

**Procurement of Aggregated Power of 2500 MW under Pilot Scheme-II for three years (covered under Medium Term) facilitated by PFC Consulting Ltd as Nodal Agency and through an Aggregator**

Sr. No.	Document	Clause No. and Existing Provision	Clarification Required	Suggested text for the Amendment	Rationale for Clarification or Amendment	Reply/ Clarification
1.	APPP-II	<p>Clause 10.2</p> <p>Despatch of unutilised Contracted Capacity</p> <p>In the event that the Aggregator does not require the supply of the whole or part of the Contracted Capacity for a continuous period of 24 (twenty four) hours or more, it may, by a notice of at least 72 (seventy two) hours prior to such period, specify the reduction in dispatch of the Contracted Capacity and for such reduction in supply, it shall be entitled to a rebate equal to 25% (Twenty Five percent) of the Fixed Charge payable for Availability thereof and the waived Fixed Charge under Clause 10.2.2. Provided, however, that any reduction in supply under Clause 10.2.1 shall be uniform for a block of at least 24 (twenty four) hours and shall not vary between Peak Hours and Off-Peak Hours.</p>	<p>If there is any upward revision proposed by the Aggregator and the Supplier is not able to supply the power due to power sold in open market then original availability will be considered by the Aggregator for such scheduled day.</p>		<p>For e.g.:</p> <p>If Aggregator confirms the schedule for 60% of the contracted capacity but it does the downward revision to 50% then Aggregator will be liable for payment of Full Fixed Charge instead of 25% rebate on fixed charge. Kindly confirm.</p>	<p>Provisions are self-explanatory.</p>
2.	APPP-II	<p>Clause 11.1</p> <p>Tariff</p>	<p>Kindly clarify about the availability to be considered after shortfall in power due to shortage of fuel.</p>		<p>There is no clause mentioned in PAPP</p>	<p>Provisions are self-explanatory.</p>

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					related to the shortfall in power supply occurs due to shortage of fuel.	
3.	APPP-II	<p>Clause 11.2</p> <p>Fixed Charge The Parties agree that the Fixed Charge payable for Availability shall, in accordance with the offer of the Supplier, be Rs. .... (Rupees ....) per kWh, which shall remain constant for the entire contract period.</p>		<p>Please modify the clause as below:</p> <p>Fixed Charge The Parties agree that the Fixed Charge payable for Availability shall, in accordance with the offer of the Supplier, be Rs. .... (Rupees ....) per kWh, which shall remain constant for the entire contract period which shall be revised annually to reflect 20% (twenty percent) of the variation in WPI occurring between January 31 immediately preceding the Bid Date and January 31 immediately preceding the Accounting Year for which such revision is undertaken.</p>	As per model bidding document for procurement of power for Medium Term published by Ministry of Power, Fixed charges payable by utility is linked with 20% of WPI Index.	No Change
4.	APPP-II	Clause no 11.3.3		Kindly delete this clause	Supplier is	No Change

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		In the event that any shortfall in supply of electricity to the Aggregator occurs on account of deficiency in transmission between the Point of Grid Connection and Drawal Point, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.4.2 and the Aggregator shall not be liable for payment of any Fixed Charge for the Non-Availability arising as a consequence thereof.		and add the following test: Aggregator shall be liable for payment of full Fixed Charge for the Non-availability arising due to any shortfall in supply of electricity on account of deficiency in transmission between the Point of Grid Connection and Drawal Point	not responsible for Transmission constraint and accordingly it should not be penalised for the same.	
5.	APPP-II	<p>Clause 11.7 Taxes and Duties</p> <p>11.7.1 The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties, except the taxes and duties specified in Clause 11.7.2.</p> <p>11.7.2 The Tariff and Incentives payable by the Utility under this Article 11 shall be exclusive of GST or any replacement.</p>	Whether the quoted tariff should be inclusive of all taxes and duties? Kindly confirm.			Provisions are self-explanatory.
6.	APPP-II	<p>Clause 11.8.3</p> <p>The Aggregator shall, within 32 (thirty two) days of receipt of a Monthly Invoice in accordance with Clause 11.8.1 (the "Payment Due Date"), make payment of the</p>	Kindly confirm Aggregator shall make payment to the Supplier as per Payment Due Date whether the payment is received from the Utility or not.			Provisions are self-explanatory.

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		amount claimed directly, through electronic transfer, to the nominated bank account of the Supplier, save and except any amounts which it determines as not payable or disputed (the "Disputed Amounts").				
7.	APPP-II	<p>Clause 11.8.5</p> <p>The Supplier shall raise Supplementary Invoices for reimbursement of charges for inter-state transmission of electricity and RLDC fees/charges as per the actual bills of CTU/RLDC etc. Payment due date, late payment surcharge, rebate for early payment etc. for such Supplementary Invoices shall be as per the actuals bills of CTU/RLDC etc.</p>		<p>Kindly modify the clause as following:</p> <p>Clause 11.8.5</p> <p>The Supplier shall raise Supplementary Invoices for reimbursement of charges for inter-state transmission of electricity and RLDC fees/charges as per the actual bills of CTU/RLDC etc. Payment due date, late payment surcharge, rebate for early payment etc. for such Supplementary Invoices shall be as per the actuals bills of CTU/RLDC etc.</p> <p>However, Aggregator shall pay the Supplementary Invoice amount to Supplier 3 days prior to the payment due date w.r.t to open access</p>	<p>Aggregator shall pay the Invoice amount to Supplier 3 days prior to the payment due date of CTU/RLDC bills and/or any other Payments required to be made to any Government Authorities. Supplier has to pay the same amount to RLDC/CTU or any other Payments</p>	<p>Provisions are self-explanatory.</p>

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				bills raised by CTU/RLDC.	required to be made to any Government Authorities before payment due date.	
8.	APPP-II	<p>Clause 14.3 Evidence of Insurance Cover All insurances obtained by the Supplier in accordance with this Article 14 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Supplier shall furnish to the Aggregator , notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Supplier to the Aggregator.</p>		<p>Clause 14.3 Evidence of Insurance Cover All insurances obtained by the Supplier in accordance with this Article 14 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Supplier shall furnish to the Aggregator , notarised true copies of the certificate(s) of insurance, cover and premia payment receipts in respect of such insurance, <del>and no such insurance shall be cancelled, modified, or allowed to expire or lapse</del></p>	<p>Detailed insurance policy takes time to receive. We will provide Insurance cover immediately and insurance policy when received.</p> <p>This is not pass through PPA hence there should be no requirement to intimate cancellation of Insurance.</p>	No Change

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				until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Supplier to the Aggregator.		
9.	APPP-II	<p>Clause 14.5 Waiver of subrogation</p> <p>All insurance policies in respect of the insurance obtained by the Supplier pursuant to this Article 14 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, <i>inter alia</i>, the Aggregator, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.</p>		This clause should be deleted	Insurance policy of supplier would not be assigned to Aggregator. Hence question of subrogation does not arise.	No change

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10.	APPP-II	<p>Clause 14.7 Application of insurance proceeds The proceeds from all insurance claims, except life and injury, shall be paid to the Supplier and it shall, notwithstanding anything to the contrary contained in Clause 18.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or development of the Power Station.</p>	<p>Kindly explain the liking of clause 18.3 with this clause.</p>			<p>Provisions are self-explanatory.</p>
11.	APPP-II	<p>Audited accounts 15.1.1 The Supplier shall maintain books of accounts recording all its receipts (including Tariff, revenues from sale of power to the Aggregator, other Distribution Licensees and Buyers, and all incomes derived/collected by it from or on account of the Power Station and/or sale of electricity from the Power Station), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Supplier shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss</p>		<p>Audited accounts 15.1.1 The Supplier shall maintain books of accounts recording all its receipts (including Tariff, revenues from sale of power to the Aggregator, other Distribution Licensees and Buyers, and all incomes derived/collected by it from or on account of the Power Station and/or sale of electricity from the Power Station), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good</p>	<p>Audited results would be available within 150 days from end of financial year  This is not pass through PPA hence inspection right of books should not be provided.</p>	<p>No Change Provisions are self-explanatory.</p>

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		<p>Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Aggregator shall have the right to inspect the records of the Supplier during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Aggregator for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.</p>		<p>Industry Practice, Applicable Laws and Applicable Permits. The Supplier shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 150 (one hundred fifty) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Aggregator shall have the right to inspect the records of the Supplier during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Aggregator for verification of basis of payments, and</p>		



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				<p><del>in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.</del></p>		
12.	APPP-II	<p>15.1.2 The Supplier shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Aggregator its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange</p>		<p>15.1.2 The Supplier shall, within 45 (forty five) days of the close of each quarter of an Accounting Year, furnish to the Aggregator its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange</p>	<p>As per applicable rules, the listed company need to publish its quarterly results within 45 days of quarter closing.</p>	<p>Provisions are self-explanatory.</p>
13.	APPP- II	<p>15.1.3 On or before the thirty-first day of May each Year, the Supplier shall provide to the Aggregator, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised</p>		<p>This clause should be deleted</p>	<p>This is not pass through PPA hence such type of certification is not required.</p>	<p>No Change</p>

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		information on (a) receipts on account of Tariff, (b) revenues from sale of electricity to other Distribution Licensees and Buyers, and (c) such other information as the Aggregator may reasonably require.				
14.	APPP-II	<p>15.2 Appointment of auditors</p> <p>15.2.1 The Supplier shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it and acceptable to the Aggregator. All fees and expenses of the Statutory Auditors shall be borne by the Supplier.</p> <p>15.2.2 The Supplier may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Aggregator, subject to the replacement Statutory Auditors being appointed in the manner specified in Clause 15.2.1.</p> <p>15.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Aggregator shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the "Additional Auditors") of Chartered</p>		This clause should be deleted	Appointment and change of auditor is a right of supplier. Aggregator acceptance of the same can not be accepted. Further additional auditor appointment can not be agreed.	No Change

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		Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.				
15.	APPP-II	15.3 Certification of claims by Statutory Auditors Any claim or document provided by the Supplier to the Aggregator in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.		This clause should be deleted	Statutory Auditor certificate should not be insisted upon.	No Change
16.	APPP-II	15.5 Dispute resolution In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Aggregator by recourse to the		This clause should be deleted	Since Additional Auditor will not be required hence this clause is irrelevant.	No Change

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		Dispute Resolution Procedure.				
17.	APPP-II	<p>Clause no 24.3 Interest Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.</p>		<p>Kindly modify the clause as follows: Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly monthly rests.</p>		No Change
18.	APPP-II	<p>Clause no 24.4 Delayed payments The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this</p>		<p>Kindly add the following are the clause no 24.4: Amount received shall be adjusted in following order: i) Delayed Payment charges, ii) Past Pending Monthly Invoices dues, iii) Current Monthly Invoice</p>	Settlement methodology for the payment received shall govern as per the Standard Industry practice.	No Change

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		Agreement including Termination thereof.				
19.	APPP-II	<p>Definitions:            Change in Law            "Change in Law" means the occurrence of any of the following after the Bid Date:            (a) the enactment of any new Indian law;            (b) the repeal, modification or re-enactment of any existing Indian law;            (c) the commencement of any Indian law which has not entered into effect until the Bid Date;            (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or            (e) any change in the rates of any of the Taxes that have a direct effect on the Supply of Electricity;</p>		<p>Kindly modify the Change in Law definition to include the International Law.            Further supply from alternate source shall be covered under Change in Law.</p>		No Change
20.	APPP-II	Addition of New Clause		Supplier shall be compensated for Increase in Fuel cost due to lower schedule (Partial Loading)		
21.	APPP	1.3	All measurements and calculations shall be in the	In reverse auction, minimum decrement		Provisions are self-

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			metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down	allowed in the Traiff is 1 paise. Considering the fact that Fixed Cost shall be Equal to Cost of Generation, and if both are to be quoted upto 2 decimal places, the minimum decrement in the Tariff shall be 2 paise. No bidder can decrease its total tariff by 1 paise if we quote all the components upto 2 decimal places. Hence, Utility is requested to allow bidders to bid Tariff upto 3 decimal places		explanatory.
22.	APPP	4.1.2 (b)	ensured approval of the Commission by Utility for payment of Tariff by the Aggregator to the Supplier in accordance with the provisions of this Agreement & PSAP-II;	Kindly clarify who will take the approval of Commission for Payment of the Tariff. Also clarify that whether approval will be taken from Central Commission or State Commission.		Provisions are self-explanatory.
23.	APPP	4.1.3	Condition precedents required to be satisfied by the supplier	As per the clause, conditions precedent are required to be staisfied within a period of 90 days. However as per present regulation the six months		No Change

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				required to procure transmission system under MTOA.  It is kindly suggested to extend the duration to fulfill the condition precedent accordingly.		
24.	APPP	4.1.3 (e)	The Supplier shall have executed the Fuel Supply Agreement, if applicable; and	Kindly Clarify that in case of use of e-auction coal, what need to be done		Any document showing coal arrangement to the satisfaction of Aggregator.
25.	APPP	11.5.3	The Parties expressly agree that within 30 (thirty) days of the close of every Accounting Year, the cumulative monthly Availability for such year shall be determined and the Incentive or Damages, as the case may be, shall be computed with reference to the Normative Availability for that year. The amount so arrived at shall be adjusted against the Incentives or Damages determined for the respective months of the year and the balance remaining shall be adjusted	We understand that the total fixed charge payable for any Accounting Year shall be on the basis of cumulative monthly Availability and shall be reconciled within 30 days of the close of every Accounting Year.		Provisions are self-explanatory.

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			in the following Monthly Invoice.			
26.	APPP	Definations	“Fuel” means the coal which is fit for use in generation of electricity at the Power Station;	<p>We understand that there is no restriction on the use of concessional/linkage fuel and supplier can use linkage fuel or fuel from open market/E-auction fuel or both, in case one is not sufficient for supply of entire contactred capacity. Please confirm the same.</p> <p>Also, Ministry of Coal had introduced SHAKTI Scheme in May 2017 for allocation of Linkage fuel. In case supplier gets allocation of Linkage fuel under the SHAKTI SCHEME {B(ii) &amp;/or B(iii)}, before or after the signing of the agreement with the aggregator, will the supplier be allowed to use that coal for supply of power under this aggrement ?</p>		No restriction on use of coal from any type of source
27.		1.3 Measurements and arithmetic	Since the effect of RLDC and SLDC operating charges			Provisions are self-



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		<p>conventions</p> <p>All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.</p>	<p>have significant figures from third decimal places, bidders shall be allowed to quote up to third decimal place.</p>			<p>explanatory.</p>
28.		<p>4.1.2: Conditions Precedent required to be satisfied by the Aggregator shall be deemed to have been fulfilled when the Aggregator shall have:</p>	<p>New paragraph to be added:</p> <p>(c) ensured that Utility shall have procured access to the transmission system required for carrying electricity from the Delivery Point to their draw point;</p>			<p>No Change</p>
29.		<p>4.1.3 The Conditions Precedent required to be satisfied by the Supplier .....</p> <p>(d) submitted the Capacity Certificate and evidence of the capacity of the Power Station; and</p>	<p>Please share the format of providing Capacity Certificate and evidence of the capacity of the Power Station;</p>			<p>Already Defined</p>
30.		<p>4.1.3 The Conditions Precedent required to be satisfied by the Supplier .....</p>	<p>Please specify if successful bidder would be eligible to use Concessional Fuel from</p>			<p>No restriction on use of coal if the term of FSA/ allocation and/or</p>

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		(e) The Supplier shall have executed the Fuel Supply Agreement; and	Coal India for supply			allocation policy provides the same.
31.		4.1.3 The Conditions Precedent required to be satisfied by the Supplier .....  (f) procured access to the transmission system required for carrying electricity from the Power Station to the Delivery Point and Delivery Point to the Utility's Drawal Point.	The Supplier's liability shall be only till the delivery point, beyond the delivery point, the Aggregator or the Utility shall be responsible for getting Open Access. Hence the following phrase shall be deleted: "and Delivery Point to the Utility"s Drawal Point."			No Change
32.		4.3 Damages for delay by the supplier....  In the event that  (i) the Supplier does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause and  (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement	The damages payable by the Supplier to Aggregator in case of non-fulfilment of Condition Subsequent is 0.3% of the Performance Security subject to maximum of Bid Security Amount, however the damages payable by Aggregator is only 0.1% and subject to 20% of Performance Security amount.  The damages payable in case of non fulfilment of CS shall be equal for both			No Change

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		<p>by the Aggregator or due to Force Majeure,</p> <p>the Supplier shall pay to the Aggregator Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching</p> <p>such maximum, the Aggregator may, in its sole discretion, terminate the Agreement</p>	<p>supplier and Aggregator.</p> <p>Further the right to terminate the agreement in case of non fulfilment of CS is provided only to the Aggregator. The supplier shall also have the right to terminate the agreement in case of non fulfilment of CS by the Aggregator.</p>			
33.		<p>4.4. Deemed Termination upon delay</p> <p>Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, 120 (one hundred twenty) days from the date of this Agreement or the extended period provided in</p>	<p>Similar Clause shall be applicable for the Aggregator also. i.e. in case the Appointed Date does not occur within stipulated time i.e. 120 days due to reasons attributable to the Aggregator, the agreement shall be deemed to be terminated and all rights, privileges, claims and entitlements of the Aggregator under or arising</p>			No Change

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		<p>accordance with this Agreement, all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and the Agreement for Procurement of Power shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Supplier, the Performance Security of the Supplier shall be encashed and appropriated by the Aggregator as Damages thereof.</p>	<p>out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Aggregator, and the Agreement for Procurement of Power shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Aggregator, the Aggregator shall pay an amount equal to the Performance Security of the Supplier as Damages thereof</p>			
34.		<p>5.8 Obligations relating to taxes</p> <p>The Supplier shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Power Station and supply of electricity till the Delivery Point.</p>	<p>What shall be the procedure to claim taxes. Further if supplier is supplying power to third parties in addition to the Aggregator, how can the supplier provide the receipt in such a case. Hence it is requested that all taxes applicable shall be allowed to be loaded in tariff and separate space pertaining to</p>			Provisions are self-explanatory

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			taxes shall be provided in the price bid.			
35.		<p>9.1.1. Performance Security:</p> <p>The Supplier shall, for the performance of its obligations hereunder, provide to the Aggregator no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. 10 lakh per MW of Contracted Capacity</p>	<p>As the said tender is for only Medium Term, the Performance Security shall be reduced to Rs. 2 lakhs/MW.</p> <p>Further, having high cost of Performance Security will increase the Tariff for the Aggregator as the Supplier will load the cost of Performance Security in Tariff.</p>			No Change
36.		<p>9.4... Deemed Performance Security</p> <p>The Parties expressly agree that upon release of Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this clause 9.4, as if it is a Performance Security under clause 9.1 for and in respect of the entire Contract Period (the "Deemed Performance Security"). The</p>	<p>Deemed Performance Security is an additional financial and operational burden on the Supplier. If the supplier has already supplied power to Aggregator for six months, supplier has displayed its credibility. In such a case, there shall be no need for Performance Security.</p> <p>This clause is not only</p>			No Change

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		Deemed Performance Security shall be unconditional and irrevocable, and shall constitute the first and exclusive charge on all amounts due and payable by the Aggregator to the Supplier, and the Aggregator shall be entitled to enforce the Deemed Performance Security by making a deduction from the amounts due and payable by it to the Supplier in accordance with the provisions of Clause 9.5	burdensome for the Supplier but against fair business practices, and thus may discourage serious bidders from bidding in the medium term tender hence this clause shall be deleted.			
37.		10.2.1 .....In the event that the Aggregator does not require the supply of the whole or part of the Contracted Capacity for a continuous period of 24 (twenty four) hours or more, it may, by a notice of at least 72 (seventy two) hours prior to such period, specify the reduction in dispatch of the Contracted Capacity and for such reduction in supply, it shall be entitled to a rebate equal to 25% (Twenty Five percent) of the Fixed Charge payable for Availability thereof and the waived Fixed Charge under Clause 10.2.2. Provided, however, that any reduction in supply under	The clause provides a safeguard for utility that if they don't require supply of the whole or part of Contracted Capacity for a continuous period of 24 hours or more, it may give a notice 72 hours in advance for reduction in dispatch of the Contracted Capacity and for such reduction in supply, it shall be entitled to a rebate equal to 25% of the Capacity Charge. Thereby, in case the developer is unable to find a suitable buyer for the capacity not requisitioned by the Utility, he stands to lose			No Change

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		Clause 10.2.1 shall be uniform for a block of at least 24 (twenty four) hours and shall not vary between Peak Hours and Off-Peak Hours	out on a part of debt service, O&M and ROE. Hence irrespective of buyer's requirement of power, the buyer shall all time continue to pay the fixed charges based on DC			
38.		10.3 Substitute Supply In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance or Force Majeure, the Supplier may, with prior consent of the Aggregator, which consent the Aggregator may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Tariff, be deemed to be supply under and in accordance with the provisions of this Agreement.	Compensation shall not be applicable in case Utility refuses off take from alternate source and in such case power shall be counted as available to the extent of quantum being arranged from alternate source for the purpose of calculating Fixed Charges			No change
39.		11.2 Fixed Charge The Parties agree that the Fixed Charge payable for Availability shall, in accordance with the offer of the Supplier, be Rs. .... (Rupees ....) per kWh, which shall remain	Since the period of contract is 3 years, Fixed Cost if remain unchanged will cause huge loss to the buyer on account of inflation. The bidder will be compelled to			No Change

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		constant for the entire contract period.	quote high tariff in such a case, hence it is requested that escalation based on WPI as per the standard FOO document be allowed in fixed charge.			
40.		11.3.3 ..... In the event that any shortfall in supply of electricity to the Aggregator occurs on account of deficiency in transmission between the Point of Grid Connection and Drawal Point, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.4.2 and the Aggregator shall not be liable for payment of any Fixed Charge for the Non-Availability arising as a consequence thereof.	Since transmission constraint is beyond the control of supplier, penalizing supplier for transmission deficiency is not justified. Further since point of delivery is CTU interconnection of the Plant, hence supplier shall not be made responsible for availability of power beyond the delivery point.			No Change
41.		11.6 Incentive and Damages  11.6.1 In the event that the Availability in any month exceeds the Normative Availability, the Supplier shall, in lieu of a Fixed Charge, be entitled to an Incentive which shall be calculated and paid at the rate of 50 % (fifty per cent) of the Fixed Charge for Availability in excess	Incentive shall be linked with Availability and not actual dispatch since actual dispatch will depend on the utility requirement, and other parameters that are beyond the control of the supplier hence seller may not get the incentive even after making the power available to utility if utility refuse to off-take			No Change



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		of Normative Availability. Provided, however, that any Incentive hereunder shall be due and payable only to the extent of Despatch of the Power Station.	power.			
42.		11.6.4 .... The Parties agree that the generating cost component of Base Variable Charge specified in Clause 11.6.2 shall be increased for every Accounting Year following the Base Year so as to reflect 50% (fifty per cent) of the variation in WPI occurring between January 31 immediately preceding the Base Year and January 31 immediately preceding the Accounting Year for which such revision is undertaken.	Providing escalation in Base Variable Charges at 50% WPI is not justifiable. The escalation on base variable charge shall be linked to WPI for non-coking coal used in Power Sector or with CERC Escalation rate for domestic coal as per the fuel utilized by the supplier.			No change
43.		11.7.1  The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 11.7.2. It is further agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 11.7.2, in accordance	Kindly clarify whether the tariff taxes such as Forest Tax, Central Sales Tax, Goods and Services Tax etc. which are levied on the coal are also reimbursable. Further the Electricity Duty applicable on the Auxiliary Consumption corresponding to the Contracted Capacity			Provisions are self-explanatory

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		with Applicable Laws..	<p>should also be reimbursed.</p> <p>Accordingly it is requested that separate Provision for quoting of Taxes &amp; Duties be made as per the format specified in APPENDIX I of RFP.</p> <p>No Escalation has been provided on Fuel Charge. Requested to provide provision for same to enable efficient quoting of Variable Charges</p>			
44.		11.8.1 Commencing from the month following the month in which the Appointed Date occurs, the Supplier shall, by the 5th (fifth) day of such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Aggregator, an invoice in the agreed form (the "Monthly Invoice")	Since the date of publishing of REA by the RPC's is 5 <sup>th</sup> of every month, the date for billing must be atleast 8th day of the month.			No Change
45.		11.8.2.. Billing and Payment The Supplier shall, with each	Since the bid document has been envisaged with a view of recovery of stressed			No Change

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		Monthly Invoice submit,	assets it is requested to modify Billing cycle to weekly.			
46.		12.1.1 The Aggregator shall, no later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit with for an amount equivalent to 20% (twenty percent) of the annual Capacity Charge (the "Letter of Credit"),	Since billing is on monthly basis and payment due date is 32 days after billing date. Hence by the time first payment is due the supplier has already supplied power for almost two and a quarter months, hence the value of LC must be equivalent to at least two months billing (FC + VC) amount.			No Change
47.		12.2.1 In the event the Supplier is unable to recover its Tariff through the Letter of Credit, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Supplier shall have the right to sell the whole or part of the Contracted Capacity to any Buyer for recovery of its dues from the Aggregator	In case of third party sale due to seller's default, the supplier's right to recover its dues from the Aggregator shall continue to remain as per the terms and conditions of the APP.			No Change
48.		15.1.3..... On or before the thirty-	Audited accounts certified by			No Change

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		first day of May each Year, the Supplier shall provide to the Aggregator, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) receipts on account of Tariff, (b) revenues from sale of electricity to other Distribution Licensees and Buyers, and (c) such other information as the Aggregator may reasonably require.	Statutory Auditors are generally available till September, hence providing the same in May will be difficult, Hence it is requested that audited accounts shall be provided by October each year for preceding Financial Years.			
49.		20.5 No claim in the event of recovery from Buyers  Notwithstanding anything to the contrary contained in this Agreement, the Aggregator shall not in any manner be liable to reimburse to the Supplier any sums on account of a Change in Law if the same are recoverable from the Buyers.	Please clarify how can change in law be claimed from buyers for the capacity dedicated for the Aggregator?			Provisions are self-explanatory
50.		Delayed payment  The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall	As per the standard industry practice Delayed payment surcharge rate shall be linked to the SBI Prime Lending Rate rather than Bank Rate as per section 49			No Change

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		be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate,	of the Reserve Bank of India Act, 1934 to avoid confusion.			
51.		Definitions:  "Capacity Certificate" means the certificate issued by an experienced and qualified firm of technical consultants certifying the installed capacity, plant configuration, station Heat Rate and other principal parameters of the Power Station;	Please specify the need of providing such a certificate as the seller has to provide power in Medium Term.  Further Please clarify meaning of "experienced and qualified firm of technical consultant."			Provisions are self-explanatory
52.		Annex – I  (Schedule-A)  7. Description of Power Station	Since Power is required on Medium Term, SHR and other operational parameters are not required by the by the Aggregator.			Provisions are self-explanatory

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		.....				
53.		General Query	There is no provision for compensation to seller on account of loss due to Coal linkage deficit, grade slippage and short materialization of coal. Suitable provisions for loss due to the above factors may be added			No Change
54.		General Query	Impact of FGD installation to be considered. Due to compliance with new emission norms, FGD installation with an expenditure of Rs 30-45 lakhs/MW is likely to be incurred by plants within the next 1 to 2 years. This is going to increase the cost of supply. hence the same shall be allowed to be pass through on pro-rata basis under this contract.			No Change
55.		Clause 4.2 & 4.3 Damages Payable by the Supplier & Utility at 0.3% of Performance Security (PS) and 0.1% of PS	Upon Non-Fulfillment of conditions precedent, the extent of damages payable by Utility and Supplier are not pegged at same			No Change

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		respectively...	percentage.  Request to kindly modify, as may deem fit.			
56.		<p><i>Clause 11.3.3</i></p> <p>In the event that any shortfall in supply of electricity to the Aggregator occurs on account of deficiency in transmission between the Point of Grid Connection and Drawal Point, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.4.2 and the Aggregator shall not be liable for payment of any Fixed Charge for the Non-Availability arising as a consequence thereof,</p> <p><i>And</i></p> <p><i>Clause 11.4.2</i></p>	<p>As you may appreciate, apart from timely booking the corridor under MTOA/or as applicable, supplier has no control over the grid parameters and the availability of transmission elements, beyond the delivery point (CTU Interconnection).</p> <p>For the reasons beyond the control of supplier and in case the generating facility is available, suitable provisions should be included/ amended for payment of Fixed Charges for the loss of generation on account of Non-Availability of transmission.</p> <p>Request to kindly modify, as may deem fit.</p>			No Change
57.	Preliminary  APPP – II	(E) The Supplier has arranged fuel supply vide ***1 for the purposes of the Contracted	In present scenario most of the generators are purchasing domestic coal from spot auction and			Any document showing coal arrangement to the satisfaction of

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		Capacity.  1 Document with respect to Fuel supply to be inserted, if applicable.	imported coal from spot market for supplying power.  Kindly specify the documents required to be submitted as a proof against the assured supply of fuel			Aggregator.
58.	Clause No. 4.1.3 (e)  APPP-II	(e) The Supplier shall have executed the Fuel Supply Agreement, if applicable; and	Request you to kindly delete the said clause as most of the generators are purchasing domestic coal from spot auction and imported coal from spot market for supplying power.  Thus Fuel Supply Agreement should not form part of condition precedent for the Supplier.			No Change
59.	Clause No. 4.3	Damages for delay by the Supplier	We request that the clause should be modified as following			No Change



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	APPP-II	<p>In the event that (i) the Supplier does not procure fulfilment or waiver of any or all of the Conditions Precedent..... the Supplier shall pay to the Aggregator Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Aggregator may, in its sole discretion, terminate the Agreement.....</p>	<p>In the event that (i) the Supplier does not procure fulfilment or waiver of any or all of the Conditions Precedent..... the Supplier shall pay to the Aggregator Damages in an amount calculated at the rate of 0.1% (zero point one percent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 10% (twenty percent) of the Performance Security.</p> <p>Provided that in the event of delay by the Aggregator in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Supplier under this Clause 4.3 until the date on which the</p>			

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			Aggregator shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.			
60.	Clause No. 5.1.4  APPP-II	The Supplier shall operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity of the Power Station is at least 85% (eighty five per cent) thereof during each year of the Contract Period (the "Normative Availability").	Normative availability by supplier mentioned as 85% during each year of the contract period.  Please clarify regarding Minimum Off take Guarantee by Aggregator, so that the power generator can be assured of its technical minimum capacity of the unit?			Provision is self-explanatory
61.	Clause No 5.5.2  APPP – II	The Aggregator shall be liable for reimbursement of all charges to the Supplier, due and payable under Applicable Laws, for inter-state transmission of electricity from the Delivery Point to the	Please clarify whether the Transmission Charges that will be paid to the Supplier will be based on the actual invoice raised by PGCIL for the Contracted Capacity, on the Supplier or it will be for			Provision is self-explanatory

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		Drawal Point.	<p>the quantum of power declared available/scheduled energy?</p> <p>It is suggested that the payment of transmission charges should be based on PGCIL's actual invoice of Contracted Capacity, as per Bill-1 and Bill-3.</p>			
62.	Clause No 5.8 APPP – II	The Supplier shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Power Station and supply of electricity under this Agreement	<p>Request utility to clarify as to how the taxes and duties shall be reimbursed, do the Bidders have to mention the existing taxes and duties applicable which shall be reimbursed</p> <p>Kindly clarify how the billing of all the taxes and duties to be done.</p>			Provision is self-explanatory
63.	Clause No 10.2.1 APPP – II	In the event that the Aggregator does not require the supply of the whole or part of the Contracted Capacity for a continuous period	72 hours may not be sufficient to find buyer for such capacity which is not required by the Utility. Moreover, the tariff			No Change

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		of 24 (twenty four) hours or .....	realizable may not be more than energy charge of the plant. Hence rebate of 25% should not be applicable. Request you to consider modifying the clause as sharing of gain over the Energy / variable charge.			
64.	Clause No 11.7.1 APPP – II	The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 11.7.2. It is further agreed that the Supplier shall pay all taxes and duties, including the taxes and duties specified in Clauses 11.7.2, in accordance with Applicable Laws.	Request utility to confirm whether the taxes and duties levied on Coal above the base price such as District Mineral Fund (DMF), National Mine Exploration Trust (NMET), MP development charges, GST, GST Compensation Cess, Forest Transit Fee etc. shall be reimbursed by the Utility over and above the quoted Tariff, in accordance with Clause 11.7.1, i.e. reimbursement of taxes and duties in addition to Quoted Tariff. Please confirm.			Provision is self-explanatory

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65.	Clause No 11.7.2  A PPP – II	The Tariff and Incentives payable by the Aggregator under this Article 11 shall be exclusive of GST or any replacement thereof, if applicable, and any GST thereon shall be paid by the Supplier and reimbursed by the Aggregator upon submission of necessary particulars by the Supplier.	Please clarify whether ED on Aux Power will be reimbursed or not?  For better clarity request you to list out in the tariff format the taxes and duties that will be paid out over and above tariff.			Provision is self-explanatory
66.	Clause No 11.8.5  A PPP – II	The Supplier shall raise Supplementary Invoices for reimbursement of charges for inter-state transmission of electricity and RLDC fees/charges as per the actual bills of CTU/RLDC etc. Payment due date, late payment surcharge, rebate for early payment etc. for such Supplementary Invoices	Request to confirm the time frame for the payment of the supplementary invoice as Supplier has to make payment to CTU/RLDC at earliest to avoid any adverse action by them.  We suggest that the Supplier shall submit the invoice raised by PGCIL and the Aggregator shall immediately			Provision is self-explanatory

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		shall be as per the actuals bills of CTU/RLDC etc.	make the payment to the supplier. So that the Supplier can accordingly make payment to PGCIL.			
67.	Clause No 5.3 APPP - II	Obligations relating to Change in Ownership  The Supplier shall not undertake or permit any Change in Ownership, except with the prior written approval of the Aggregator.	We request that the clause should be modified as following, since many stressed plants are undergoing change in ownership  Obligations relating to Change in Ownership  The Supplier shall not undertake or permit any Change in Ownership, except with the prior written intimation to the Aggregator.			No Change
68.	Clause No 7.1 APPP - II	Representations and warranties of the Supplier  The Supplier represents and warrants to the Aggregator that:	Request you to kindly delete the said clause as most of the generators are purchasing domestic coal from spot auction and imported coal from spot			No Change

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		(m) it has entered into a Fuel Supply Agreement for assured supply of Fuel required for meeting obligations under this Agreement, if applicable;	market for supplying power.  Thus Fuel Supply Agreement should not form part of Representations and warranties of the Supplier.			
69.	Clause No. 11.3.2  APPP - II	The Supplier shall not, for and in respect of any day, be entitled to receive payment of Fixed Charge for Availability exceeding 85% (eighty five per cent) thereof, and in the event it supplies electricity to the Aggregator in excess of such 85% (eighty five per cent), such excess supply shall be eligible only for payment of Variable Charge, save and except the payment of Incentive due under the provisions of Clause 11.3.1.	Request you to kindly modify the clause as following  The Supplier shall not, for and in respect of any accounting year, be entitled to receive payment of Fixed Charge for Availability exceeding 85% (eighty five per cent) thereof, and in the event it supplies electricity to the Aggregator in excess of such 85% (eighty five per cent), such excess supply shall be eligible only for payment of Variable Charge, save and except the payment of Incentive due under the provisions of Clause 11.3.1. However, in any particular month the			No Change

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			<p>availability can exceed 85% and payment of fixed charges shall be accordingly made, such that cumulative availability is not exceeding 85%.</p> <p>Eg. Supplier may be available for 70% in the first month and 90% in the second month, in such case payment for the first month may be limited to 70% and next for second month the cumulative availability shall be 85% and hence the payment should be made for 80% instead of 70%.</p>			
70.	Definition of Fuel in APPP-II	“Fuel” means the coal which is fit for use in generation of electricity at the Power Station;	Kindly clarify whether concessional or linkage coal can be used or not.			No restriction on use of coal from any type of source
71.	4.1.3 (f) of APPP-II	procured access to the transmission system required for carrying electricity from the Power Station to the Delivery Point.	Medium term OA application is to be applied at least 5 months prior to start of power flow, whereas the Conditions Precedent is to be satisfied by the Supplier			Provision is self-explanatory



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			within 90 days from the date of the agreement. Kindly clarify how the supplier shall satisfy the aggregator within 90 days from the date of the signing of agreement.			
72.	4.2 & 4.3 of APPP-II	<p>Damages for delay by the Aggregator</p> <p>the Aggregator shall pay to the Supplier Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent,....</p> <p>Damages for delay by the Supplier</p> <p>...the Supplier shall pay to the Aggregator Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent,...</p>	It is humbly requested that penalty shall be at the same level for delay by either party.			No Change
73.	14.3 and 14.4 of	14.3 Evidence of Insurance Cover All insurances obtained by the	Insurance cover documents are to be submitted to			Provision is self-explanatory

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	APPP-II	<p>Supplier in accordance with this Article 14 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Supplier shall furnish to the Aggregator.....</p> <p>14.4 Remedy for failure to insure If the Supplier shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Aggregator shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Supplier, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Supplier.</p>	<p>Aggregator when it is understood to be a good industry practice followed? Kindly clarify the reason for such submission or it can be avoided by the bidder?</p> <p>In case of default of Supplier on the above, the aggregator should be allowed to recover the amount from Supplier in the event of computation of termination payment?</p>			
74.	4.4 of APPP-II	<p>Deemed Termination upon delay</p> <p>...the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, 120 (one hundred twenty) days from the date of this</p>	<p>This clause is only applicable to supplier, it is requested similar provisions for compensation for the delay in occurrence of the Appointed Date for reasons attributable to the</p>			No Change

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		Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and the Agreement for Procurement of Power shall be deemed to have been terminated by mutual agreement of the Parties.....	Aggregator shall also be included.			
75.	11.1 of APPP-II	The Parties agree that the Fixed Charge payable for Availability shall, in accordance with the offer of the Supplier, be Rs. .... (Rupees ....) per kWh, which shall remain constant for the entire contract period.	It is hereby clarified that the Fixed Charge shall be fixed for the entire Contract Period and there shall be no allowable escalation which results into huge loss to the buyer on account of inflation. It is therefore requested that the escalation based on WPI as per the standard FOO document be allowed in fixed charge.			No Change
76.	11.2.4 of APPP-II	11.2.4 In the event that the Availability at any time is determined to be lower than 100% (one hundred per cent) of	This provision of Mis Declaration is not in line with the Grid Code.			Extant Govt. Policy will apply. No Change

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		<p>the Contracted Capacity or the reduced Availability notified hereunder, an event of mis-declaration of Availability (the "Mis-declaration") shall be deemed to have occurred. In such an event, the Availability for the relevant month shall, for the purposes of payment of Tariff, be deemed to be reduced by the same proportion that Availability bears to Mis-declaration, as if the Mis-declaration had occurred for a period of one month. For the avoidance of doubt, the Parties agree that deductions on account of Mis-declaration shall be made from the subsequent payments due to the Supplier under this Agreement.</p>	<p>As per Central Electricity Regulatory Commission Indian Electricity Grid Code (Amendment) Regulations, 2009;</p> <p>Clause 22.</p> <p><i>22. The quantum of penalty for the first mis-declaration for any duration/block in a day shall be the charges corresponding to two days fixed charges. For the second mis-declaration the penalty shall be equivalent to fixed charges for four days and for subsequent mis-declarations, the penalty shall be multiplied in the geometrical progression.</i></p> <p>Kindly modify or incorporate suitable clause in line with Grid Code.</p>			
77.	15.2 of APPP-II	<p>15.2 Appointment of auditors 15.2.1 The Supplier shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it and acceptable to the Aggregator. All</p>	<p>Appointment of auditors shall be responsibility of Supplier and its fee and expenses are generally borne by the supplier only.</p>			Provision is self-explanatory

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		fees and expenses of the Statutory Auditors shall be borne by the Supplier.	Kindly clarify the reason for acceptance of aggregator while choosing the audit firm or can it be avoided by the bidder?			
78.	16.2(f) of APPP-II	Any event of Force Majeure identified under the PSAP-II between Aggregator and the Utility/Utilities thereby affecting supply of power from the Aggregator to the Utility under the PSAP-II shall be considered as Force Majeure event under this Agreement.	This provision in turn passes on the entire risk on account of Force Majeure, in the PSAP-II between the Aggregator and the Buyer, affecting the Aggregator towards the Supplier.  Please clarify if any Force Majeure occurs in the APP, then that will be considered as Force Majeure event in the PSA-II or not?			Provision is self-explanatory
79.	20.1.1 of APPP-II	Change in Law shall mean any change in taxes (excluding taxes on corporate income), duties, cess or introduction of any tax, duty, cess made applicable for supply of power by the Supplier, after the date of submission of bid.	Change in law will cover change in taxes and duties on landed cost of fuel as well as any change of taxes and duties that affects the Suppliers cost of supply of power- Nodal Agency to confirm.			Provision is self-explanatory
80.	General	FORCE MAJEURE Non-Political Event	As you aware that the MOEF vide its notification dated 07.12.2015 has revised			Provision is self-explanatory

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			Environmental norms for coal-based Thermal Power Plants, in this context, if the existing thermal power plants face shutdown of their units due to adverse impact of MOEF notification then such situation will have to be treated as a Force Majeure Event.			
81.	20.5 of APPP-II	20.5 No claim in the event of recovery from Buyers Notwithstanding anything to the contrary contained in this Agreement, the Aggregator shall not in any manner be liable to reimburse to the Supplier any sums on account of a Change in Law if the same are recoverable from the Buyers.	Please clarify how can change in law be claimed from buyers for the capacity dedicated for the Aggregator?  How and who will substantiate whether change in law can be recovered from DISCOMS? Why not Aggregator recover from Buyer after the same is recovered by Bidder from Aggregator.			Provision is self-explanatory
82.	Clause No. 18.3.1 & 18.3.2	18.3 Termination Payment 18.3.1 Upon Termination on account of a Supplier Default, the Supplier shall pay to the Aggregator, by way of Termination Payment, an amount	LC provided by Aggregator shall not be sufficient to cover the 3 months termination payment. It is requested that there should be some mechanism to			No Change

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	APPP-II	equal to the Tariff that would have been due and payable for Normative Availability for a period of 3 (three) months as if the Contracted Capacity was Available for such 3 (three) months from the date of Termination.	recover the termination payment by the Supplier in the event of aggregator default.			
83.	Clause No. 12.1.1 APPP-II	12.1 Letter of Credit 12.1.1 The Aggregator shall, no later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit with for an amount equivalent to 20% (twenty percent) of the annual Capacity Charge (the "Letter of Credit"),.....	Since billing is on monthly basis and payment due date is 32 days after billing date. Hence by the time first payment is due the supplier has already supplied power for almost two and a quarter months, hence the value of LC must be equivalent to at least two months billing (FC + VC) amount.			No Change
84.	Clause No. 11.5.2 APPP-II	In the event that Availability in any month is less than the Normative Availability, the Fixed Charge for such month shall be reduced to the extent of shortfall in Normative Availability and in addition, any reduction below.....	As per the clause, if availability is less than 85%, then supplier is liable to pay 25% of the fixed charge as damages for the capacity below 85%.  Please clarify if the same is applicable in case availability is less than 85% due to transmission constraint or			Provision is self-explanatory

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			fuel shortage.			
85.	Clause No. 10.3 APPP-II	10.3 Substitute Supply In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance or Force Majeure, the Supplier may, with prior consent of the Aggregator, which consent the Aggregator may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity.....	Please clarify if Compensation shall not be applicable in case Utility refuses off take from alternate source as arranged by the Seller and offered to Utility, and in such case power shall be counted as available to the extent of quantum being arranged from alternate source for the purpose of calculating Fixed Charges.			Provision is self-explanatory
86.	Clause No. 9.1.1 APPP-II	Performance Security The Supplier shall, for the performance of its obligations hereunder, provide to the Aggregator no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. 10 lakh per MW of Contracted Capacity.....	As the tender is for Medium term it is requested to reduce the Performance Security to Rs. 2 lakhs/MW.			No Change
87.	General	Minimum offtake Guarantee	Minimum guaranteed off take by Nodal Agency/Aggregator is not mentioned.			No Change



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			Please clarify regarding Minimum Off take Guarantee by Aggregator? Besides the point of revenue erosion Units of the power plant also has to run at technical minimum, and in case minimum offtake guarantee is not provided to the seller, it will have an adverse impact on the seller.			
88.	Draft Agreement for Procurement of Power under Pilot Scheme - II	Recital F: "The Aggregator shall enter into a Power Supply Agreement under Pilot Scheme-II ("PSAP-II") with **** ("the Utility") in accordance with the Guidelines for supply of the Contracted Capacity to the Utility/Utilities."	Kindly specify the name of the utilities and demand quantum of their respective utilities		This is required by the bidders to analyze any Utility specific risks.	Successful Bidder will be signing the Agreement for Procurement of Power under Pilot Scheme – II with Aggregator and Aggregator will be signing the Power Supply Agreement under Pilot Scheme-II with Utility
89.	Draft Agreement for Procurement of Power under Pilot	Clause 4.1.3 (e): "The Supplier shall have executed the Fuel Supply Agreement"	Kindly confirm whether linkage coal will be allowed to use for this purpose.			No restriction on use of coal from any type of source

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	Scheme - II					
90.	Draft Agreement for Procurement of Power under Pilot Scheme - II	Clause 5.1.5 (a): "Non-grant of medium term open access shall be mutually decided by the Aggregator and Supplier."	<p>Kindly confirm that non-grant of open access shall be treated under Force Majeure.</p> <p>Also, supplier shall be allowed to supply power under Short term Open Access (STOA) till the time medium term open access is granted.</p> <p>In such cases, Aggregator to reimburse at actuals any transmission charges incurred by the supplier including but not limited to CTU injection charges.</p>			Provision is self-explanatory
91.	Draft Agreement for Procurement of Power under Pilot Scheme - II	Clause 9.1.1: "The Supplier shall, for the performance of its obligations hereunder, provide to the Aggregator no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)2	Request you to reduce the Performance Security amount to Rs. 5,00,000/MW.		This will reduce the burden for already stressed plants	No Change

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		2 To be calculated @Rs. 10,00,000 (Rs. ten lakh) per MW of Contracted Capacity”				
92.	Draft Agreement for Procurement of Power under Pilot Scheme - II	Clause 11.2 Fixed Charge: “The Parties agree that the Fixed Charge payable for Availability shall, in accordance with the offer of the Supplier, be Rs. .... (Rupees .....) per kWh, which shall remain constant for the entire contract period.	Request you to kindly provide escalation in Fixed Charge to reflect 20% of the variation in WPI.		This will be in line with Standard FOO Document and cover the escalation in O&M costs for the Bidder	No Change
93.	Draft Agreement for Procurement of Power under Pilot Scheme - II	Late Payment Surcharge	Kindly specify the rate for late payment surcharge for the outstanding amount beyond due date.			Provision is self-explanatory
94.	Draft Agreement for Procurement of Power under Pilot Scheme - II	Clause 20.1.3: “The payment for Change in Law shall be through Supplementary Bills.”	Kindly confirm that the late payment surcharge shall also be applicable on Supplementary Bills for change in law claims.			Provision is self-explanatory