charges ((Rs./ kWh) for Scenario 1, 2, 7)	Quoted Non Escalable Energy Charges ((USD/ kWh) for Scenario 3, 4,5,7)	Quoted Escalable Energy Charges ((USD/ kWh) for Scenario 4,5,7)	Quoted Non Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	Quoted Escalable Inland Transportation Charges ((Rs./ kWh) for Scenario 1, 2, 3, 4, 5,7)	Quoted Non Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	Quoted Escalable Overseas Transportation Charges ((USD/ kWh) for Scenario 3, 4,7)	Quoted Non Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)	Quoted Escalable Fuel Handling Charges ((Rs./ kWh) for Scenario 3, 4,7)
1st Oct-12	31st March-13	2.813	0.234	0	0.696	0	0	0	0.691	0	0	0	0
01-Apr-13	31st March-14	2.399	0.234	0	0.696	0	0	0	0.691	0	0	0	0
01-Apr-14	31st March-15	2.527	0.234	0	0.696	0	0	0	0.691	0	0	0	0
01-Apr-15	31st March-16	2.779	0.234	0	0.696	0	0	0	0.691	0	0	0	0
01-Apr-16	31st March-17	2.942	0.234	0	0.696	0	0	0	0.691	0	0	0	0
01-Apr-17	31st March-18	2.783	0.234	0	0.696	0	0	0	0.691	0	0	0	0
01-Apr-18	31st March-19	2.731	0.234	0	0.696	0	0	0	0.691	0	0	0	0
01-Apr-19	30th Sep-19	2.968	0.234	0	0.696	0	0	0	0.691	0	0	0	0

Levellised Tariff as per CERC Norms (Rs./ kWh)

Levellised Tariff as per CERC Norms (Rs./ kWh)	4.618

Committee Members

First Name	User Name
Mr. Harshad M. Patel	dnhelehmp

Previous | Print | Export To Excel

Tenders Under Creation | Create New Tender | Approve Tender | My Procurements | Edit Tender | Approve Corrigendum | Pre Bid Meeting | Create Offline Tender | Create New Form | Tender BackUp | Bid Evaluation | Bid Evaluation Reports | Assign Tender Activities | Upload Documents | Tender Summary | Registered Suppliers | Add Limited Suppliers |

Server Time : 03/07/2012 15:24:39

EMCO Energy Ltd. GMR Bangalore

SCHEDULE OF SELECTED BID FROM EMCO ENERGY LIMITED

Commencement Date of Quoted Tariff	End Date of Quoted Tariff	Quoted Non Escalable Capacity Charges	Quoted Escalable Capacity Charges	Quoted Non Escalable Energy Charges	Quoted Escalable Energy Charges	Quoted Non Escalable Energy Charges	Quoted Escalable Energy Charges	Quoted Non Escalable Inland Transportation Charges	Quoted Escalable Inland Transportation Charges	Quoted Non Escalable Overseas Transportation Charges	Quoted Escalable Overseas Transportation Charges	Quoted Non Escalable Fuel Handling Charges	Quoted Escalable Fuel Handling Charges
		(Rs./ kWh) for Scenario 1,2,3,4,5,6,7	(Rs./ kWh) for Scenario 1,2,3,4,5,6,7	(Rs./ kWh) for Scenario 1, 2,6 ,7	(Rs./ kWh) for Scenario 1,2,7	(USD/ kWh) for Scenario 3,4,5,7	(USD/ kWh) for Scenario 4,5,7	(Rs./ kWh) for Scenario 1,2,3,4,5,7	(Rs./ kWh) for Scenario 1,2,3,4,5,7	(USD/ kWh) for Scenario 3,4,7	(USD/ kWh) for Scenario 3,4,7	(Rs / kWh) for Scenario 3,4,7	(Rs./ kWh) for Scenario 3,4,7
1st Apr-13	30th Sept-13	2.813	0.234	0.000	0.696	0.000	0.000	0.000	0.691	0.000	0.000	0.000	0.000
1-Oct-13	30th Sept-14	2.399	0.234	0.000	0.696	0.000	0.000	0.000	0.691	0.000	0.000	0.000	0.000
1-Oct-14	30th Sept-15	2.527	0.234	0.000	0.696	0.000	0.000	0.000	0.691	0.000	0.000	0.000	0.000
1-Oct-15	30th Sept-16	2.779	0.234	0.000	0.696	0.000	0.000	0.000	0.691	0.000	0.000	0.000	0.000
1-Oct-16	30th Sept-17	2.942	0.234	0.000	0.696	0.000	0.000	0.000	0.691	0.000	0.000	0.000	0.000
1-Oct-17	30th Sept-18	2.783	0.234	0.000	0.696	0.000	0.000	0.000	0.691	0.000	0.000	0.000	0.000
1-Oct-18	30th Sept-19	2.731	0.234	0.000	0.696	0.000	0.000	0.000	0.691	0.000	0.000	0.000	0.000
1-Oct-19	30th June-20	2.968	0.234	0.000	0.696	0.000	0.000	0.000	0.691	0.000	0.000	0.000	0.000

EMCO Energy Ltd. GMR Bangalore

11 SCHEDULE 11: LIST OF BANKS

Scheduled Commercial Banks

SBI and Associates

1. State Bank of India
2. State Bank of Bikaner and Jaipur
3. State Bank of Hyderabad
4. State Bank of Indore
5. State Bank of Mysore
6. State Bank of Patiala
7. State Bank of Saurashtra
8. State Bank of Travancore

Nationalised Banks

1. Allahabad Bank
2. Andhra Bank
3. Bank of India
4. Bank of Maharashtra
5. Bank of Baroda
6. Canara Bank
7. Central Bank of India
8. Corporation Bank
9. Dena Bank
10. Indian Bank
11. Indian Overseas Bank
12. Oriental Bank of Commerce
13. Punjab National Bank
14. Punjab and Sind Bank
15. Syndicate Bank
16. Union Bank of India
17. United Bank of India
18. UCO Bank

EMCO Energy Ltd. GMR Bangalore

19. Vijaya Bank

2. Foreign Banks

1 BNP Paribas
2 Citi Bank N.A.
3 Deutsche Bank A.G.
4 The Hongkong and Shanghai Banking Corporation Ltd.
5 Standard Chartered Bank
6 ABN Amro Bank N.V.
7 UFJ Bank Ltd.
8 Sumitomo Mitsui Banking Corporation
9 Societe Generale
10 Barclays Bank
11 Bank of Novascotia

3. Scheduled Private Banks

1 ING Vysya Bank Ltd.
2 ICICI Bank Ltd.
3 HDFC Bank Ltd.
4 IDBI Bank Ltd
5 Axis Bank
6 Kotak Mahindra Bank

[Note: The Procurer/Authorized Representative is authorized to modify the aforesaid list of Banks as deemed fit. Such modification shall not be construed as a change in standard bidding documents.]

EMCO Energy Ltd. GMR Bangalore

12 SCHEDULE 12: SUBSTITUTION RIGHTS OF THE LENDERS

12.1 *Substitution of the Seller*

12.1.1 Subject to the terms of the PPA, upon occurrence of a Seller Event of Default under the PPA, the Lenders shall, have the right to seek substitution of the Seller by a Selectee for the residual period of the PPA, for the purposes of securing the payments of the Total Debt Amount from the Seller and performing the obligations of the Seller, in accordance with the provisions of this Schedule.

12.1.2 The Lenders may seek to exercise right of substitution by an amendment or novation of the PPA and other RFP Documents executed between Procurer and the Seller in favour of the Selectee, the Procurer and the Seller shall cooperate with the Lenders to carry out such substitution.

12.2 *Procurers Notice of Default*

12.2.1 The Procurer, who serve(s) the Preliminary Default Notice on the Seller as per this Agreement, shall simultaneously also issue a copy of the same to the Lenders.

12.3 *Substitution Notice*

12.3.1 In the event of failure of the Seller to rectify the Seller Event of Default giving rise to Preliminary Default Notice and on receipt of a copy of the Termination Notice by the Procurer, the Lenders, either on their own or through its representative (the "**Lenders' Representative**") shall be entitled to notify the Procurer and the Seller of the intention of the Lenders to substitute the Seller by the Selectee for the residual period of the PPA (the "**Substitution Notice**").

12.4 *Interim operation of Power Station*

12.4.1 On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule 12 of this Agreement.

12.4.2 On issue of a Substitution Notice, the Lenders shall have the right to request the Procurer to enter upon and takeover the Power Station for the interim and till the substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Power Station, including levy, collection and appropriation of payments thereunder, subject to, the servicing of monies owed in respect of the Total Debt Amount as per the Financing Agreements and the Seller shall completely cooperate in any such takeover of the Power Station by the Procurer. If the Procurer, at their sole and exclusive discretion agree to enter upon and takeover the Power Station, till substitution of the Selectee in accordance with this Agreement, such Procurer shall be compensated for rendering such services in accordance with Clause 12.9.4 of this Schedule.

12.4.3 If the Procurer refuse to takeover the Power Station on request by the Lenders in accordance with Clause 12.4.2 above, the Seller shall have the duty and obligation to continue to operate the Power Station in accordance with the PPA till such time as the Selectee is finally substituted.

12.4.4 The Lenders and the Procurer shall, simultaneously have the right to commence the process of substitution of the Seller by the Selectee in accordance with these terms and the Seller hereby irrevocably consents to the same.

12.5 *Process of Substitution of Seller*

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

12.5.2 The Lenders and the Seller shall ensure that, upon the Procurer approving the Selectee, the Seller shall transfer absolutely and irrevocably, the ownership of the Power Station to such Selectee simultaneously with the amendment or novation of the PPA and other RFP Documents executed between the Seller and the Procurer in favour of the Selectee as mentioned in Clause 12.1.2 of this Schedule.

12.6 *Modality for Substitution*

Criteria for selection of the Selectee

12.6.1 The Lenders and / or the Lenders' Representative shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:

(a) if the Seller is proposed to be substituted prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, the Selectee shall possess the financial capability used to qualify bidders in the RFP stage (including the methodology prescribed therein) to perform and discharge all the residual duties, obligations and liabilities of the Seller under the PPA. If the Seller is proposed to be substituted during the Operation Period, this criteria shall not be applicable.

(b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Seller to the Procurer under and in accordance with the PPA and also payment of the Total Debt Amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;

(c) the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or any Lender or between the Selectee and the Procurer, involving sums greater than Rupees twenty (20) Crore at any time in the last two (2) years as on the date of the substitution notice to the Seller.

(d) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained and the security in favour of the Lenders under the Financing Agreements is preserved.

12.7 *Modalities*

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

12.7.2 The Lenders' Representative shall on behalf of the Lenders propose to the Procurer (the "Proposal") pursuant to Clause 12.7.3 below, the name of the Selectee for acceptance, seeking:

(a) grant of all the rights and obligations under the PPA and the other RFP Documents executed between the Procurer and the Seller, to the Selectee (as substitute for the Seller);

(b) amendment of the PPA and the other RFP Documents executed between the Procurer and the Seller, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Seller under the original PPA and the other RFP Documents executed between the Procurer and the Seller; and

(c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this Agreement.

12.7.3 The Proposal shall contain the particulars and information in respect of the Selectee and the data and information as Procurer/ All Procurers (insert as applicable) may reasonably require. The Procurer may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.

12.7.4 The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the Procurer of the Proposal:

(a) observe, comply, perform and fulfill the terms, conditions and covenants of the PPA and all other RFP Documents executed between Seller and the Procurer or a new PPA or respective RFP Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Seller, as if such Selectee was the Seller originally named under the PPA; or the respective RFP Document; and

(b) be liable for and shall assume, discharge and pay the Total Debt Amount or then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and the Procurer as if such Selectee was the Seller originally named under such Financing Agreements.

12.7.5 At any time prior to taking a decision in respect of the Proposal received under Clause 12.7.2, the Procurer may require the Lender/ Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of the Procurer as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.

EMCO Energy Ltd. GMR Bangalore

12.7.6 The Procurer shall convey their approval or disapproval of such Proposal, through the Lead Procurer, if applicable, to the Selectee. Such decision shall be made by the Procurers at their reasonably exercised discretion within twenty one (21) days of:

(a) the date of receipt of the Proposal by the Procurer; or

(b) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by any of the Procurers under Clause 12.7.3 above is received;

whichever is later.

Notwithstanding anything to the contrary mentioned in this Agreement, the approval of the Procurer or Lead Procurer for the Selectee shall not be withheld in case the Selectee meets the criteria mentioned in Clause 12.6.1.

12.7.7 Upon approval of the Proposal and the Selectee by the Procurer, the Selectee mentioned in the Proposal shall become the Selectee hereunder.

12.7.8 Following the rejection of a Proposal, the Lenders and/ or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this article shall apply *mutatis mutandis* to such fresh Proposal.

12.7.9 The substitution of the Seller by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Seller, Procurer and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and the Procurer and upon transfer of ownership and complete possession of the Power Station by the Procurer or the Seller, as the case may be, to the Selectee. The Procurer shall novate all the RFP Documents, which they had entered in to with the Seller in order to make the substitution of the Seller by the Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Seller towards purchase of the Power Station and assumption of all the rights and obligations of the Seller under the PPA and other RFP Documents as mentioned in this Agreement shall be entirely between the Seller, Selectee and the Lenders and the Procurer shall in no way be responsible to bear the same.

12.7.10 Upon the substitution becoming effective pursuant to Clause 12.7.9 above, all the rights of the Seller under the PPA shall cease to exist:

Provided that, nothing contained in this sub-article shall prejudice any pending / subsisting claims of the Seller against a Procurer or any claim of the Procurer against the erstwhile Seller or the Selectee.

12.7.11 The Selectee shall, subject to the terms and conditions of the substitution, have a period of ninety (90) Days to rectify any breach and/ or default of the Seller subsisting on the date of substitution and required to be rectified and shall incur the liability or consequence on account of any previous breach and/ or default of the Seller.

12.7.12 The decision of the Lenders and the Procurer in the selection of the Selectee shall be final and binding on the Seller and shall be deemed to have been made with the concurrence of the Seller. The Seller expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

12.7.13 The Lenders shall be solely and exclusively responsible for obtaining any and all consents/ approvals or cooperation, which may be required to be obtained from the Seller under this Agreement and the Procurer shall not be liable for the same.

12.7.14 All actions of the Lenders' Representative hereunder shall be deemed to be on behalf of the Lenders and shall be binding upon them. The Lenders' Representative shall be authorised to receive payment of compensation and any other payments, including the consideration for transfer, if any, in accordance with the Proposal and the Financing Agreements and shall be bound to give valid discharge on behalf of all the Lenders.

12.8 ***Seller's Waiver***

12.8.1 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Lenders, the Lender's Representative and the Procurer or exercise of their rights under and in accordance with these terms.

12.8.2 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in Clause 12.7.10, it shall cease to have any rights under the PPA or the Financing Agreements other than those expressly stated therein.

12.8.3 The Seller warrants and covenants that any agreement entered into by the Seller, in relation to the Power Station, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Lenders or the Procurer. The Seller further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Power Station and which lack a legally enforceable clause providing for automatic novation of such agreement, the Seller shall procure an amendment in the concluded agreement to incorporate such clause.

12.9 ***Interim Protection Of Service And Preservation Of Security***

Appointment of a Receiver

12.9.1 In every case of the Lenders issuing a Substitution Notice and the Procurer refusing to takeover the Power Station and the Seller failing to operate the Power Station in accordance with Clause 12.4.3 and the Procurer not electing to act as Receiver as per Clause 12.9.2 hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.

12.9.2 If the assets of the Power Station are, in the opinion of the Procurer, necessary and required for the operation and maintenance of the Power Station, the Procurer shall be entitled to elect to act as the Receiver for the purposes of this Article and be entitled to maintain, preserve and protect the said assets by engaging an operator/service

provider to act on their behalf and the Lenders and Seller hereby consent and agree to the same. Upon the Procurer so intimating the Seller and the Lender's representative their desire to act as Receiver, the Seller and the Lender's representative shall co-operate with the Procurers to facilitate the same.

12.9.3 Upon appointment of the Court appointed Receiver or the Procurer acting as Receiver, all the Receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by the Procurer and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the Lenders in accordance with the terms of its appointment.

12.9.4 When acting as a Receiver or operator in accordance with Clauses 12.9 or 12.4.2, Procurer shall be entitled to be remunerated for such services as may be determined by the Appropriate Commission. Furthermore, when acting as a Receiver, the Procurer shall not be liable to the Lenders, the Lenders' Representative, Seller or any third party for any default under the PPA, damage or loss to the Power Station or for any other reason whatsoever, except for wilful default of the Procurer.

12.10 *Substitution Consideration*

12.10.1 The Lenders and Procurer shall be entitled to appropriate any consideration received for the substitution of the Seller as hereinabove provided, from the Selectee towards the payment of Lenders' and the Procurers' respective dues, to the exclusion of the Seller.

12.10.2 The Seller shall be deemed to have nominated, constitutes and appoints the Lenders' Representative as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Seller by the Selectee pursuant to these terms.

12.11 *Change in the Procurers or Lenders*

12.11.1 The Parties hereto acknowledge that during the subsistence of the PPA, it is possible that any Procurer may cease to be a party to this Agreement by reason of termination of PPA vis-à-vis such Procurer and any Lender may cease to remain as a Lender by reason of repayment of the debt or otherwise. Further it may possible that any Lender may be substituted or a new Lender may be added. In the event of any Procurer or Lender ceasing to be a party to the PPA or Financing Agreement respectively, the term and conditions as prescribed in this Schedule shall cease to automatically apply to such Procurer or Lender as the case may be. Further, upon any entity being added as a Lender and in the event such entity is given the right to substitute the Seller under the Financing Agreement and then the contents of this Schedule shall be applicable to the exercise of such right by the said new entity.

EMCO Energy Ltd. GMR Bangalore

13 SCHEDULE 13: CAPITAL STRUCTURE SCHEDULE

(This shall need to be filled up in case Seller is not a Trading Licensee and on or before NTP)

===Not Applicable===

EMCO Energy Ltd. GMR Bangalore