

CO-GENERATION

This draft Power Purchase Agreement is made at Bangalore this ***** day of ***** Two thousand and Five between **KARNATAKA POWER TRANSMISSION CORPORATION LIMITED**, a company formed and incorporated in India under the Companies Act, 1956 with its registered office located at Kaveri Bhavan, Bangalore - 560009, Karnataka State hereinafter referred to as the “**Corporation**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) as party of the first part, and **M/s. *******, a company formed and incorporated under the Companies Act, 1956, having its registered office at ***** hereinafter referred to as the “**Company**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors, and permitted assigns) as party of the second part..

WHEREAS:

- i) The Govt. of Karnataka by its order Nos. ***** dated***** has accorded its sanction to the proposal of the Company for installation of a Bagasse based Cogeneration Electric Power Generating Station of *** MW capacity at *****Village, *****Distret, Karnataka state and permitted Corporation to enter into an agreement with the Company for purchase of Electricity corresponding to the Exportable Capacity as herein after defined.
- ii) Pursuant to (i) above the Company plans to develop, design, engineer, procure finance, construct, own, operate and maintain a Cogeneration Electric Power Generating Station, hereinafter defined as the Project, with a gross capacity of ***** MW at ***** and desires to sell Electricity to Corporation.
- iii) Corporation which is at present engaged in the purchase, transmission and bulk supply of electricity has agreed to purchase the Electricity (as hereinafter defined) from the company to be generated at *****subject to the conditions set forth herein.

NOW THEREFORE IN VIEW OF THE FOREGOING PREMISES AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREINAFTER SET FORTH, CORPORATION AND THE COMPANY, EACH TOGETHER WITH THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS, A PARTY AND COLLECTIVELY THE PARTIES, HEREBY AGREE AS FOLLOWS SUBJECT TO THE APPROVAL OF THE COMMISSION:

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ARTICLE 1

DEFINITIONS

1.1 For all purposes of this Agreement, the following words and expressions shall have the respective meanings set forth below:

“Agreement” shall mean this Power Purchase Agreement executed hereof, including the schedules hereto, amendments, modifications and supplements made in writing by the parties from time to time.

“Approvals” means the permits, clearances, licences and consents to be obtained by the Company, as are listed in Schedule 4 hereto and any other statutory approvals.

“Billing Period” means (subject to Clause 6.1 of this Agreement) the calendar month ending with the Metering Date. The first Billing Period shall commence with the Commercial Operation Date and end with the Metering Date corresponding to the month in which the Commercial Operation Date occurs.

“Billing Date” shall be the first Business Day after the Metering Date of each Billing Period.

“Business Day” means any Day on which commercial banks are not authorized or not required by Law to remain closed in the State of Karnataka.

“Commercial Operation Date” with respect to the Project shall mean the date on which the Project is available for commercial operation and such date as specified in a written notice given at least ten days in advance by the Company to Corporation and in any case, shall not be beyond the Schedule Date of Completion.

“Commission” means Karnataka Electricity Regulatory Commission.

“Construction Default” shall mean default on the part of the Company in the completion of the Project before the Scheduled Date of Completion thereof.

“Contract Year” shall mean, with respect to the initial Contract Year, the period beginning on the Commercial Operation Date of the Unit and ending at 12.00 midnight on 31st March of that Fiscal Year. Each successive Contract Year shall coincide with the succeeding Fiscal Year, except that the final Contract Year shall end on the date of expiry of the Term or on Termination of this Agreement whichever is earlier.

“Corporation” means Karnataka Power Transmission Corporation Limited or its successor entity.

“Corporation’s Load Despatch Center” means the load despatch center of the Corporation located at Bangalore

“Delivery Point” shall be the point or points at which Electricity is delivered into the Grid System of the Corporation and is at the high voltage side of the step up transformer installed at Project Site.

“Delivered Energy” means the kilowatt hours of Electricity actually fed and measured by the energy meters at the Delivery Point in a Billing Period after deducting there from, the energy supplied by Corporation to the Project, as similarly measured during such Billing Period and shall be Computed in accordance with Article 6.1.

“Due Date of Payment” in respect of a Tariff Invoice means the date, which is fifteen (15) Days from the date of receipt of such invoices by the designated official of the Corporation.

“Effective Date” means the date on which all the conditions precedent pursuant to Section 2.1 are either satisfied in full or such conditions precedent which are unfulfilled or are waived by the Parties **and in any case shall not be beyond 3 (three) months from the date of signing the agreement.**

“Electricity” shall mean the electrical energy in kilowatt-hours.

“Electricity Laws” shall mean the Electricity Act 2003 and the relevant rules, notifications, and amendments issued thereunder and all other Laws in effect from time to time and applicable to the development, financing, construction, ownership, operation or maintenance or regulation of electrical generating companies in India.

“Emergency” means a condition or situation affecting either Corporation's electrical system or the Grid System, including without limitation, frequency/voltage variations beyond the Technical Limits, which threatens the safe and reliable operation of such system or which is likely to result in disruption of safe, adequate and continuous electric supply by Corporation or the Grid System or could endanger life or property.

“Exportable Capacity” means the surplus available Electricity generated by the Project, after providing for captive Electricity consumed by the Company, which shall be upto *** MW.

“Financing Documents” " mean the agreements and documents between a Company and the Financing Parties relating to the financing of the design, construction, commissioning, operation and maintenance of the Project (which may include asset leasing arrangements).

“Financial Closure” means the signing of the Financing Documents for financing of the Project and fulfillment of all the conditions precedent to the initial availability of funds there under and the receipt of commitments for such equity as required by the Company in order to satisfy the requirements of the lenders, provided however that the Company has immediate access to funds (subject to giving the required draw down notices) regarded as adequate by the Company and in any case shall be achieved within 3 (three) months from the date of signing of Agreement

“Financing Parties” means the parties financing the Project, pursuant to the Financing Documents.

“Fiscal Year” shall mean, with respect to the initial Fiscal Year, the period beginning on the Commercial Operation Date and ending at 12.00 midnight on the following March 31. Each successive Fiscal Year shall begin on April 1 and end on the following March 31, except that the final Fiscal Year shall end on the date of expiry of the Term or on Termination of this Agreement, whichever is earlier

“Force Majeure Event” shall have the meaning set forth in Article 8.

“Fuel” means Bagasse used as the primary fuel in the Project, or any other alternate fuel.

“GoI” means the Government of the Republic of India and any agency, legislative body, department, political subdivision authority or instrumentality thereof.

“GoK” means the Government of the State of Karnataka an entity existing under the laws of the Republic of India or any agency, legislative body, department, political subdivision, authority or instrumentality thereof.

“Government Instrumentality” means the GoI, and the GoK and their ministries, inspectorate, departments, agencies, bodies, corporations, authorities and legislative bodies.

“Grid System” means Corporation’s power transmission system through which Delivered Energy is evacuated and distributed.

“Interconnection Facilities” in respect of the Company shall mean all the facilities installed by the Company to enable Corporation to receive the Delivered Energy from the Project at the Delivery

Point, including transformers, and associated equipments, relay and switching equipment, protective devices and safety equipments and transmission lines from the Project to Corporation's nearest sub-station.

"Installed Capacity" means the capacity of the Project at the generating terminal(s) and shall be equal to ***** MW.

"KV" means Kilovolt.

"KWH" means Kilowatt-hour.

"Law" means any valid legislation, statute, rule, regulation, notification, directive, or order, issued, or promulgated by any Governmental Instrumentality.

"Letter of Credit" shall mean the letter of credit established pursuant to Article 6.

"Metering Date" for a Billing Period, means the midnight of the last day of the calendar month.

"Metering Point" for the purpose of recording of Delivered Energy at the Delivery Point and shall include two separate sets of electronic trivector meters, main meter installed by the Company and check meter installed by the Corporation and **both** sealed by Corporation having, facilities to record both export and import of electricity to/from the grid.

"Monthly Charge" shall have the meaning set forth in Article 5.

"MW" means Megawatts.

"O & M Default" shall mean default on the part of the Company for a continuous period of ninety (90) days to (i) operate and or (ii) maintain (in accordance with Prudent Utility Practices), the Project at all times during the period of availability of Fuel for generation.

"Project" means a Cogeneration **bagasse** based project Power Station proposed to be established by the Company at *****village*****district in Karnataka State comprising of ** Units with an individual capacity of ***** KW and a total installed capacity of ***** KW and shall include land, buildings, plant, machinery, ancillary equipment, material, switchgear, transformers, protection equipment and the like necessary to deliver the Exportable Capacity of the Project to Corporation at the Delivery Point.

"Project Site" means any and all parcels of real property, rights-of-way, easements and access roads located at ***** , Karnataka, India upon which the Project and its related infrastructure will be located, as described in Schedule 1 hereto.

"Prudent Utility Practices" means those practices, methods, techniques and standards, **as changed from time to time** that are generally accepted for use in electric utility industries taking into account conditions in India, and commonly used in prudent electric utility engineering and operations to design, engineer, construct, test, operate and maintain equipment lawfully, safely, efficiently and economically as applicable to power stations of the size, service and type of the Project, and that generally confirmed to the manufacturers' operation and maintenance guidelines.

"Scheduled date of Commencement" shall mean the date on which the construction work at the Project Site is actually started and such date shall be within 3 months from the date of achievement of Financial Closure.

“Scheduled Date of Completion” shall mean the date on which the Project is scheduled to deliver Exportable Capacity of its Electricity to Corporation at the Delivery Point after completion of all the required tests, and shall be within one and half years from the date of Financial Closure.

“Tariff” shall have the meaning set forth in Article 5.

“Tariff Invoices” shall have the meaning set forth in Article 6.

“Technical Limits” means the limits and constraints described in Schedule 2, relating to the operation, maintenance and despatch of the Project.

“Term” means the term of the Agreement as defined in Article 9.1

“Unit” means one set of turbine-generator and auxiliary equipment and facilities forming part of the Project.

“Voltage of Delivery” means the voltage at which the Electricity generated by the Project is required to be delivered to Corporation and shall be **** KV.

“System constraint” means a condition or situation under which the Corporation’s electrical system is not able to evacuate and transmit the generated energy fully or partly due to unforeseen break down of the system which includes the condition of ‘emergency’.

“Corporation’s electrical system” means, which includes the Corporation’s power transmission lines, Transformers, Circuit Breakers, CTs, PTs, relays, Towers, Structures and associated equipments involved in the transmission of Electrical energy.

1.2 Interpretation:

- (a) Unless otherwise stated, all references made in this Agreement to “Articles” and “Schedules” shall refer, respectively, to Articles of, and Schedules to, this Agreement. The Schedules to this Agreement form part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement.
- (b) In this Agreement, unless the context otherwise requires (i) the singular shall include plural and vice versa; (ii) words denoting persons shall include partnerships, firms, companies, and corporations, (iii) the words “include” and “including” are to be construed without limitation and (iv) a reference to any party includes that party's successors and permitted assigns.

ARTICLE 2

CONDITIONS PRECEDENT

2.1 Conditions Precedent: The obligations of Corporation and the Company under this Agreement are conditional upon the occurrence of the following in full:

- a. The Company shall have been granted and received all permits, clearances and approvals (whether statutory or otherwise) as are required to execute and operate the Project (hereinafter referred to as “Approvals”),
- b. The Financial Closure shall have occurred.

The date on which the Company fulfills any of the Conditions Precedent pursuant to Article 2.1, it shall promptly notify the Corporation of the same. The company shall achieve the Financial Closure within three (3) months from the date of signing of this Agreement.

- 2.2 Non-Fulfillment of Conditions Precedent:** Non-fulfillment of the Conditions Precedent, within three (3) months from the date of signing of this Agreement, shall render this Agreement null and void automatically and Corporation shall stand discharged of all obligations.

ARTICLE 3

CONSTRUCTION AND OPERATION

- 3.1** The Company shall complete the construction of the Project before the Scheduled Date of Completion.
- 3.2** For the purposes of such completion of the Project, the Company shall take all necessary steps for obtaining Approvals pursuant to Article 2.1.
- 3.3** The Company shall achieve Financial Closure within 3 (three) months of signing of this Agreement.
- 3.4** Notwithstanding anything contained anywhere else in this Agreement or any other agreement between the Parties, if the Company does not achieve Financial Closure within 3 (three) months from the date of signing of this Agreement or commence construction of the Project before the Scheduled Date of Commencement other than due to occurrence of Force Majeure Events or fails to complete the construction within the Scheduled date of Completion this Agreement shall automatically become null and void and Corporation shall stand discharged of all obligations and liabilities. Corporation shall not also in any way, be liable for any damages for any loss, whatsoever, arising from termination of the Agreement.
- 3.5** If the Company commits a Construction Default or an O & M Default other than due to Force Majeure Events, Corporation shall give notice of 90 days in writing to the Company, calling upon the Company to remedy such default and if the Company fails to take steps to remedy such default within the aforesaid period the Agreement shall stand terminated.
- 3.6** The Company shall provide to the Corporation's Load Despatch Centre and Transmission Zone Chief Engineer of Corporation, information regarding Electricity generated during testing, commissioning, synchronization and startup.
- 3.7** Upon the occurrence of an Emergency in Corporation's evacuation system for safe operation of its Grid, Corporation reserves the right to shut down the line and has no obligation to evacuate the Electricity nor pay any compensation during such period. The Company shall suitably back down their generation. Corporation will, however, make reasonable endeavors to remedy such Emergency, and bring back normalcy at the earliest.

ARTICLE 4

UNDERTAKINGS

4.1 Obligations of the Company:

- (i) The company shall obtain all statutory approvals, clearances and permits necessary for the Project in addition to those Approvals as listed in Schedule 4.
- (ii) The Company shall construct the Project including the Interconnection Facilities.
- (iii) The Company shall achieve Scheduled Date of Completion within one and half years from the date of Financial Closure.
- (iv) The Company shall make available to Corporation confirmatory letters from the Financing Parties within 15 days from receipt of such documents.
- (v) The Company shall seek approval of Corporation in respect of Interconnection Facilities.

- (vi) The Company shall undertake at its own cost construction/upgradation of (a) the Interconnection Facilities and (b) the transmission lines as per the specifications and requirements of Corporation, as notified to the Company.
- (vii) The Company shall undertake at its own cost maintenance of the Interconnection Facilities, excluding the transmission line as per the specifications and requirements of Corporation, as notified to the Company, in accordance with Prudent Utility Practices. The transmission line so constructed shall remain as dedicated transmission line without provision for any tappings.
- (viii) The Company shall operate and maintain the Project in accordance with Prudent Utility Practices.
- (ix) The Company shall be responsible for all payments on account of any taxes, cesses, duties or levies imposed by the GoK or its competent statutory authority on the land, equipment, material or works of the Project or on the Electricity generated or consumed by the Project or by itself or on the income or assets owned by it.
- (x) The benefits accruing on account of carbon credit shall be shared between the Company and the Corporation in the ratio of 50:50, after deducting all expenses incurred by the company in this regard

4.2 Obligations of Corporation:

Corporation agrees:

- (i) To allow Company to the extent possible to operate the Project as a base load generating station subject to system constraints.
- (ii) Subject to system constraints to off-take and purchase the Electricity generated by the Company at the Delivery Point. However backing down of generation for any reason what so ever shall be in accordance with the Grid Code and other regulations as notified by the Commission from time to time.
- (iii) To make tariff payments to the Company as set out in Article 5.
- (iv) To accord approval within a reasonable period for the Interconnection Facilities to be constructed by the Company.
- (v) To undertake maintenance of the transmission lines at its own cost after Commercial Operation Date.
- (vi) To provide start up power required for the plant.

ARTICLE 5

RATES AND CHARGES

- 5.1** Monthly Energy Charges: Corporation shall for the Delivered Energy pay, for the first 10 years from the Commercial Operation Date, to the Company every month during the period commencing from the Commercial Operation Date at the rate of Rs. 2.80 (Rupees Two and Eighty paise only) per kilowatt-hour (“the base tariff”) for energy delivered to the Corporation at the Metering Point with an escalation at a rate of 2% per annum over” the base tariff” every year. This shall mean that the annual escalation will be at the rate of Rs.0.056 per Kwhr
- 5.2** From the 11th year onwards, from the Commercial Operation Date, Corporation shall pay to the Company for the energy delivered at the Metering Point at a rate based on operating costs and incentives to be agreed upon by mutual negotiations. In case the Parties do not arrive at a mutual agreement on the tariff, the same shall be referred to the Commission for a determination. In case the Corporation refuses to purchase the power generated, the Company shall be permitted to sell energy to third parties and enter into a Wheeling Agreement with Corporation to sell power through the Corporation grid for which it shall pay transmission and other charges to Corporation at the rates applicable from time to time as approved by the Commission.

- 5.3 The Company shall agree to pay to the Corporation, on or before signing of this Agreement, at the rate of Rs. 37,000/- [Rupees Thirty Seven Thousand only] per MW of Installed Capacity and for fractions thereof on a pro rata basis as a one time lump sum payment for the sole purpose of providing the required MVAR capacity at the sub-station of the Corporation to which the Project is interconnected to supply the requisite reactive power to the Grid system.
- 5.4 Company shall be permitted to use 10% of the installed capacity for startup, after inspection by the concerned officers of the Corporation and 115% of such energy provided by the Corporation for startup purposes shall be deducted from the energy pumped into the Grid by the Company for determining the amount to be paid by the Corporation to the Company. If energy over and above the above requirement is drawn from the Grid, the same will be billed under the tariff applicable to HT industries.

ARTICLE 6

BILLING AND PAYMENT

- 6.1 **Tariff Invoices:** The Company shall submit to the Chief Engineer Elec, Corporation's Load Despatch Centre, Bangalore or any other designated officer of Corporation, a Tariff Invoice for each Billing Period in the format prescribed by Corporation from time to time setting forth those amounts payable by Corporation for the Delivered Energy in accordance with Article 5.
- 6.2 **Payment:** Corporation shall make payment of the amounts due in Indian Rupees within fifteen (15) days from the date of receipt of the Tariff Invoice by the designated office of Corporation.
- 6.3 **Late Payment:** If any payment from Corporation is not paid when due, there shall be due and payable to the Company penal interest at the rate of SBI medium term Lending rate per annum for such payment from the date such payment was due until such payment is made in full.
- 6.4 **Disputes:** In the event of a dispute as to the amount of any Tariff Invoice, Corporation shall notify the Company of the amount in dispute and Corporation shall pay the Company the total Tariff Invoice including the disputed amount. The Parties shall discuss within a week from the date on which Corporation notifies the Company of the amount in dispute and try and settle the dispute amicably. If the dispute is not settled during such discussion then the payment made by Corporation shall be considered as a payment under protest. Upon resolution of the dispute, in case the Company is subsequently found to have overcharged, then it shall return the overcharged amount with an interest of SBI medium term lending rate per annum for the period it retained the additional amount. Corporation /Company shall not have the right to challenge any Tariff Invoice, or to bring any court or administrative action of any kind questioning/modifying a Tariff Invoice after a period of one year from the date the Tariff Invoice is due and payable.
- 6.5 **Letter of Credit:** Corporation shall establish and maintain transferable, assignable, irrevocable and unconditional non-revolving Letter of Credit in favour of, and for the sole benefit of, the Company. The Letter of Credit shall be established in favour of, and issued to, the Company on the date hereof and made operational thirty (30) days prior to the Commercial Operation Date of the Project and shall be maintained consistent herewith by Corporation at any and all times during the Term of the Agreement. Such Letter of Credit shall be in form and substance acceptable to both Parties and shall be issued by any Scheduled Bank and be provided on the basis that:

- (i) In the event a Tariff Invoice or any other amount due and payable by Corporation pursuant to the terms of this Agreement is not paid in full by Corporation as and when due, the Letter of Credit may be called by the Company for payment in full of the unpaid Tariff Invoice or any such other unpaid amount.
- (ii) The foregoing as determined pursuant hereto, upon presentation of such Tariff Invoice or other invoice or claim for such other amount by the Company on the due date there for or at any time thereafter, without any notification, certification or further action being required.
- (iii) The amount of the Letter of Credit shall be equal to one month's projected payments payable by the Corporation based on the average of the annual generation.
- (iv) The Corporation shall replenish the LC to bring it to the original amount within 30 days in case of any valid draw down.
- (v) The Company shall allow a rebate of 1.8% of the Tariff Invoice amount or actual expenditure/charges for the LC account incurred, which ever is **higher**, and the same shall be deducted from the monthly Tariff Invoice payable to the Company.
- (vi) The Letter of Credit shall be renewed and/or replaced by the Corporation not less than 60 days prior to its expiration.

6.6 Payment under the Letter of Credit: The drawal under the Letter of Credit in respect of a Tariff Invoice shall require:

- (i) a copy of the metering statement jointly signed by the official representatives of the Parties, supporting the payments attributable to the Delivered Energy in respect of such Tariff Invoice,
- (ii) a certificate from the Company stating that the amount payable by Corporation in respect of such Tariff Invoice has not been paid by Corporation within the Due Date of Payment of the Tariff Invoice.

ARTICLE 7

METERING AND COMMUNICATION

- 7.1 Metering :** The Delivered Energy shall be metered by the Parties at the high voltage side of the step up transformer installed at the Project Site.
- 7.2 Metering Equipment:** The metering equipment shall be electronic trivector meters of accuracy class 0.2% required for the Project (both main and check meters). The main meter shall be installed and owned by the Company, where as check meters shall be by Corporation. Dedicated core of both CT's and PT's of required accuracy shall be made available by the Company to Corporation. The metering equipment shall be maintained in accordance with electricity standards. Such equipment shall have the capability of recording half-hourly and monthly readings. The Company shall provide such metering results to Corporation. The meters installed shall be capable of recording and storing half-hourly readings of all the electrical parameters for minimum of 35 days with digital output.
- 7.3 Meter Readings:** The monthly meter readings (both main and check meters) shall be taken jointly by the Parties on the first day of the following month at 12 Noon. At the conclusion of each meter reading an appointed representative of Corporation and the Company shall sign a document indicating the number of kilowatt-hours indicated by the meter.
- 7.4 Inspection of Energy Meters:** All the main and check energy meters (export and import) and all associated instruments, transformers installed at the Project shall be of 0.2% accuracy class. Each meter shall be jointly inspected and sealed on behalf of the Parties and

shall not be interfered with by either Party except in the presence of the other Party or its accredited representatives.

- 7.5 Meter Test Checking:** All the main and check meters shall be tested for accuracy every calendar quarter with reference to a portable standard meter which shall be of an accuracy class of 0.1%. The portable standard meter shall be owned by Corporation at its own cost and expense and tested and certified at least once every year against an accepted laboratory standard meter in accordance with electricity standards. The meters shall be deemed to be working satisfactorily if the errors are within specifications for meters of 0.2% accuracy class. The consumption registered by the main meters alone will hold good for the purpose of billing as long as the error in the main meter is within the permissible limits.
- (i) If during the quarterly tests, the main meter is found to be within the permissible limit of error and the corresponding check meter is beyond the permissible limits, then billing will be as per the main meter as usual. The check meter shall, however, be calibrated immediately.
 - (ii) If during the quarterly tests, the main meter is found to be beyond permissible limits of error, but the corresponding check meter is found to be within permissible limits of error, then the billing for the month upto the date and time of such test shall be as per the check meter. There will be a revision in the bills for the period from the previous calibration test upto the current test based on the readings of the check meter. The main meter shall be calibrated immediately and billing for the period thereafter till the next monthly meter reading shall be as per the calibrated main meter.
 - (iii) If during the quarterly tests, both the main meter and the corresponding check meter are found to be beyond the permissible limits of error, both the meters shall be immediately calibrated and the correction applied to the reading registered by the main meter to arrive at the correct reading of energy supplied for billing purposes for the period from the last month's meter reading upto the current test. Billing for the period thereafter till the next monthly meter reading shall be as per the calibrated main meter.
 - (iv) If during any of the monthly meter readings, the variation between the main meter and the check meter is more than that permissible for meters of 0.2 % accuracy class, all the meters shall be re-tested and calibrated immediately.
- 7.6 Interconnection and Metering Facilities:** The Company shall provide dedicated core for the check metering. Both the main meter and the check meter shall be installed nearest to the **PT** in the outdoor yard and shall be housed in a suitable weatherproof cubicle.
- 7.7 Communication Facilities:** The Company shall install and maintain at its cost communication facilities such as fax and telecommunication facilities to the Project to enable receipt of data at Corporation's Load Despatch Centre.

ARTICLE 8

FORCE MAJEURE

- 8.1 Force Majeure Events :** (a) Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder

(except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:

- (i) acts of God;
 - (ii) typhoons, floods, lightening, cyclone, hurricane, drought, famine, epidemic, plague or other natural calamities;
 - (iii) strikes, work stoppages, work slowdowns or any other labour dispute which affects a Party's ability to perform under this Agreement;
 - (iv) acts of war (whether declared or undeclared), invasion or civil unrest;
 - (v) any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India.,(provided such requirement, action or omission to act is not due to the breach by the Company or Corporation of any Law or any of their respective obligations under this Agreement);
 - (vi) inability despite complying with all legal requirements to obtain, renew or maintain required licenses or Approvals;
 - (vii) earthquakes, explosions , accidents; landslides;
 - (viii) fire;
 - (ix) expropriation and/or compulsory acquisition of the Project in whole or in part;
 - (x) chemical or radioactive contamination or ionizing radiation; or
 - (xi) damage to or breakdown of transmission facilities of either Party;
 - (xii) breakdown of generating equipment of the Company;
 - (xiii) break-down of sugar plant equipment;
 - (xiv) non-availability of sugar cane;
- (b)** The availability of Article 8.1 to excuse a Party's obligations under this Agreement due to a Force Majeure Event shall be subject to the following limitations and restrictions:
- (i) the non-performing Party gives the other Party written notice describing the particulars of the Force Majeure Event as soon as practicable after its occurrence;
 - (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event;
 - (iii) the non-performing Party is able to resume performance of its obligations under this Agreement, it shall give the other Party written notice to that effect;
 - (iv) the Force Majeure Event was not caused by the non-performing Party's negligent or intentional acts, errors or omissions, or by its negligence/ failure to comply with any material Law, or by any material breach or default under this Agreement;
 - (v) in no event shall a Force Majeure Event excuse the obligations of a Party that are required to be completely performed prior to the occurrence of a Force Majeure Event.

8.2 Payment Obligations: For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure Events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.

ARTICLE 9

TERM, TERMINATION AND DEFAULT

9.1 Term of the Agreement: This Agreement shall become effective upon the execution and delivery thereof by the Parties hereto and unless terminated pursuant to other provisions of the Agreement, shall continue to be in force for such time until the completion of a period of

twenty (20) years from the **Commercial Operation Date** and may be renewed for such further period of ten (10) years and on such terms and conditions as may be mutually agreed upon between the Parties, ninety (90) days prior to the expiry of the said period of twenty (20) years.

9.2 Events of Default:

9.2.1 Company's Default: The occurrence of any of the following events at any time during the Term of this Agreement shall constitute an Event of Default by Company:

- a. O&M Default on part of Company
- b. Failure or refusal by Company to perform any of its material obligations under this Agreement.

9.2.2 Corporation's Default: The occurrence of any of the following at any time during the Term of this Agreement shall constitute an Event of Default by Corporation:

- a. Failure or refusal by Corporation to perform its financial and other material obligations under this Agreement.
- b. In the event of any payment default by the Corporation for a continuous period of three months, the company shall be permitted to sell Electricity to third parties by entering into a Wheeling Agreement with the Corporation for which it shall pay transmission and any other charges to the Corporation at the rates applicable from time to time and as approved by the Commission.

9.3 Termination:

9.3.1 Termination for Company's Default: Upon the occurrence of an event of default as set out in sub-clause 9.2.1 above, Corporation may deliver a Default Notice to the Company in writing which shall specify in reasonable detail the Event of Default giving rise to the default notice, and calling upon the Company to remedy the same.

At the expiry of 30 (thirty) days from the delivery of this default notice and unless the Parties have agreed otherwise, or the Event of Default giving rise to the default notice has been remedied, Corporation may deliver a Termination Notice to the Company, Corporation may terminate this Agreement by delivering such a Termination Notice to the Company and intimate the same to the Commission. Upon delivery of the Termination Notice this Agreement shall stand terminated and Corporation shall be discharged of all its obligations. However all payment obligations as per the Article 5 prior to the date of termination of the Agreement shall be met by the Parties.

Where a Default Notice has been issued with respect to an event of Default, which requires the co-operation of both Corporation and the Company to remedy, Corporation shall render all reasonable co-operation to enable the Event of Default to be remedied.

9.3.2 Termination for Corporation's Default: Upon the occurrence of an Event of Default as set out in sub-clause 9.2.2 above, the Company may deliver a Default Notice to Corporation in writing which shall specify in reasonable detail the Event of Default giving rise to the Default Notice, and calling upon Corporation to remedy the same.

At the expiry of 30 (thirty) days from the delivery of this default notice and unless the Parties have agreed otherwise, or the Event of Default giving rise to the Default Notice has been remedied, Company may deliver a Termination Notice to Corporation. Company may terminate this Agreement by delivering such a Termination Notice to Corporation and intimate the same to the Commission. Upon delivery of the Termination Notice this Agreement shall stand terminated and Company shall stand discharged of its obligations.

Where a Default Notice has been issued with respect to an Event of Default, which requires the co-operation of both Company and Corporation, to remedy, Company shall render all reasonable co-operation to enable the Event of Default to be remedied.

ARTICLE 10

DISPUTE RESOLUTION

- 10.1** All disputes or differences between the Parties arising out of or in connection with this Agreement shall be first tried to be settled through mutual negotiation.
- 10.2** The Parties hereto agree to attempt to resolve all disputes arising hereunder promptly, equitably and in good faith.
- 10.3** Each Party shall designate in writing and communicate to the other Party its own representative who shall be authorized to resolve any dispute arising under this Agreement in an equitable manner and, unless otherwise expressly provided herein, to exercise the authority of the Parties hereto to make decisions by mutual agreement.
- 10.4** If the designated representatives are unable to resolve a dispute under this Agreement within thirty days after such dispute arises, such dispute shall be referred to higher authorities designated by the Parties for resolution of the dispute.
- 10.5** In the event that such differences or disputes between the Parties are not settled through mutual negotiations within, ninety (90) days after such dispute arises, then it shall be got adjudicated by the Commission in accordance with law.

ARTICLE 11

INDEMNITY

- 11.1 Company's Indemnity :** The Company agrees to defend, indemnify and hold harmless Corporation, its officers, directors, agents, employees and affiliates (and their respective officers, directors, agents and employees) from and against any and all claims, liabilities, actions, demands, judgements, losses, costs, expenses, suits, actions and damages arising by reason of bodily injury, death or damage to property sustained by third parties that are caused by an act of negligence or the willful misconduct of the Company, or by an officer, director, sub-contractor, agent or employee of the Company except to the extent of such injury, death or damage as is attributable to the willful misconduct or negligence of, or breach of this Agreement by Corporation, or by an officer, director, sub-contractor, agent or employee of Corporation.
- 11.2 Corporation's Indemnity :** Corporation agrees to defend, indemnify and hold harmless the Company, its officers, directors, agents, employees and affiliates (and their respective officers, directors, agents and employees) from and against any and all claims, liabilities, actions, demands, judgements, losses, costs, expenses, suits, actions and damages arising by reason of bodily injury, death or damage to property sustained by third parties that are caused by an act of negligence or the willful misconduct of Corporation, or by an officer, director, sub-contractor, agent or employee of Corporation except to the extent of such injury, death or damage as is attributable to the willful misconduct or negligence of, or breach of this Agreement by the Company, or by an officer, director, sub-contractor, agent or employee of the Company.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 Governing Law : This Agreement shall be interpreted, construed and governed by the Laws of India.

12.2 Insurance : The Company shall obtain and maintain necessary policies of insurance during the Term of this Agreement consistent with Prudent Utility Practice.

12.3 Books and Records : The Company shall maintain books of account relating to the Project in accordance with generally accepted Indian accounting principles.

12.4 Waivers : Any failure on the part of a Party to exercise, and any delay in exercising, exceeding three years, any right hereunder shall operate as a waiver thereof. No waiver by a Party of any right hereunder with respect to any matter or default arising in connection with this Agreement shall be considered a waiver with respect to any subsequent matter or default.

12.5 Limitation Remedies and Damages : Neither Party shall be liable to the other for any consequential, indirect or special damages to persons or property whether arising in tort, contract or otherwise, by reason of this Agreement or any services performed or undertaken to be performed hereunder.

12.6 Notices : Any notice, communication, demand, or request required or authorized by this Agreement shall be in writing and shall be deemed properly given upon date of receipt if delivered by hand or sent by courier, if mailed by registered or certified mail at the time of posting, if sent by fax when dispatched (provided if the sender's transmission report shows the entire fax to have been received by the recipient and only if the transmission was received in legible form), to :-

(i) In case of the Company:

M/s. *****

Telephone No. : *****
Fax No. : *****
E-mail :

(ii) In case of Corporation

The General Manager (Technical)
KARNATAKA POWER TRANSMISSION CORPORATION LIMITED
Kaveri Bhavan, District Office Road,
BANGALORE 560 009
Karnataka State
Telephone No.: 080-22210685
Telex No. : BG 0845-2435
Fax No. : 080-22218930
E-mail : ads@keb.gov.in

The Chief Engineer, Electricity,
Karnataka Power Transmission Corporation Limited
Transmission Zone,

Telephone No.: *****
Telefax No : *****

12.7 Severability: Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity, enforceability or legality of such provision in any other jurisdiction.

12.8 Amendments: This Agreement shall not be amended, changed, altered, or modified except by a written instrument duly executed by an authorized representative of both Parties. However, Corporation may consider any amendment or change that the lenders may require to be made to this Agreement.

12.9 Assignment:

(i) Neither Party shall assign this Agreement or any portion hereof without the prior written consent of the other Party, provided further that any assignee shall expressly assume the assignor's obligations thereafter arising under this Agreement pursuant to documentation satisfactory to such other Party.

(ii) Corporation shall consent to the assignment by the Company of its rights herein to the Financing Parties and their successors and assigns in connection with any financing or refinancing related to the construction, operation and maintenance of the Project and shall execute documents reasonably satisfactory to the Financing Parties if requested by the Company to evidence such consent. In furtherance of the foregoing, Corporation acknowledges that the Financing Documents may provide that upon an event of default by the Company under the Financing Documents, the Financing Parties may cause the Company to assign to a third party the interests, rights and obligations of the Company thereafter arising under this Agreement. Corporation further acknowledges that the Financing Parties, may, in addition to the exercise of their rights as set forth in this Section, cause the Company to sell or lease the Project and cause any new lessee or purchaser of the Project to assume all of the interests, rights and obligations of the Company thereafter arising under this Agreement.

12.10 Entire Agreement, Appendices: This Agreement constitutes the entire agreement between Corporation and the Company, concerning the subject matter hereof. All previous documents, undertakings, and agreements, whether oral, written, or otherwise, between the Parties concerning the subject matter hereof are hereby cancelled and shall be of no further force or effect and shall not affect or modify any of the terms or obligations set forth in this agreement, except as the same may be made part of this Agreement in accordance with its terms, including the terms of any of the appendices, attachments or exhibits. The appendices, attachments and exhibits are hereby made an integral part of this Agreement and shall be fully binding upon the Parties.

In the event of any inconsistency between the text of the Articles of this Agreement and the appendices, attachments or exhibits hereto or in the event of any inconsistency between the provisions and particulars of one appendix, attachment or exhibit and those of any other appendix, attachment or exhibit Corporation and the Company shall consult to resolve the inconsistency.

12.11 Further Acts and Assurances : Each of the Parties after convincing itself agrees to execute and deliver all such further agreements, documents and instruments, and to do and perform all such further acts and things, as shall be necessary or convenient to carry out the provisions of this Agreement and to consummate the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their fully authorized officers, and copies delivered to each Party, as of the day and year first above stated.

FOR AND ON BEHALF OF CORPORATION

WITNESSES

(Sri.)
General Manager (Technical)
Karnataka Power Transmission
Corporation Limited

1.

2.

FOR AND ON BEHALF OF COMPANY

WITNESSES

(Sri. *****)
Managing Director.
M/s. *****.

1.

2.

SCHEDULE - 1

PROJECT, SITE AND SITE CHARACTERISTICS

THE BAGASSE BASED COGENERATION POWER PROJECT IS LOCATED AT ***
VILLAGE, ***** TALUK ***** DISTRICT, KARNATAKA STATE**

LOCATION

STATE **KARNATAKA**

DISTRICT

TALUK

VILLAGE

SCHEDULE 2

TECHNICAL LIMITS

1. The nominal steady state electrical characteristics of the system are as follows:
 - a) three phase alternating current at 50 Hertz plus or minus 0.5 Hertz
 - b) nominal voltage of +*****% to -*****% on *** KV
 - c) a power factor (at maximum rated power) between 0.85 lagging and 0.95 leading
2. The Project shall be designed and capable of being synchronized and operated within a frequency range of 47.5 to 51.5 Hertz. and voltage of ***** KV and ***** KV and a power factor (at maximum rated power) between 0.85 lagging and 0.95 leading at the generator terminals.
3. The Project shall be capable of generating and delivering reactive power corresponding to a power factor as specified in Item 1(c) above.
4. Operation of the Project outside the nominal voltage and power factor range specified above will result in a reduction of power output consistent with generator capability curves.

SCHEDULE 3
GOVERNMENT ORDERS

1] *****

SCHEDULE 4
APPROVALS, PERMITS AND CLEARANCES

All Statutory and Non-statutory Approvals, Permits and Clearances as applicable for such power projects.

SCHEDULE 5

Company and Corporation shall evolve suitable testing procedures three (3) months before the Commercial Operation Date of the Project considering relevant standards.

SCHEDULE 6
SPECIFICATION OF ELECTRICAL ENERGY DELIVERY

1. The generation voltage from M/s. *****, Cogeneration plant is *** KV. It uses unit connection of generator, generator transformer and unit transformer.
2. The generated power at ** KV will be stepped up to *** KV for the purpose of interconnection with KPTCL grid. ** KV / ** KV GT's will also be used to draw start up power from the grid.