STANDARD

BATTERY ENERGY STORAGE PURCHASE AGREEMENT FOR

PROCUREMENT OF _____ MW/_____ MWH

ON LONG TERM BASIS

Between

…….. [Insert Name of BESSD]

And

Tamil Nadu Power Distribution Corporation Limited

……. [Insert month and year]

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This Battery Energy Storage Purchase Agreement is made on the …….[Insert date] day of …….[Insert month] of …….. [Insert year] at .....[Insert place]

Between

……. [Insert name of the BESSD], a Company incorporated under the Companies Act 1956 or Companies Act 2013, having its registered office at …….. [Insert address of the registered office of BESSD] (hereinafter referred to as "**Battery Energy Storage System Developer**" **or** "**Storage Project Developer" or "Developer" or** "**BESSD**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **First Part**;

And

Tamil Nadu Power Distribution Corporation Limited, a company formed as per G.O. Ms No.6 dt.24.01.2024 and incorporated under the Companies Act 1956, having its registered office at 144, Anna Salai, Chennai – 600 002 (hereinafter referred to as **"TNPDCL", or "Procurer" or "Buyer"** which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the **Second Part**;

AND, WHEREAS the Ministry of Power, Government of India notification "F.No. 09/13/2021/RCM dated 22-July-2022" stipulates the Renewable Purchase Obligation and Energy Storage Obligation trajectory till 2029-30" that the Obligated Entities may purchase Energy from BESS, PSP and any other new promising commercially viable energy storage technology to fulfill their Energy Storage Obligation (ESO) at the tariff determined through Competitive Bidding.

The BESSD and TNPDCL are individually referred to as 'Party' and collectively referred to as 'Parties'.

WHEREAS:

A. The Ministry of Power, Government of India has issued the "*Guidelines for Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services*" vide Resolution dated 10th March 2022, including subsequent amendments and

clarifications thereof, if any, issued until [Enter the last date of bid submission of the RfS].

B. Whereas Ministry of Power, Govt. of India has issued draft Operational guidelines for implementation of State Component under the Scheme for Viability Gap Funding for development of Battery Energy Storage System, wherein 1000 MWh of BESS allocation has been made to Tamil Nadu.

C. Tamil Nadu Power Distribution Corporation Limited (hereinafter referred to as "TNPDCL") is a company formed as per G.O. Ms No.6 dt.24.01.2024 and incorporated under the Companies Act 1956 and is the successor of erstwhile Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and also the holding company of other reorganized functional entities of the TANGEDCO. TNPDCL is performing the functions of bulk purchase and bulk sale of power as well as residual functions to its consumers of erstwhile TANGEDCO, assigned as per the re-organization scheme notified by the Government of Tamil Nadu.

D. Tamil Nadu Green Energy Corporation Limited (hereinafter referred to as "TNGECL") is a company formed under the Companies Act 2013 by integrating Renewable Energy wing of TANGEDCO and merger of Tamil Nadu Energy Development Agency (TEDA) with the new company as per G.O. Ms No.7 dt.24.01.2024 and incorporated under the Companies Act 1956.

E. For implementation of the 1000MWh BESS in Tamil Nadu under the state Component of VGF funding for standalone BESS, TNGECL has taken the role of Tender process management as well as Contract Management, while TNPDCL shall be the end procurer of power and also arrange for charging of BESS.

F. TNGECL had initiated a Tariff Based Competitive Bid process for development of cumulative capacity of 500MW/ 1000 MWh of STU connected Battery Energy Storage Project(s) (Projects) on the terms and conditions contained in the Request for Selection Documents (hereinafter referred to as 'RFS') issued by TNGECL vide RfS No…….. dated…….

G. TNGECL has issued the Letter of Award No…….. dated.....in favor of the [Insert name of the Bidding Company] for development and establishment of the_ MW/ MWh of "Project" or "BESS" at location(s) provided at _____ in the State of _____ as per the terms and conditions contained in the RfS, this Battery Energy Storage Purchase Agreement (BESPA) and other bidding documents as well as the conditions contained in the Letter of Award. The RfS shall form an integral part of this BESPA.

H. **[Insert Name of the Bidding Company]** has been selected in the Competitive Bidding Process {in case Bidding Company is executing the Project through SPV}, has constituted …… **[Insert Name of the SPV]** (hereinafter referred to as '**BESSD**'), for development, and supply of BESS Capacity from the ……MW/_MWh of the Project / BESS to be established by BESSD in_____ S/s, _____ and for making available such Battery Energy Storage Capacity to TNPDCL.

I. TNPDCL has agreed to purchase such Battery Energy Storage Capacity from the BESSD as per the provisions of the RfS and as per the given provision of this Agreement.

J. In terms of the RfS and the Bidding Documents, the BESSD has furnished the Performance Bank Guarantee in the sum of Rs……..in favour of TNPDCL as per the format provided as a part of the Bidding Documents and a copy of the Bank Guarantee provided in Schedule –C to this Agreement.

K. BESSD has fulfilled the terms of the RfS Documents and the terms of the Letter of Award for signing this Battery Energy Storage Purchase Agreement as a definitive agreement for developing the "Project" (or "BESS") of……. MW/ MWh at _____ S/s, _____ for making available Battery Energy Storage Capacity by the BESSD to TNPDCL;

L. The parties have agreed to execute this Battery Energy Storage Purchase Agreement in terms of the provisions of the RfS, the bidding documents and the Letter of Award in regard to the terms and conditions for development of the Project at Tamil Nadu on "Build, Own Operate" basis and for making available such Battery Energy Storage Capacity by the BESSD to TNPDCL.

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

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

"Act" or "Electricity Act, 2003"	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
"Adjusted Equity"	shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the "Reference Date"), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date: a. On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date; b. An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "Base Adjusted Equity"); c. After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by X% (wherein X=100%/ (12 * Term of BESPA)) thereof at the commencement of each month following the COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date; For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the BESPA period is extended, but the revision on account of WPI shall continue to be made.

“Agreement” or "Battery Energy Storage Purchase Agreement" or “Storage Capacity Agreement” or “BESPA”	shall mean this Battery Energy Storage Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	Appropriate Commission shall mean Tamil Nadu Electricity Regulatory Commission;
“Annual Availability”	For a particular Contract Year, “Annual Availability” shall be the average availability of the Contracted BESS capacity during that particular Contract Year, calculated as per the Article-4.4.2 and Schedule-A;
“Battery Energy Storage Project” or “Project” or “BESS PROJECT”, “**Battery Energy Storage Systems” or “BESS”**	shall mean the system(s)/projects of ……..[Insert capacity] MW/ MWh, located at ..... [Insert name of the place] in …. [Insert name of the District and State] having a separate control system, metering and single point of injection into the grid at Delivery/Interconnection/Metering point at STU substation and utilizing methods and technologies such as electrochemical batteries (Lead Acid, Li-ion, solid state batteries, flow batteries etc.), providing a facility that can store energy and deliver the stored energy in the form of electricity. It also includes all units and auxiliaries, Battery Energy Management System including associated applications / software; bay/s for transmission system in the switchyard, dedicated transmission line up to the Delivery Point, if any, and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the Energy Storage; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of above mentioned Battery Energy Storage Capacity as per this Agreement;
“Business Day”	shall mean with respect to BESSD and TNPDCL, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Chennai (Tamil Nadu);
“CERC”	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;

"CTU" or "Central Transmission Utility"	shall mean the Government Company notified by the Central Government under Sub-Section (1) of Section 38 of the Electricity Act, 2003.
Charging Power	Shall mean the requirement of energy to charge the contracted capacity and additional energy considering minimum system efficiency as per clause 4.4.2 (C). Charging power shall be provided by TNPDCL under this agreement.
"Change in Law"	shall have the meaning ascribed thereto in Article 12 of this Agreement;
"Commissioning"	The Project will be considered as commissioned if all equipment as per rated Project Capacity has been installed, synchronized with Grid, demonstrated all required parameters as per procedure in Schedule D of this Agreement and certification of the same by TNGECL.
"Commercial Operation Date (COD)"	shall mean the date of next day on which the Project Capacity or the last part capacity of the Project (as the case may be) has achieved successful commissioning (as per provisions of this Agreement Documents).
"Competent Court of Law"	shall mean any court or tribunal or any similar judicial or quasi judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
"Consents, Clearances and Permits"	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up Project and providing energy storage facility under this Agreement;
"Consultation Period"	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a BESSD Preliminary Default Notice or TNPDCL Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

Contract Year	shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that: (i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement
"Contracted Capacity"	shall mean …… [Insert 100% of the Project Capacity] ……MW/ MWh, which is the Energy Storage Capacity contracted with TNPDCL for supply of discharge capacity contracted between the BESSD to TNPDCL at the Delivery Point from the Project.
"Controlling Shareholding"	shall mean more than 50% of the voting rights and paid-up share capital in the Company/ Consortium.
"Day"	shall mean a day, if not a Business Day, the immediately succeeding Business Day.

"Debt Due"	shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date: a. The principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the 'Principal') but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date. b. All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (a) above until the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due 2 (two) years prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Procurer Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by Lenders for financing the Total Project Cost. Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken. Provided further that the Debt Due, on or after COD, shall in no case exceed 70% (seventy percent) of the Total Project Cost.
"Delivery Point"	shall mean the interconnection point at the voltage level of [Insert Voltage level] of the [Insert name of the GSS] Grid Interconnecting Sub-station including the dedicated transmission line (if any) connecting the Project with the _____ KV substation system in Tamil Nadu. Metering shall be done at this interconnection point where the power is injected into / drawn. For interconnection with grid and metering, the BESSD shall abide by the relevant and applicable regulations, Grid Code notified by the CERC or (and) Central Electricity Authority (Installation and Operation of Meters) Regulations, 2014 as amended and revised from time to time, or orders passed there under by the appropriate commission or CEA.

“DISCOMs”	shall mean the TNPDCL who will sign the BESPA with BESSD for purchase of Battery Energy Storage Capacity;
“Dispute”	shall mean any dispute or difference of any kind between TNPDCL and the BESSD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
"Due Date"	shall mean the forty fifth (45th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hardcopy and duly acknowledged by the TNPDCL or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by TNPDCL.
“Effective Date”	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
“Electricity Laws”	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Accounts"	shall mean the state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof
“Event of Default”	shall mean the events as defined in Article 13 of this Agreement;
“Expiry Date”	Shall mean the date occurring as on Twelve (12) years from the date of full commissioning of the Project, as per terms & conditions of this Agreement;
“Financial Closure”	shall mean compliance with the requirements under Article 3.1 of this Agreement;
Financing Agreements”	shall mean the agreements pursuant to which the BESSD has sought financing for the Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of TNPDCL;
"Force Majeure" or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 11 of this Agreement;

“TNGECL”	“TNGECL” shall mean the Tamil Nadu Green Energy Corporation Limited formed as per G.O. Ms No.7 dt. dt.24.01.2024 and incorporated under the Companies Act 1956 for development of Renewable Energy in the State or its successor, if any, as decided by the State Government from time to time;
“TNERC”	shall mean the Tamil Nadu Electricity Regulatory Commission constituted under Section-82 of the Electricity Act, 2003 or its successors;
“Guidelines” or “Scheme”	shall mean the Guidelines for “Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services” issued by the Ministry of Power vide Gazette Resolution dated 10th March 2022, including subsequent amendments and clarifications, issued until the last date of bid submission of the referred RfS and Operational guidelines issued by MoP for implementation of State Component under the scheme of VGF for development of BESS ;
“TNPDCL”	shall mean Tamil Nadu Power Distribution Corporation Limited formed as per G.O. Ms No.6 dt. dt.24.01.2024
"Grid Code" / “IEGC” or “State Grid Code”	shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub section (1) of Section 86 of the Electricity Act 2003, as applicable;
“Indian Governmental Instrumentality”	shall mean the GoI, the Government of Tamil Nadu and their ministries, inspectorate, departments, agencies, bodies, authorities, legislative bodies.
“Insurances”	shall mean the insurance cover to be obtained and maintained by the BESSD in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on BESSD’s side of the Delivery Point for scheduling, transmitting and metering the electrical output and input in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;
“Invoice” or “Bill”	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;

“Joint Control”	shall mean a situation where none of the promoter shareholders has more than 50% shareholding in the paid-up share capital and voting rights in the BESSD, and the control is exercised jointly;
“Late Payment Surcharge”	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
“Letter of Credit” or “L/C”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“MNRE”	shall mean the Ministry of New and Renewable Energy, Government of India;
"Month"	shall mean a period of thirty (30)/ thirty-one (31) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
“Payment Security Mechanism”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“Performance Bank Guarantee” or “PBG”	shall mean the irrevocable unconditional bank guarantee, submitted by the BESSD to TNPDCL in the form attached hereto as Schedule-C;
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 13 of this Agreement;
“Project Capacity”	Shall mean [Insert the capacity] MW/ MWh [as per LOA] of BESS, which [Insert name of BESSD] is required to “Build Own Operate” and supply such Battery Energy Storage Capacity as per provisions of this Agreement read harmoniously with RfS Documents and LOA.

"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of Energy Storage System equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be installed / used for the Project Battery Energy Storage Project; b) the requirements of Indian Law; and the physical conditions at the site of the Project; c) Installation, Operation, Maintenance and Safety Guidelines / Rules / Regulations for BESS/ Projects / Power Projects issued by Indian Government Instrumentality;
"RBI"	shall mean the Reserve Bank of India;
"Rebate"	shall have the same meaning as ascribed thereto in Article 10.3.5 of this Agreement;
"RPC"	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Rupees", "Rs.", "₹"	shall mean Indian rupees, the lawful currency of India;
"Scheduled Commissioning Date" or "SCD" of the Project	shall mean .....[Insert Date]. in relation to the contracted capacity or the part of the contracted capacity shall mean the date(s) corresponding to the date of commencement of supply of quoted storage capacity in the RfS (Request for Selection) (i.e., not more than 18 months from the date of BESPA).
"SLDC"	shall mean the State Load Dispatch Center of the Tamil Nadu State established under Sub-section (1) of Section 31 of the Electricity Act 2003;
"SLDC Charges"	shall mean the charges levied by the SLDC;
"State Transmission Utility" or "STU" or "TANTRANSCO"	shall mean Tamil Nadu Transmission Corporation Limited notified by the Government of Tamil Nadu under Sub-section (1) of Section 39 of the Act including its successors;
"Tariff" or "Applicable Tariff"	Shall have the same meaning as provided for in Article 9 of this Agreement;

"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
"Unit/ Part Commissioning"	Subject to the compliance of conditions / procedure as detailed under Schedule-D of this Agreement, Unit / Part Commissioning shall mean the Energy Storage Power Capacity (AC MW/ AC MWh) to be commissioned as per provisions of this Agreement and schedule-E of this agreement and to be certified by TNERC. Subject to other applicable provisions, the minimum part commissioning capacity for the 1st part will be 50 MW / 100 MWh or 50% of the Project Capacity whichever is lower. The total number of instalments / phases / parts in which a Project can be commissioned will not be more than 3, i.e., 1st Part of min. 50 MW or 50% of the Project Capacity whichever is less and 2 subsequent parts.
"Unit Commercial Operation Date (UCOD)"	shall mean the date of the next day of commissioning of the respective part(s) of the Battery Energy Storage Project subsequent to the demonstration of the compliance of commissioning as per this Agreement and witnessed by the Committee (as applicable) duly constituted by TNGECL and also start of injection/ drawl and scheduling of power from the BESS at the Delivery Point and availability/ installation of all necessary arrangements/ equipment including RTU for scheduling of power charged and discharged from the Project and transmission of data to the concerned authority as per applicable regulation;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

1.2. Interpretation

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

1.2.1 “Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexure;

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

1.2.3 A “Crore” means a reference to ten million (10,000,000) and a “Lakh” means a reference to one tenth of a million (1,00,000);

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

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

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

1.2.7 "Rupee", "Rupees”, “Rs” or new rupee symbol “₹” shall denote Indian Rupees, the lawful currency of India;

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

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

1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;

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

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

1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty-five (365) days;

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

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

1.2.18 This Agreement and other documents such as Request for Selection Documents, Guidelines including subsequent clarifications, amendments and further clarifications in regard to the tender shall be read in conjunction with each other and interpreted in harmonious manner. However, in case of any mismatch/contradiction between provisions of different documents, following shall be the order of precedence:

1. Battery Energy Storage Purchase Agreement
2. RfS Document & Letter of Award
3. Lease Agreement

ARTICLE 2: TERMS OF AGREEMENT

2.1. Effective Date

2.1.1 This Agreement shall come into effect from the date of signing by both parties and such date shall be referred to as the Effective Date.

2.1.2 The Parties agree that decisions pertaining to adoption of the Tariff and approval of the same, for procurement of Contracted Capacity, shall be binding on all Parties concerned, as contained in the Electricity Act, 2003 and any amendments thereof.

2.2. Term of Agreement

2.2.1 Subject to Article 2.3 and 2.4 of this Agreement, this Agreement shall be valid for a term from the Effective Date until the Expiry Date.

2.3. Early Termination

2.3.1. This Agreement shall terminate before the Expiry Date if either TNPDCL or BESSD terminates the Agreement, pursuant to Article 13 of this Agreement.

2.4. Survival

2.4.1. The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 16 (Governing Law and Dispute Resolution), Article 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

ARTICLE 3: CONDITIONS SUBSEQUENT

3.1. Satisfaction of conditions subsequent by the BESSD

The BESSD agrees and undertakes to duly perform and complete all of the following activities at its own cost and risk unless such completion is affected by any Force Majeure event, or for the activities specifically waived off in writing by TNPDCL:

3.1.1 BESSD shall sign Right-to-Use/ Right of Use (ROU) Agreement with TANTRANSCO in addition to signing of BESPA with TNPDCL. The land area will be given to the BESSD by TANTRANSCO for Right of Use (ROU) within 60 days from the signing of the BESPA as per provisions of RfS.

3.1.2 BESSD at its own cost and risk by.....[Enter the date as on Six (6) Months after the Effective Date] shall make Project financing arrangements (i.e. *arrangement of necessary funds by the Battery Storage System Developer towards 100 % project cost either by way of commitment of funds by the Company from its internal resources (by a resolution passed by the Board of Directors) and/or tie up of funds through a bank/financial institution by way of sanction of a loan or firm commitment letter agreeing to finance*) for Projects(s) and shall provide necessary certificates to TNPDCL in this regard;

3.1.3 Detailed Project Report (DPR) of the Project, detailing out project configuration and proposed commissioning schedule of the Project.

3.1.4 The BESSD shall also submit to TNGECL the relevant documents as stated above, complying with the Conditions Subsequent, within Six (6) months from the Effective Date.

3.1.5 The BESSD will have to submit the required documents to TNGECL at least 14 days prior to the scheduled Financial Closure date. In case of delay in submission of documents mentioned above, TNGECL shall not be liable for delay in verification of documents and subsequent delay in Financial Closure.

3.2. Consequences of non-fulfilment of conditions subsequent and financial closure

3.2.1. In case of a failure to submit the documents as above, TNPDCL on direction from TNGECL may encash the Performance Bank Guarantee submitted by the BESSD, terminate this Agreement and remove the Project by giving a notice to the BESSD in writing of atleast thirty (30) days, unless the delay BESSD is on account of delay in allotment of Land not owing to any action or inaction on the part of the BESSD or caused due to a Force Majeure. Unless extended as per provisions of Article 3.2.2 (i) of this

Agreement in writing, the termination of the Agreement shall take effect upon the expiry of the 30th day of the above notice.

3.2.2. (i) An extension, without any impact on the Scheduled Commissioning Date, can however be considered, on the sole request of BESSD, on payment of Rs.1000/- per day per MW to TNPDCL. Such extension charges are required to be paid to TNPDCL in advance, for the period of extension required. In case of any delay in depositing this extension charge, BESSD shall pay an interest on this extension charge for the days lapsed beyond due date of Financial Closure @ SBI-MCLR (1Year). In case such delay in making payment of the extension charges to TNPDCL is more than 30 days, the termination of the Agreement shall take effect pursuant to issuance of termination notice of 30 days which may be issued by TNPDCL. In case of the BESSD meeting the requirements of conditions subsequent and financial closure before the last date of such proposed delay period, the excess amount deposited by the BESSD shall be returned by TNPDCL without interest. This extension will not have any impact on the Scheduled Commissioning Date. Any extension charges paid so by the BESSD, shall be returned to the BESSD without any interest on achievement of successful commissioning within the Scheduled Commissioning Date, on pro-rata basis, based on the project capacity commissioned as on Scheduled Commissioning Date. However, in case the BESSD fails to commission the Contract Capacity by Scheduled Commissioning Date, the extension charges deposited by the BESSD shall not be refunded by TNPDCL. This shall be without prejudice to the further right of TNPDCL to claim liquidated damages for the delay in achieving the Commissioning of the project.

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

3.2.4. In case of inability of the BESSD to fulfill the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent and Financial Closure as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.

3.2.5. Provided that due to the provisions of this Article 3.2.1, any increase in the time period for completion of conditions subsequent and financial closure mentioned under Article 3.1, shall not lead to an equal extension in the Scheduled Commissioning Date.

3.3. Performance Bank Guarantee

3.3.1. The Performance Bank Guarantee (PBG) having validity from the date of submission of PBG until 10 months after the SCD (with additional claim period as per RBI norms)

submitted for a value of Rs. ____ **(equivalent to 40% of the annual payment due to the developer on MW/Project basis**) to be furnished under this Agreement shall be for guaranteeing the commencement of the supply (injection / drawl) of power / energy up to the Project Capacity within the time specified in this Agreement as per Schedule-C.

3.3.2. The failure on the part of the BESSD to furnish and maintain the Performance Bank Guarantee shall be a material breach of the term of this Agreement on the part of the BESSD.

3.3.3. If the BESSD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement or any further extension thereof granted by TNPDCL, subject to conditions mentioned in Article 4.5, TNPDCL shall encash the Performance Bank Guarantee equivalent to the amount calculated as per liquidated damages applicable under Article 4.6 as on the date of encashment without prejudice to the other rights of TNPDCL under this Agreement.

3.3.4. BESSD acknowledges and accepts that the amount of the Performance Bank Guarantee and the methodology specified herein above for calculation of the compensation payable for nonfulfillment of conditions subsequent within the stipulated time as well as non commencement of supply within the stipulated time is a genuine and accurate pre-estimation of the actual loss that will be suffered by TNPDCL. BESSD further acknowledges and accepts that a breach of any of the obligations contained herein result in injuries and that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this document is a genuine and reasonable pre estimate of the damages that may be suffered by TNPDCL in each case specified under this Agreement.

3.4. Return of Performance Bank Guarantee

3.4.1. Subject to Article 3.3, TNPDCL shall return / release the Performance Bank Guarantee within 9 months from successful commissioning of the Project, after taking into account any liquidated damages/ penalties due to delays in commissioning as per provisions stipulated in this agreement.

3.4.2. The return / release of the Performance Bank Guarantee shall be without prejudice to other rights of TNPDCL under this Agreement.

ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1. BESSD's Obligations

4.1.1 **The BESSD undertakes to be responsible, at BESSD's own cost and risk, for the following:**

a) The BESSD shall be solely responsible and make arrangements for associated infrastructure for development of the Project and for Connectivity with the STU till Delivery Point for confirming the evacuation of power by the Scheduled Commissioning date and all clearances related thereto. However, it is clarified that the Project shall be interconnected to the ____ substation in Tamil Nadu. Connectivity has been assured to be provided to the BESSD, and necessary applications in this regard, will be required to be made by the BESSD. All the requisite costs associated with such as bay cost and other related infrastructure cost and including fees for obtaining connectivity shall be borne by the BESSD.

b) Obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. Except for the Earmarked Land and Connectivity for the Project, TNPDCL shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the Project. The BESSD shall, on his own, obtain permissions/ sanctions from Government authorities, if any required for establishing and operating (including for Charging and Discharging from BESS) the project. Any steps that may be taken by TNPDCL in regard to grant of such consents and permits or any other approval to be taken by the BESSD shall only be a voluntary endeavour with no intention of being bound by any legal or binding obligation.

c) Designing, constructing, erecting, commissioning, completing and testing the Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.

d) The commencement of charging & discharging of power / energy up to the Contracted Capacity to TNPDCL no later than the Scheduled Commissioning Date and continuance of the charging & discharging of power throughout the term of the Agreement;

e) Connecting the Project switchyard with the Interconnection Facilities at the Delivery Point; The BESSD shall make adequate arrangements to connect the Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point.

f) Owning the Project throughout the Term of Agreement free and clear of encumbrances,

except those expressly permitted under Article 15.

g) Maintaining its shareholding pattern as per Schedule-F in the agreement.

h) Fulfilling all other obligations required to be undertaken by the BESSD under this Agreement for development of Project on "Build, Own, Operate" basis and supply of BESS Capacity during Term of this Agreement and as per provisions of this Agreement, RfS and LOA.

i) The BESSD shall be responsible for directly coordinating and dealing with the TNPDCL, Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Stored Energy Capacity and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the BESSD and TNPDCL are the Grid connected entities in respect of the Battery Energy Storage Capacity contracted under this Agreement.

j) The BESSD shall fulfill the technical requirements according to criteria mentioned under Schedule-E for Technical requirement for Project under the Guidelines.

k) Further, the Project being implemented under this Agreement shall fulfill the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof,

l) As part of scheduling of power / energy from / to the Project for discharging / charging, the BESSD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interface of SLDC for the corridor of power flow, as per the Regulations in force, under intimation to TNPDCL and in consultation with TNPDCL. TNPDCL may facilitate in identification of any discrepancy and assist the BESSD for its early rectification without any liability on TNPDCL. The BESSD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices/penalty.

m) After signing of BESPA, the BESSD shall apply for drawl NOC(s) from the STU as per the power mapping provided by TNPDCL.

n) The BESSD shall obtain financial closure within 6 (Six) months period and satisfy all conditions mentioned in Article 3.1.

o) BESSD shall be liable to make available on first priority to TNPDCL, all available capacity from the Project namely and there shall be no commitment entered into by the BESSD affecting the said rights of TNPDCL.

p) BESSD will have to comply with the Charging and Discharging Schedule as intimated by SLDC/TANTRANSCO/TNPDCL. Frequent deviations from schedule by BESSD on account of commercial gain shall be considered under the material breach of this

agreement.

q) After completion of BESPA tenure of 12 Years or early termination or any other reason specified in this agreement, BESSD shall clear the land provided by the TANTRANSCO on lease basis and all the infrastructure developed by BESSD needs to be cleared at the time of handing over the land to TANTRANSCO and that expenses shall be borne by BESSD as per Clause 6.4 of RfS.

4.2. Information regarding Interconnection Facilities

4.2.1. The BESSD shall be required to obtain all information from the STU/ TANTRANSCO /concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection facilities on the BESSD's side of the Delivery Point to enable injection / drawl of electricity at the Delivery Point. The transmission of power / energy to / from up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the BESSD at its own cost.

4.2.2. Penalties, fines and charges imposed by the TNPDCL under any statute or regulation in relation to delay in commissioning of Project shall be under the Scope of BESSD and there shall be no recourse to TNPDCL in this regard. In case, there is any liability on TNPDCL under the extant Regulations for any delay in commissioning of BESSD, TNPDCL shall be reimbursed for the same from BESSD and TNPDCL shall be entitled to encash the Bank Guarantees available with it or adjust against the payments due to BESSD for recovery of such amounts.

4.2.3. The responsibility of getting connectivity with the transmission system up to the Interconnection Point will lie with the BESSD. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the BESSD at his own cost. The maintenance of Transmission system up to the designated point as per the applicable terms and conditions shall be the responsibility of the BESSD. All costs, charges and losses up to and including at the Interconnection Point associated with this arrangement will also be borne by the BESSD.

4.2.4. Not Used.

4.2.5. The arrangement of connectivity shall be made by the BESSD through a dedicated transmission line, if applicable. The entire cost of transmission including cost of construction offline, any other charges, losses etc. from the Project up to the Interconnection Point will be borne by the BESSD.

4.2.6. Treatment of STU Charges & losses shall be as per the extent regulation / orders / guidelines.

4.2.7. Following studies may be conducted (not limited to below) by BESS Developer(s) in this regard as per requirements of STU:

i. Harmonic studies considering network and BESS system along with flicker studies

ii. Transient and dynamic studies

iii. Small signal stability studies

iv. Sub-Synchronous Oscillations/ Sub-Synchronous Resonance / Sub Synchronous Torsional Interaction studies

v. Sub-synchronous control interactions studies between different converter-based equipment.

vi. Any other studies stipulated by STU.

1. In addition, BESS system shall comply to requirements/performance parameters stipulated in Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 and its amendments.

2. Communication Equipment Requirement at BESS end shall be as per stipulations of STU:

BESSD will provide UGFO/Approach cable (having minimum 12 Fibers) from BESS end to the ……control room.

BESSD will provide FOTE (STM-16) terminal equipment, FODP and PMU at the BESS end.

3. Communication Equipment Requirement at STU end shall be as per stipulations of STU:

At STU station (bays are provided by STU): BESS Developer to provide suitable optical interface at STU Substation FOTE for integration.

4.3. Purchase and sale of Contracted Capacity

4.3.1. Subject to the terms and conditions of this Agreement, the BESSD undertakes to sell to TNPDCL and TNPDCL undertakes to pay Applicable Tariff in Rupees on per MW per Month basis, as per this Agreement for the Battery Energy Storage Capacity up to the Contracted Capacity at the Delivery Point.

4.4. Right to Project / Contracted Capacity

4.4.1. TNPDCL, in any Contract Year, shall not be obliged to off-take any capacity beyond / over and above Contracted Capacity.

Moreover, during a day in any Contract year, BESSD shall not be asked as well as BESSD shall not be allowed to schedule for more than **2 Cycles / day**. For the purpose of this Agreement, Cycle shall mean charging of the BESS upto the Contracted capacity followed

by discharge of such stored energy including any intervening recovery time as specified in Schedule-A of this Document. The BESSD shall not use the Contracted Capacity for any purpose other than that specified in this Agreement.

4.4.2. **Performance Parameters**

Subsequent to commissioning of the Project, for any Contract Year, the BESSD shall be required to maintain and demonstrate the following performance parameters:

a) **Minimum Annual Average Availability of 95%:** During any Contract Year for the Contracted Capacity, BESSD shall be required to maintain minimum annual average availability of 95%.

The Monthly Average Availability shall be calculated for each month. On the basis of monthly average Availability, Annual Average Availability will be calculated. However, if for any month the average availability is greater than 95%, it shall be restricted to 95%. The illustration is provided as under:

Illustration:

Month	Monthly Average Availability	Annual Average Availability = {Σ (Monthly Average Availability)}/ 12
1	95%	
2	95%	
3	93%	
4	97%	
5	93%	
6	98%	
7	95%	
8	92%	
9	96%	
10	95%	
11	91%	= (95%+95%+93%+95%+93%+95%+95%+92%+
12	90%	95%+95%+91%+90%)/12

Liquidated Damages

If Annual Average Availability is found lesser than the minimum requirement, then the liquidated damages shall be applicable at twice the capacity charges. Annual Average Availability shall be calculated as per methodology given in Schedule-A.

In case of shortfall in meeting the above criteria, the BESSD shall be levied liquidated damages for such shortfall and shall duly pay such damages to TNPDCL. Amount of such liquidated damages shall be twice the Capacity Charges (Capacity Charges shall mean Applicable Tariff as defined under Article 9 of the BESPA) for the capacity not made available. The Liquidated damages for shortfall of Annual Average Availability shall be applicable at the end of each Year and shall be deducted from the invoices raised by the

BESSD.

The Minimum Annual Average Availability as specified above, shall however be relaxable by TNPDCL to the extent of grid non-availability for evacuation which is beyond the control of the BESSD (as certified by the SLDC) and / or upon occurrence of Force Majeure event as identified in BESPA (and occurrence of such Force Majeure event(s) has been mutually agreed) and affecting availability and supply of Contracted Capacity.

b) **Round Trip Efficiency**: The BESSD shall maintain AC to AC roundtrip efficiency (RtE) of 85% for the system on a monthly basis. Calculation of Round-Trip Efficiency shall be as per the methodology specified in Schedule-A.

Liquidated Damages

The BESSD shall be liable for liquidated damages, if any, as per following criteria:

i. For 70% ≤ RtE < 85% there shall be a liquidated damage levied @ Rs. APPC charge of previous financial year of TNPDCL of excess conversion losses considering system RtE = 85%
ii. For RtE <70%, there shall be a liquidated damage levied @ APPC charge of previous financial year of the Discoms of excess conversion losses considering system RtE = 85%, and tariff payment for the corresponding month shall not be made to the BESSD.
iii. For RtE > 85%, there shall be incentive @ Rs.0.50 per unit of excess discharge of energy considering system RtE = 85%

c) **Minimum Dispatchable Capacity:** Taking into consideration capacity degradation, the minimum dispatchable capacity to be made available by the BESSD at the end of a given year shall be as follows:

Year	**Min. Dispatchable Capacity at the end of Year** ***(as % of Capacity at the Beginning of Life/COD)***
1	97.5%
2	95.0%
3	92.5%
4	90.0%
5	87.5%
6	85.0%
7	82.5%
8	80.0%
9	77.5%
10	75.0%

11	72.5%
12	70.0%

d) Performance criteria to be demonstrated by the Project have been detailed out in Schedule-A of this Agreement.

4.4.3. **Shortfall in meeting Performance Criteria**

Following provisions shall be applicable on the Contracted Capacity guaranteed to be off taken by TNPDCL:

- Subsequent to COD of full Project Capacity, in case the Annual Availability demonstrated by the BESSD is less than the minimum as specified above, such shortfall in performance shall make the BESSD liable to pay the liquidated damages provided in the BESPA to TNPDCL.

- Liquidated damages on account of shortfall in meeting the minimum Availability criteria as per Article 4.4.2 (a) will be computed as follows:

  Liquidated damages = (A – B) x C x D x n x 2

  where,

  A is Guaranteed Annual Availability as per Article 4.4.2 (a) above;

  B is Actual Annual System Availability, as calculated as per Schedule-A of this Agreement;

  C is Contracted Capacity;

  D is Tariff / Capacity Charges/MW/month as discovered through bidding process;

  n is the no. of months.

- The liquidity damages for each non-compliance of Annual Average Availability shall be calculated at the end of each year and L.D shall be deducted from monthly invoice.

- In case the BESSD fails to meet the monthly RtE demonstration as per Article 4.4.2 (b), additional Liquidated Damages for the unavailability of the required minimum RtE shall be applicable for the entire month.

- The liquidity damages for each non-compliance of monthly RtE shall be deducted from each monthly invoice.

For avoidance of any doubt, liquidated damages as specified above are mutually exclusive and independent, therefore, in case of levying of liquidated damages against Annual Average Availability and Round-Trip Efficiency, both damages shall be payable by the BESSD. Illustrations regarding calculation of liquidated damages are provided at Schedule-

A of this Agreement.

4.5. Extensions of Time

4.5.1. In the event that the BESSD is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

a) any TNPDCL Event of Default; or

b) Force Majeure Events affecting TNPDCL or

c) Force Majeure Events affecting the BESSD,

the Scheduled Commissioning Date and the Expiry Date shall be deferred for a reasonable period but not less than 'day for day' basis, to permit the BESSD or TNPDCL through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the BESSD or TNPDCL, or till such time such Event of Default is rectified by TNPDCL.

4.5.2. In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of 180 days (or any mutually agreed extended period) from the date of the Force Majeure, any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.10.

4.5.3. If the Parties have not agreed within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Article 16.

4.5.4. As a result of such extension on account of Article 4.5.1, the newly determined Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.

4.5.5. Delay in commissioning of the project beyond the scheduled commissioning date for reasons other than those specified in Article 4.5.1 shall be an event of default on part of the BESSD and shall be subject to the consequences specified in the Article 4.6.

4.6. Liquidated Damages not amounting to penalty for delay in Commissioning

4.6.1. The Project shall be fully commissioned within the Scheduled Commissioning Date as defined in this Agreement. If the BESSD is unable to commission the Project by the Scheduled Commissioning Date for the reasons other than those specified in Article 4.5.1, the BESSD shall pay to TNPDCL, damages for the delay in such commissioning and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:

(a) Delay beyond the Scheduled Commissioning Date upto (& including) the date of commissioning, as part of the liquidated damages, the total PBG amount for the Project shall be encashed on per-day basis and proportionate to the balance capacity not commissioned. For the purpose of calculations of the liquidated damages, 'month' shall be considered consisting of 30 days. As an alternative to the above encashment of PBG, the BESSD may choose to make a payment of the amount corresponding to the liquidated damages, directly to TNPDCL or by way of deduction from the monthly payments. The BESSD shall intimate to TNPDCL, its chosen alternative out of the two options, within 10 business days of intimation of the liquidated damages to the BESSD, as calculated by TNPDCL. In case no response is received from the BESSD until the lapse of the above deadline, TNPDCL shall encash the PBG for the amount as per the liquidated damages. In case the Developer chooses to make necessary payments in lieu of the liquidated damages, the said payment shall be credited to TNPDCL's account through NEFT/RTGS payment, no later than 5 business days from the above intimation by the BESSD. In case of non-payment by the developer within the above deadline, the PBG will be encashed by TNPDCL on the next business days.

(b) Delay beyond Nine (9) Months from SCD: The BESPA capacity shall stand reduced/amended to the Project Capacity commissioned, the entire PBG will be encashed by TNPDCL, and the BESPA for the Project shall stand terminated for the balance un-commissioned capacity.

(c) For avoidance of doubt it is clarified that provisions of Article 4.6.1 will be applicable even in cases where no capacity (**i.e., 0 MW**) is commissioned.

4.6.2. The BESSD further acknowledges and accepts that the amount of the liquidated damages as specified above is a fixed, genuine and reasonable pre-estimate of the damages that may be suffered by TNPDCL.

4.7. Acceptance/Performance Test

4.7.1. Prior to synchronization of the Project, the BESSD shall be required to get the Project certified for the requisite test including for safety as may be laid down by Central Electricity Authority or an agency identified by the central government to carry out testing and certification for the Battery Energy Storage projects. Further, BESSD shall ensure that all technical, acceptance and performance criteria as specified in schedule - E, Documents and Guidelines are also complied and maintained.

4.8. Third Party Verification

4.8.1. The BESSD shall be further required to provide entry to the site of the Project free of all encumbrances at all times during the Term of the Agreement to TNPDCL (or its authorized representatives) and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the BESSD at the site of the Project. The BESSD shall provide full support to TNPDCL and/or the third party in this regard.

4.8.2. The third party may verify the construction works/operation of the Project being carried out by the BESSD and if it is found that the construction works/operation of the Project is not as per the Prudent Utility Practices, it may seek clarifications from BESSD or require the works to be stopped or to comply with the instructions of such third party.

4.9. Breach of Obligations

4.9.1. The Parties herein agree that during the subsistence of this Agreement, the BESSD would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity which is the subject matter of this Agreement including in case of any dispute between the parties pending the orders of the adjudication authority under the Dispute Resolution Provisions. It is the specific understanding between the Parties that such bar will apply throughout the entire term of this Agreement.

ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

5.1. Synchronization, Commissioning and Commercial Operation

5.1.1. The BESSD shall give the concerned SLDC/TANTRANSCO, TNGECL and TNPDCL at least sixty (60) days' advanced preliminary written notice and at least thirty (30) days' advanced final written notice, of the date on which it intends to synchronize the Project to the Grid System.

5.1.2. Subject to Article 5.1.1, the Project may be synchronized by the BESSD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.

5.1.3. The synchronization equipment and all necessary arrangements / equipment including RTU / any other equipment for charge and discharge of power from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the BESSD at its facility of the Project at its own cost. The BESSD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/Grid System and checking/verification is made by the concerned authorities of the Grid System.

5.1.4. The BESSD shall immediately after each synchronization/tripping of system, inform the sub-station of the Grid System to which the Project is electrically connected in accordance with applicable Grid Code under intimation to TNPDCL. In addition, the BESSD at its own risk and cost, will be required to arrange for the charging and discharging of power for carrying to carry out operational/ functional test prior to commercial operation as well as for commissioning of the Project. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.

5.1.5. The BESSD shall commission the Project as detailed in "**Schedule-D: Commissioning Procedure**" within eighteen (18) Months of the Effective Date of BESPA. Declaration of COD / UCOD shall only be done by TNPDCL subject to the demonstration of the compliances as per Schedule-D.

5.1.6. **Part commissioning of the Project**

Part commissioning of the Project, without prejudice to the imposition of liquidated damages in terms of the BESPA, on part, which is not commissioned, shall be accepted by TNGECL/TNPDCL subject to the condition that minimum part commissioning capacity for the 1st part will be 50% of the project capacity or 50 MW whichever is lower. The total

number of installments in which a Project can be commissioned will be not more than 3, i.e., 1st initial installment of 50 MW or 50% of the project capacity as the case may be.

However, the SCD will not get altered due to part commissioning. Irrespective of dates of part commissioning or full commissioning, the BESPA will remain in force for a period as per Clause 22.3 of the RfS.

5.1.7. The Parties agree that for the purpose of commencement of the BESS capacity by the BESSD to TNPDCL, liquidated damages for delay etc., the Scheduled Commissioning Date (or extended Scheduled Commissioning Date) as defined in this Agreement shall be the relevant date.

5.1.8. **Early Commissioning**

The BESSD shall be permitted for full commissioning as well as part commissioning of the Project even prior to the Scheduled Commissioning Date. Early commissioning of the Project will be allowed solely at the risk and cost of the BESSD, and TNPDCL may purchase the BESS capacity from such early commissioned Project at BESPA tariff.

Such intimation for early commissioning shall be provided to TNPDCL at least 15 days before the proposed early commissioning date as per the Commissioning Procedure. In case there is no response provided by TNPDCL within 7 days from the receipt of such intimation, such early commissioned capacity shall be deemed to have been rejected by TNPDCL.

In case TNPDCL does not agree to purchase such capacity, early commissioning of the Project shall still be allowed and the BESSD will be free to sell such capacity to a third party at its own risk and cost; until SCD or the date of commencement of procurement of BESS Capacity notified by TNPDCL, whichever is earlier. In such cases, a Provisional Commissioning Certificate will be issued to BESSD for period up to SCD or date of commencement of Storage Capacity Procurement (whichever is earlier). UCOD/COD of the Project under the BESPA will be the date on which the commissioning certificate is issued upon successful commissioning of the full capacity of the Project. Subject to the provisions of this Agreement, in case of early commissioning, the BESSD will have to again demonstrate 100% of Contracted Capacity (as per the Commissioning Procedure) to the Procurer from the date of commencement of off-take of capacity by the Procurer.

ARTICLE 6: DISPATCH AND SCHEDULING

6.1. Dispatch and Scheduling

6.1.1. The BESSD, in consultation with TNPDCL, shall be required to charge/ discharge the Battery System as per the applicable regulations / requirements / guidelines of CERC/ TNERC/ SLDC/ NLDC/ SRLDC or any other competent agency and same being recognized by the SLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the BESSD.

6.1.2. The BESSD shall be responsible for directly coordinating and dealing with TNPDCL, SLDCs, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of charging and discharging power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the BESSD and TNPDCL are the Grid connected entities.

6.1.3. DSM charges, if any, shall be levied separately on the BESSD as applicable, for the charging and discharging activities. DSM / UI charges on this account shall be directly paid by the BESSD as applicable. Reactive power charges shall be on account of the BESSD during charging and discharging, as per CERC/TNERC regulations.

6.1.4. The BESSD shall take separate, metered connection for the Auxiliary Power load of BESS. Cost of Auxiliary power shall be borne by the BESSD as per the TNERC regulations.

ARTICLE 7: METERING

7.1. Meters

7.1.1. For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the BESSD shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2014, the Grid Code, as amended and revised from time to time.

7.1.2. The BESSD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at BESSD side of Delivery Point for injection and drawl of power from the Grid during discharging and charging of BESS.

7.1.3. A set of Main Meter and Check Meter shall be required to be installed at TANTRANSCO s/s side and a Back-Up Meter shall be required to be installed at generation side.

7.2. Reporting of Metered Data and Parameters

7.2.1. Online arrangement would have to be made by the BESSD for submission of metering data regularly for the entire period of this Agreement to the SLDC, TANTRANSCO, TNPDCL and the concerned Ministry or concerned agency as per applicable regulation / directions.

7.2.2. Reports on metering parameters on monthly basis, and/or as required by regulation /Guidelines, shall be submitted by the BESSD to TNPDCL / TANTRANSCO / SLDC for entire Term of the BESPA.

7.3. Sealing and Maintenance of Meters

i. The Main Metering System, the Backup Metering System and all the ABT Compliant Meters shall be sealed in the presence of representatives of BESSD and TANTRANSCO.

ii. When the Main Metering System and / or Backup Metering System and / or any component thereof is found to be outside the acceptable limits of accuracy or otherwise not functioning properly, it shall be repaired, re-calibrated or replaced by the BESSD and / or TANTRANSCO at BESSD's cost, as soon as possible.

iii. Any meter seal(s) shall be broken only by TANTRANSCO representative in the presence of BESSD representative whenever the Main Metering System or the Backup Metering System is to be inspected, tested, adjusted, repaired or replaced.

iv. All the Main and Check Meters shall be calibrated at least once in a period of three years.

v. In case, both the Main Meter and Check Meter are found to be beyond permissible limit of

error, both the meters shall be calibrated immediately and the correction applicable to main meter shall be applied to the energy registered by the Main Meter at the correct energy for the purpose of energy accounting / billing for the actual period during which inaccurate measurements were made, if such period can be determined or, if not readily determinable, shall be the shorter of:

a. the period since immediately preceding test of the relevant Main meter, or

b. one hundred and eighty (180) days immediately preceding the test at which the relevant Main Meter was determined to be defective or inaccurate.

7.4. Records

Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this agreement and the operation of the Project. Among such other records and data, the BESSD shall maintain an accurate and up-to-date operating log at the Power Plant with records of:

a) Fifteen (15) minutes logs of real and reactive power generation, frequency, transformer tap position, bus voltage(s), Main Meter and Back up Meter Readings and any other data mutually agreed;

b) any unusual conditions found during operation / inspections;

c) chart and printout of event loggers, if any, for system disturbances/ outages;

d) All the records will be preserved for a period of 36 months.

ARTICLE 8: INSURANCES

8.1. Insurance

8.1.1. The BESSD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of BESPA, Insurances against such risks to keep the Project in good condition and shall take Industrial All Risk insurance policy covering risks against any loss or damage, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements, and under the applicable laws.

8.1.2. The BESSD shall submit the Insurance copy to Procurer, at the time of commissioning of project.

8.2. Application of Insurance Proceeds

8.2.1. In case of the Project not being implemented through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the BESS or any part of the BESS shall be first applied to reinstatement, replacement or renewal of such loss or damage to the Contracted Capacity followed by outstanding claims of TNPDCL against BESSD, if any.

In case of the Project being financed through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Project to any part of the BESS shall be applied as per such Financing Agreements.

8.2.2. If a Force Majeure Event renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, TNPDCL shall have claim on such proceeds of such Insurance limited to outstanding dues of TNPDCL against BESSD.

8.3. Effect on liability of TNPDCL

8.3.1. Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the BESSD can claim compensation, under any Insurance shall not be charged to or payable by Procurer. It is for the BESSD to ensure that appropriate insurance coverage is taken for payment by the insurer for the entire loss and there is no under insurance or short adjustment etc.

ARTICLE 9: APPLICABLE TARIFF

9.1. The BESSD shall be entitled to receive the Tariff of INR /MW/Month [Insert the Tariff discovered through the bidding process conducted by TNGECL], fixed for the entire term of this Agreement, with effect from commissioning of Project thereof (as certified by TNGECL Representatives/ Agency authorized by TNPDCL)/ from the SCD, the Contracted Capacity made available to the TNPDCL during BESPA Period, as per the provisions of this agreement & as certified by Tamil Nadu SLDC.

9.2. For each kVArh drawn from the grid, the BESSD shall pay at the rate determined by TNERC to TNPDCL from time to time.

9.3. GST levied on the energy storage service being provided by the Project, if any (as and when notified by GoI), shall be passed through to the TNPDCL as per RfS provision.

ARTICLE 10: BILLING AND PAYMENT

10.1. General

10.1.1. From the commencement of availability of BESS Capacity, TNPDCL shall pay to the BESSD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with Article 9. All capacity charge Payments by TNPDCL shall be in Indian Rupees.

10.1.2. Subject to the provision of this Agreement, BESSD shall be required to make arrangement of auxiliary power at its own risk and cost.

10.2. Delivery and Content of Monthly Bills/Supplementary Bills

10.2.1. The BESSD shall issue to TNPDCL hard copy of a signed Monthly Bill/Supplementary Bill for the immediately preceding Month/relevant period, including the time-block-wise data in the tabular format as per Illustration in Schedule-A, along with all relevant documents. The BESSD shall also submit calculations of System Availability and Round-trip Efficiency in line with provisions of this Agreement, as part of the Monthly Bill/Supplementary Bill.

10.2.2. As per applicable regulation(s) of the Appropriate Commission(s), charges pertaining to scheduling of power beyond delivery point, if any, shall be borne by TNPDCL.

10.3. Payment of Monthly Bills

10.3.1. Subject to the provisions of Article 10.3.4, TNPDCL shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to the Escrow Account as per the terms of this BESPA. TNPDCL and the BESSD shall instruct their respective bankers to make all payments under this Agreement to the Escrow Account only, and shall notify either Party of such instructions on the same day.

10.3.2. All payments required to be made under this Agreement shall also include any deduction or set off for:

i. deductions required by the Law; and

ii. amount claimed by TNPDCL, if any, from the BESSD, will be adjusted from the monthly energy payment.

10.3.3. **Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by TNPDCL beyond Due Date, a Late Payment Surcharge shall be payable on the payment outstanding after the Due Date, at the Base rate of Late Payment Surcharge applicable for the period for the first month of default.

"Base rate of Late Payment Surcharge" means the marginal cost of funds-based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent.

Late Payment Surcharge shall be payable on the payment outstanding after the Due Date at the base rate of Late Payment Surcharge applicable for the period for the first month of default. The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time. The Late Payment Surcharge shall be claimed by the BESSD through the Supplementary Bill.

Late Payment Surcharge shall be payable in accordance with Electricity (Late Payment Surcharge) Rules, 2022 and as amended from time to time.

10.3.4. Subject to the Article 9 of this Agreement, in the event of early Commissioning of the Project and subject to acceptance by TNPDCL, the payment for the Capacity charges may be accounted from the date of UCOD, and BESSD would be allowed to raise Bills against such capacity as per Article 10.2.1, subject to the conditions as stipulated in Article 9. However, payment against the 1st such bill raised by the BESSD, will be made subject to acceptance of the bill by the TNPDCL.

10.3.5. **Rebate**

For payment of Monthly Bill by TNPDCL, if paid before Due Date of Payment, a Rebate shall be deducted by TNPDCL at the rate of two (2) percent in excess of the applicable SBI 1-year Marginal Cost of Funds Based Lending Rate (MCLR) per annum / any replacement thereof by SBI, on the amount paid before due date, calculated on a week or part thereof basis viz.

= "(SBI MCLR rate + 2%) / 52" per week or part thereof.

10.4. Payment Security Mechanism

The Payment Security shall be provided in the following form:

i. Revolving Letter of Credit (LC) equivalent to one month of average billing.

ii. Payment Security Funds equivalent to two months billing of all the projects shall be provided by TNPDCL in the Escrow Account.

Letter of Credit (LC):

10.4.1. TNPDCL shall provide to the BESSD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the BESSD in accordance with this Article.

10.4.2. Before the start of supply of storage capacity, TNPDCL shall, through a scheduled bank, open a Letter of Credit in favour of the BESSD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

i. for the first Contract Year, equal to 100% of the estimated average monthly billing;

ii. for each subsequent Contract Year, equal to 100% of the average of the monthly billing of the previous Contract Year.

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

10.4.4. Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, TNPDCL shall restore such shortfall before next drawl.

10.4.5. TNPDCL shall cause the scheduled bank issuing the Letter of Credit to intimate the BESSD, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6. TNPDCL shall ensure that the Letter of Credit shall be renewed not later than its expiry.

10.4.7. All costs relating to opening, maintenance of the Letter of Credit shall be borne by BESSD.

10.4.8. If TNPDCL fails to pay undisputed Monthly Bill or Supplementary Bill or a part there of within and including the Due Date, then, subject to Article 10.4.6 & 10.5.1, the BESSD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

i. a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to BESSD and;

ii. a certificate from the BESSD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

In case of wrongful drawal of the Letter of Credit, the BESSD would be liable to further interest equivalent to late payment surcharge considered from the date of drawal of letter of credit.

10.5. Disputed Bill

10.5.1. If TNPDCL disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 50% of the invoice amount provided either party shall have the right to approach the TNERC to affect a higher or lesser payment on the disputed amount. TNPDCL shall within forty-five (45) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

i. the details of the disputed amount;
ii. its estimate of what the correct amount should be; and
iii. all written material in support of its claim.

It is clarified that the non issuance of a Bill Dispute Notice or payment of the Bill Amount would not foreclose TNPDCL's rights and interests in regard to the Bills or any claims and TNPDCL may also raise a Dispute at a later stage and take appropriate steps.

10.5.2. If the BESSD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.1 the BESSD shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

10.5.3. If the BESSD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.1, it shall, within thirty (30) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the TNPDCL providing:

i. reasons for its disagreement;
ii. its estimate of what the correct amount should be; and
iii. all written material in support of its counterclaim.

10.5.4. Upon receipt of the Bill Disagreement Notice by the TNPDCL under Article 10.5.3, authorized representative(s) of the TNPDCL and BESSD shall meet and make best endeavours to amicably resolve such dispute within thirty (30) days of receipt of the Bill Disagreement Notice.

10.5.5. If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.5.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

10.5.6. For the avoidance of doubt, it is clarified the despite a Dispute regarding an invoice, TNPDCL shall, without prejudice to its right to Dispute, be under an obligation to make payment of 50% of the invoice amount in the Monthly Bill.

10.6. Quarterly and Annual Reconciliation

10.6.1. The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year, as the case may be, has been finally verified and adjusted, the BESSD and TNPDCL shall jointly prepare such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the BESSD shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

10.7. Payment of Supplementary Bill

10.7.1. BESSD may raise a ("Supplementary Bill") for payment on account of:

i. Change in Law as provided in Article 12, or
ii. Incentive payment as per Article 4.4.2 (b),

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

10.7.2. TNPDCL shall remit all amounts due under a Supplementary Bill raised by the BESSD to the Escrow Account by the Due Date, SLDC/ RLDC or scheduling charges and transmission charges (if applicable). No surcharge will be applicable other than that on the monthly energy payment and associated debit and credit note.

ARTICLE 11: FORCE MAJEURE

11.1. Definition of Force Majeure

A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly prevents or unavoidably delays the performance by the Party (the Affected Party) of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices.

An Affected Party means TNPDCL or the BESSD whose performance has been affected by an event of Force Majeure.

11.2. Force Majeure Events

a. Act of God, including, but not limited to lightning, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, pandemic, cyclone, typhoon or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of Procurer;

b. radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party.

c. The discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land and/or as per prudent industry practices.

d. Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.

e. any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, or Industry wide strikes and labour disturbances, having a nationwide impact in India, if and only if it is declared / notified by the competent state / central authority /

agency (as applicable)

f. Nationalization or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the BESSD, as a result of which the BESSD or its shareholders are deprived (wholly or partly) of their rights or entitlements under this BESPA. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the BESSD or the BESSD related parties

g. An event of Force Majeure affecting delivery / offtake of power / Contracted Capacity from BESSD to Procurer.

11.3. Force Majeure Exclusions

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

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

b. Delay in the performance of any contractor, sub-contractor or their agents;

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

d. Strikes at the facilities of the Affected Party;

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

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

   i. Negligent or intentional acts, errors or omissions or lack of due diligence expected from any prudent and rational human being;

   ii. Failure to comply with an Indian Law; or

   iii. Breach of, or default under this Agreement.

11.4. Notification of Force Majeure Event

11.4.1. The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than fifteen (15) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications

rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. The Party who receives the Force Majeure Notification, shall take a decision on the claim of occurrence of Force Majeure Event, within 30 days of the receipt of the intimation, accompanied with supporting documents available with the Affected Party.

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

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

11.5. Performance Excused

11.5.1. The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice or any extended period as mutually agreed. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event. However, in case of the FM continuing upto a period of 180 days or any extended period as mutually agreed, either Party has the right to terminate the BESPA.

11.5.2. For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the BESSD shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the BESPA period, as the case may be. The Term of this Agreement will be suitably extended. However, adjustment in tariff shall not be allowed on account of Force Majeure event.

11.5.3. Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.

11.5.4. Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

11.6. No Liability for Other Losses

Save as otherwise provided in this Agreement, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event.

11.7. Resumption of Performance

During the period that a Force Majeure Event is subsisting, the Affected Party shall, in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under the BESPA. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

11.8. Duty to Perform and Duty to Mitigate

To the extent not prevented by a Force Majeure Event pursuant to Article 11.2, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.9. Available Relief for a Force Majeure Event

Subject to this Article 11:

a. No Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event; However, no adjustment in tariff shall be allowed on account of Force Majeure event.

b. 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.

c. Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

11.10. Available Relief & Termination Due to Force Majeure Event

a. If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Force Majeure Event is likely to continue beyond such 180 (one hundred and eighty) Day period or any extended period agreed in pursuance of Article 11.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the BESPA, and the termination shall take effect from the date on which such decision is taken.

b. In case of occurrence of an event which is not a Force Majeure as per provision of this Agreement, but causes some hardship in development of the Project, which may or may not be recognized by the Government of India and for which the Government of India has or hasn't granted any extension of time or any other relief; such event, even if sustained beyond 180 days shall not be considered as a reason for termination of BESPA under this Article.

c. Without prejudice to the provisions of Article 11.10.(a) above, the Affected Party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the BESPA in its sole discretion by issuing a notice to that effect.

d. On termination of the BESPA pursuant to Article 11.10.(c):
   i. In case of termination on account of event listed as Force Majeure as under Article 11.2 (a), (b), (c) and (d), no Termination Compensation shall be payable to the BESSD.
   ii. In case of termination at the instance of the BESSD, on account of an event listed as Force Majeure as per Article 11.2 (e) and (f) above, TNPDCL will have the option to (but will not be obliged to) takeover the Project Assets by paying Debt Due. In case TNPDCL chooses not to exercise the aforementioned option, and the same is not agreed to by the BESSD, it will result in a dispute as per the BESPA and will be resolved as per the Dispute Resolution mechanism under the BESPA.
   iii. the BESSD shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

ARTICLE 12: CHANGE IN LAW

12.1. Definitions

In this Article 12, the following terms shall have the following meanings:

12.1.1. In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events, after the last date of the bid submission:

a. the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality having a binding mandate or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the storage of electricity (leviable on final output i.e. the drawl or injection from BESS projects in the form of energy) or on supply of energy storage capacity.

b. Introduction/ modification/ changes in rates of Safeguard Duty and/or Anti-Dumping Duty and/or Customs Duty and/or Goods and Services Tax including surcharge thereon which have direct effect on the Project cost.

For avoidance of doubt, it is clarified that any change in taxes or surcharge or cess or similar charges on inputs like material, labour or any other input for setting up the Project will not be allowed under Change in Law except as specified in 12.1.1(b). It is further clarified that, Change in Law/ Regulation shall not include:

i. any change in taxes on corporate income or any change in any withholding tax on income or dividends, or

ii. change in respect of deviation settlement charges or frequency intervals by an Appropriate Commission.

iii. change in transmission charges, open access charges and losses of TANTRANSCO/ STU or Transmission licensees.

12.1.2. In the event of occurrence of any of events as provided under Article 12.1.1 which results in any adverse financial loss or gain to the BESSD then, the BESSD shall be entitled to compensation in case of financial loss from TNPDCL and in case of financial gain shall be liable to compensate TNPDCL, as the case may be, such compensation payment on account of such 'Change in Law' shall be determined and shall be effective from such date as may be decided by the Appropriate Commission and shall be adjusted in the tariff.

Provided however that, the compensation of Change in law shall be applicable only if the impact of the same in the Contract Year is on net basis more than or equal to one percent (1%) of:

i. The estimated Project Cost (during the Construction period) or
ii. Revenue for the Contract Year for which such adjustment becomes applicable (during BESPA Period), as the case may be.

12.2. Relief for Change in Law

12.2.1. In case of Change in Law taking place prior to commissioning of the Project, the compensation may be passed through in the form of increase/decrease in the tariff, linked with increase/decrease in the Project cost, which is to be paid through the monthly billing. The pass through in this case shall be as per decision of Appropriate Commission and shall be effective from date of commissioning of the Project. BESSD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 12.

12.2.2. In case of Change in Law taking place subsequent to commissioning of the Project capacity, and changes in taxes/duties/cess etc. are defined as a percentage or the ratio of the tariff, the changes will be passed on as appropriate increment/decrement in the tariff and will be paid through monthly billing as per decision of Appropriate Commission. In other cases, if any, where the Change in Law is not a percentage or ratio of tariff, suitable compensation will be provided as decided by the Appropriate Commission. BESSD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 12.

12.2.3. For the purpose of Article 12.1.2 above, BESSD or TNPDCL, which intends to adjust and recover the costs due to change in law, may file a petition before TNERC with the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party. BESSD shall furnish to TNPDCL, the computation of impact in tariff or charges to be adjusted and recovered and file the Petition with the Appropriate Commission, within 30 days of the occurrence of the change in law, and the recovery of the proposed impact in tariff or charges shall start after and in accordance with the approval of Appropriate Commission.

12.2.4. In the event of any decrease in the project cost by the BESSD or any income to the BESSD on account of any of the events as indicated above, BESSD, shall pass on the benefit of such reduction to TNPDCL. In the event of the BESSD failing to comply with

the aforementioned requirement, TNPDCL, at its option, shall make such deductions in the monthly tariff payments on immediate basis or file a petition as per Clause 12.2.3 above.

12.2.5. After the adjustment of the amount of the impact in the tariff, the BESSD shall adjust the monthly tariff or charges annually based on actual amount recovered/ paid, to ensure that the payment is not more than the financial implication on account of Change in Law. It is to clarify further that the Change in Law compensation/payment shall be limited to the Contracted Capacity only.

12.3. Notification of Change in Law

12.3.1. In case any increase or decrease in the Project Cost occurs due to Change in Law affecting the Tariff payable under this Agreement, in accordance with Article 12, the BESSD shall serve notice to TNPDCL of such Change in Law within 7 days about the proposed impact in tariff, positive or negative, to be recovered.

ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

13.1. BESSD Event of Default

13.1.1. The occurrence and/or continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by TNPDCL of its obligations under this Agreement, shall constitute an BESSD Event of Default:

i. the failure to commence availability of BESS for providing Energy Storage capacity to TNPDCL up to the Contracted Capacity, by the end of the period specified in Article 4, or failure to demonstrate guaranteed availability of such energy storage capacity to TNPDCL within six months from the identification of reduced annual availability during the term of this Agreement, or

a. the BESSD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project in contravention of the provisions of this Agreement; or

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

- is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
- is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;

ii. if (a) the BESSD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the BESSD, or (c) the BESSD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the BESSD will not be a BESSD Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the BESSD and expressly assumes all obligations of the BESSD under this Agreement and is in a position to perform them; or

iii. the BESSD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from TNPDCL in this regard; or

iv. except where due to any TNPDCL's failure to comply with its material obligations, the BESSD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the BESSD within thirty (30) days of receipt of first notice in this regard given by TNPDCL.

v. change in controlling shareholding before the specified timeframe as mentioned in Article 4.1.1 of this Agreement; or

vi. occurrence of any other event which is specified in this Agreement to be a material breach/ default of the BESSD.

13.2. TNPDCL Event of Default

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

i. TNPDCL fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the BESSD is unable to recover the amount outstanding to the BESSD through the Letter of Credit,

ii. TNPDCL repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the BESSD in this regard; or

iii. If

- TNPDCL becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of sixty (60) days, or
- any winding up or bankruptcy or insolvency order is passed against TNPDCL, or
- TNPDCL goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that it shall not constitute a TNPDCL Event of Default, where such dissolution or liquidation of Procurer or TNPDCL is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to TNPDCL and expressly assumes all obligations of TNPDCL and is in a position to perform them;

13.3. Procedure for cases of BESSD Event of Default

13.3.1. Upon the occurrence and continuation of any BESSD Event of Default under Article 13.1, TNPDCL shall have the right to deliver to the BESSD, with a copy to the representative of the lenders to the BESSD with whom the BESSD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (TNPDCL Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

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

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

13.3.4. On the date of expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the BESSD Event of Default giving rise to the Consultation Period shall have been remedied, the BESSD shall be liable pay to TNPDCL, damages, equivalent to 6 (six) months, or balance BESPA period whichever is less, of charges for its contracted capacity. TNPDCL shall have the right to recover the said damages from pending dues/bills to pay to BESSD, without prejudice to resorting to any other legal course or remedy.

13.3.5. In addition to the levy of damages as aforesaid, the lenders in concurrence with the TNPDCL, may exercise their rights, if any, under Financing Agreements, to seek substitution of the BESSD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the BESSD and performing the obligations of the BESSD within a period of 90 days from the expiry of the Consultation Period. Provided that any substitution under this Agreement can only be made with the prior consent of TNPDCL including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by TNPDCL and accepts the terms and conditions of this Agreement. However, in the event the lenders are unable to substitute the defaulting BESSD within the stipulated period or there is no outstanding debt, the BESPA shall stand terminated. If the TNPDCL desires to acquire the Project assets, it may do so, by paying 90% of Debt Due less Insurance proceeds into the Escrow Account.

13.3.6. The lenders in concurrence with TNPDCL, may seek to exercise right of substitution under Article 13.3.5 by an amendment or novation of the BESPA in favour of the selectee. The BESSD shall cooperate with TNPDCL to carry out such substitution and shall have the duty and obligation to continue to operate the Project in accordance with this BESPA till such time as the substitution is finalized.

13.4. Procedure for cases of TNPDCL Event of Default

13.4.1. Upon the occurrence and continuation of any TNPDCL Event of Default specified in Article 13.2, the BESSD shall have the right to deliver to TNPDCL, a BESSD Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

13.4.2. Following the issue of a BESSD Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, subject to a maximum of 300 days, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

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

13.4.4. After a period of two hundred ten (210) days following the expiry of the initial 90 days of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or TNPDCL Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, TNPDCL and the BESSD shall, subject to the prior consent of the BESSD, novate its part of the BESPA to any third party, including its Affiliates within the stipulated period. In this case, TNPDCL shall pay amount equivalent to 3 (three) months of charges for its contracted capacity based on the declared availability, or balance Term of the BESPA, whichever is less, for its Contracted Capacity, with the Project assets being retained by the BESSD, and exit from the BESPA. In the event the aforesaid novation is not acceptable to the BESSD, or if no offer of novation is made by TNPDCL within the stipulated period, then the BESSD may terminate the BESPA and choose to either continue operating the Project by itself finding an alternate procurer or to discontinue the operation of the Project. If the BESSD chooses to continue operating the project, TNPDCL will pay to the BESSD, 'termination compensation' equivalent to 6 (six) months of charges for its contracted capacity corresponding to the declared availability, or balance Term of the BESPA, whichever is less, for its Contracted Capacity. The ROU shall continue to be valid for the period till

completion of 15 years from the date of signing of BESPA. If the BESSD decides to discontinue the operation of the Project, it may require TNPDCL to make a payment of the 'termination compensation' which will be equivalent to the amount of the Debt due and 110% (one hundred and ten per cent) of the Adjusted Equity, less Insurance Cover if any, and the assets shall be transferred to TNPDCL or any other entity nominated by TNPDCL.

13.5. In all cases, the lenders may also step in, where appropriate, as provided in the financing documents. Further, in all cases, the defaulting Party will be required to pay the applicable compensation within 3 months from the due date of such payment, subsequent to which, the defaulting Party will be required to pay a monthly interest @1% of the compensation.

13.6. In the event of termination of BESPA, any damages or charges payable to the STU/ TANTRANSCO, for the connectivity / transmission charges of the plant, shall be borne by the entity due to whose failure, the termination was triggered.

ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1. Indemnity

14.1.1. **BESSD's Indemnity:** The BESSD agrees to defend, indemnify and hold harmless TNPDCL, 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, judgments, 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 BESSD, or by an officer, director, sub-contractor, agent or employee of the BESSD 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, TNPDCL, or by an officer, director, sub-contractor, agent or employee of the TNPDCL.

14.1.2. **TNPDCL's Indemnity:** TNPDCL agrees to defend, indemnify and hold harmless the BESSD, 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, judgments, 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 TNPDCL, or by an officer, director, sub-contractor, agent or employee of TNPDCL 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 BESSD, or by an officer, director, sub-contractor, agent or employee of the BESSD.

14.2. Limitation on Liability

14.2.1. Except as expressly provided in this Agreement, neither the BESSD nor TNPDCL nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non- performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits

(other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of TNPDCL, the BESSD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.2.2. TNPDCL shall have no recourse against any officer, director or shareholder of the BESSD or any Affiliate of the BESSD or any of its officers, directors or shareholders for such claims excluded under this Article. The BESSD shall have no recourse against any officer, director or shareholder of TNPDCL, or any affiliate or any of its officers, directors or shareholders for such claims excluded under this Article.

14.3. TNPDCL's Liability

14.3.1. It is specifically agreed that the payment of money becoming due from the TNPDCL to the BESSD under this Agreement for supply of Energy/ Capacity to the extent of the Contracted Capacity shall be as per the recourse under in the BESPA, shall be through Letter of Credit.

14.4. Duty to Mitigate

14.4.1. The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 14.

ARTICLE 15: ASSIGNMENTS AND CHARGES

15.1. Assignments

Neither Party shall assign this Agreement without the prior written consent of the other Party, provided further that any assignee expressly assume the assignor's obligations thereafter arising under this Agreement pursuant to documentation satisfactory to such other Party. However, such assignment shall be permissible only for entire contracted capacity.

Provided however, no approval is required from TNPDCL for the assignment by the BESSD 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.

In furtherance of the foregoing, TNPDCL acknowledges that the Financing Documents may provide that upon an event of default by the BESSSD under the Financing Documents, the Financing Parties may cause the BESSD to assign to a third party the interests, rights and obligations of the BESSD thereafter arising under this Agreement. TNPDCL further acknowledges that the Financing Parties, may, in addition to the exercise of their rights as set forth in this Section, cause the BESSD 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 BESSD thereafter arising under this Agreement.

ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION

16.1. Governing Law

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

16.2. Amicable Settlement and Dispute Resolution

16.2.1. **Amicable Settlement**

i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:
   a. a description of the Dispute;
   b. the grounds for such Dispute; and
   c. all written material in support of its claim.

ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 16.2.1(i), furnish:
   a. counterclaim and defences, if any, regarding the Dispute; and
   b. all written material in support of its defences and counterclaim.

iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 16
   a. if the other Party does not furnish any counter claim or defence under Article 16
   b. or thirty (30) days from the date of furnishing counter claims or defence by the other
   c. Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 16.2.1.
   d. the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

16.3. Dispute Resolution

16.3.1. **Dispute Resolution by the Appropriate Commission**

i. The Tariff has been fixed by bidding process and remains unaltered till the contract period. Where any Dispute or differences arises in relation to this agreement of any nature whatsoever including the construction, interpretation or implementation of the provisions of this agreement as well as claim made by any Party relates to any matter agreed to be referred to the TNERC, shall be submitted to adjudication by the

TNERC. Appeal against the decisions of the TNERC shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

ii. TNPDCL shall be entitled to co-opt the lenders (if any) as a supporting party in such proceedings before the Appropriate Commission.

16.4. Parties to Perform Obligations

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

ARTICLE 17: MISCELLANEOUS PROVISIONS

17.1. Amendment

17.1.1. 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, TNPDCL may consider any amendment or change that the Lenders may require to be made to this Agreement.

17.2. Third Party Beneficiaries

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

17.3. Waiver

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

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

17.4. Confidentiality

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

a. to their professional advisors;
b. to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
c. disclosures required under Law, without the prior written consent of the other party.

17.5. Severability

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

17.6. Notices

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

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

Chief Engineer/NCES/TNGECL,
10th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai-02.
Email: cences@tnebnet.org
Phone: 9444060167

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

Chief Engineer/PPP/TNPDCL,
NPKRR Maaligai,
144, Anna Salai, Chennai-02.
E:mail: ceppp@tnebnet.org

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

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

17.7. Language

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

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

17.8. Restriction of Shareholders/ Owners' Liability

17.8.1. Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 2013.

17.9. Taxes and Duties

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

17.9.2. TNPDCL shall be indemnified and held harmless by the BESSD against any claims that may be made against TNPDCL in relation to the matters set out in Article 17.9.1.

17.9.3. TNPDCL shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the BESSD by TNPDCL on behalf of BESSD.

17.10. Independent Entity

17.10.1. The BESSD shall be an independent entity performing its obligations pursuant to the Agreement.

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

17.11. Compliance with Law

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent

required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

17.12. Breach of Obligations

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

17.13. Order of priority in application

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

i. applicable Law, rules and regulations framed there under;
ii. the Grid Code; and
iii. the terms and conditions of this Agreement;

Note:

1. Commissioning procedure, which forms part of Schedule-D of the BESPA. The indicative Single Line Diagrams & GA report and form part of Schedule G of the BESPA.

ARTICLE 18 – ESCROW ACCOUNT

18.1. Escrow Account

18.1.1. The BESSD shall, prior to the Effective Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement. All Revenues and receipts of every kind from the operation of the project facilities shall be remitted only in the escrow account.

18.1.2. The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the BESSD, TNPDCL, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule-XY.

18.2. Deposits into Escrow Account

18.2.1. The BESSD shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

i. All funds constituting the Financial Package.
ii. All revenues from or in respect of the Project, including the proceeds of any deposits, capital receipts or insurance claims; and
iii. all Gross Revenues from the project.
iv. All payments made by TNPDCL, after deduction of any outstanding payments.

18.2.2. Minimum Escrow Balance:

TNPDCL shall deposit into the Escrow Account within 5 (five) working days from COD, an amount equivalent to Estimated Capacity Charges for two months (the "Minimum Escrow Balance"). TNPDCL shall maintain the Minimum Escrow Balance throughout the BESPA period. If at any time during the BESPA Period, the balance in the Escrow Account falls below the Minimum Escrow Balance, the Authority shall promptly, and in any event, no later than 15 days of such occurrence, fund the Escrow Account such that the Minimum Escrow Balance (as applicable) is maintained. A failure to maintain the Minimum Escrow Balance for a period exceeding 180 days will be treated as an Authority Default and the consequences set out in Article 13 shall follow.

Any interest earned on the amounts deposited by TNPDCL in the Escrow Account shall be counted towards the Minimum Escrow Balance and the abovementioned deposit into the Escrow Account.

18.3. Withdrawals during BESPA Tenure

18.3.1. The BESSD shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

i. All taxes due and payable by the BESSD for and in respect of the Project.
ii. All payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements.
iii. O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements.
iv. Monthly proportionate provision of Debt Service due in an Accounting Year.
v. All payments and Damages certified by TNPDCL as due and payable to it by the BESSD.
vi. Monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt, if any.
vii. Any reserve requirements set forth in the Financing Agreements; and
viii. Balance, if any, in accordance with the instructions of the BESSD.

18.3.2. The BESSD shall not in any manner modify the order of payment specified in Clause 18.3.1, except with the prior written approval of the Authority.

18.4. Withdrawals upon Termination

18.4.1. Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

i. All taxes due and payable by the BESSD for and in respect of the Project.
ii. Percentage of Debt Due excluding Subordinated Debt if required to be as per the terms of this Agreement.
iii. All payments and Damages certified by the Authority as due and payable to it by the BESSD.

iv. Retention and payments relating to the liability for defects and deficiencies set forth in this BESPA.
v. Outstanding Debt Service including the balance of Debt Due.
vi. Outstanding subordinate Debt.
vii. Incurred or accrued O&M expenses.
viii. Any other payments required to be made under this Agreement; and
ix. Balance, if any, in accordance with the instructions of the BESSD.

Provided that no appropriations shall be made under Sub-clause (ix) of this Clause 18.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of this BESPA.

18.4.2. The provisions of this Article 18 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 18.4.1 have been discharged.

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

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

For and on behalf of	For and on behalf of
[TNPDCL]	[BESSD]
Name, Designation and Address	Name, Designation and Address
Signature with seal	Signature with seal
Witness:	Witness:
1.	1.
2.	2.

Schedule-A System Criteria & calculation under BESPA

1. Power rating of a 1000 MWh (500 MW x 2 hrs) BESS will be 500 MW, i.e., the maximum value of the active Output and Input Power at the Delivery Point. The Energy rating of 1000 MWh of the system will be the dispatchable capacity at COD of the system, as measured at the Metering Point. Terms and definitions of terminologies related to BESS shall be as defined in IEC 62933- 2-1.

2. The BESSD shall make the BESS available for **2 operational cycles per day, i.e., 2 complete charge-discharge cycles per day**. Following provisions shall be applicable on the Project Capacity:
   i. The procurement shall be in power (MW) terms. The BESSD shall install, operate and maintain the BESS to offer facility to the Buying Entity to charge and discharge the BESS on an "on demand" basis. The BESSD shall guarantee a minimum system availability of 95% on annual basis. The BESSD shall pay the liquidated damages for such shortfall and shall duly pay such damages to TNPDCL. Amount of such liquidated damages shall be twice the Capacity Charges for the capacity not made available.
   ii. Availability of the Project shall mean the ability of the BESS to execute a function i.e., charging or discharging, when called upon to do so, as per the schedule or signal provided by the off-taker, subject to the minimum system ratings specified herein. In addition, the BESSD shall also demonstrate, on annual basis, 100% of the minimum dispatchable Capacity of the BESS as required as under,

   For a given BESPA, the Annual availability guarantee shall commence from the date of commissioning of the system and shall be calculated as below:

   Monthly System Availability = Mean of the System availabilities of all time-blocks during the Month in which the off-taker has scheduled power for charging/discharging the BESS.

where,

System Availability in a time-block =

$$\frac{Actual\ Injection/Drawl\ MU_i(A)}{Scheduled\ Injection/Drawl\ MU_i(B)},$$

where,

a. i refers to the ith time-block in the Month where Scheduled Injection/Drawl $MU_i \neq 0$.

b. Actual Injection/Drawal MU_i is the Actual Scheduled for Charging/Discharging in the ith time block, in MUs.

c. Scheduled Injection/Drawal MU_i is the Energy Scheduled for Charging/Discharging in the ith time block, in MUs.

d. A and B shall be as per the DSM/UI Reports published by the Western RPCs or measurement at the Main ABT Meter at the Point of Interconnection.

The Monthly Average Availability shall be calculated for each month. On the basis of monthly average Availability, Annual Average Availability will be calculated. However, if for any month the average availability is greater than 95%, it shall be restricted to 95%. The illustration is provided as under:

Month	**Monthly Average Availability**	**Annual Average Availability = {Σ (Monthly Average Availability)}/ 12**
1	95%	
2	95%	
3	93%	
4	97%	
5	93%	
6	98%	
7	95%	
8	92%	
9	96%	
10	95%	
11	91%	= (95%+95%+93%+95%+93%+95%+95%+
12	90%	92%+95%+95%+91%+90%)/12

iii. Round Trip Efficiency (RtE):

The BESSD shall guarantee a minimum AC to AC round trip efficiency (RtE) of 85% for the system on monthly basis. The BESSD shall be liable for Liquidated Damages

to the off-taker, if any, on account of excess conversion losses, based on the following conditions:

a) For RtE < 70%, there shall be a liquidated damage @ APPC tariff of previous financial year of TNPDCL, levied upon the excess conversion losses, considering system RtE = 85% and tariff payment for the corresponding month shall not be made to the BESSD.
b) For 70% ≤ RtE< 85%, there shall be a liquidated damage levied @ APPC tariff of last financial year of TNPDCL, levied upon excess conversion losses considering system RtE = 85%.
c) For RtE > 85%, there shall be incentive @Rs.0.50 per unit of excess discharge of energy considering system RtE = 85%.

System Roundtrip Efficiency = $\frac{Sum\ Total\ of\ Actual\ Injection/Discharging\ MUs_j\ in\ a\ month\ (C)}{Sum\ Total\ of\ Actual\ Drawal/Charging\ MUs_j\ in\ a\ month\ (D)}$

where,
j refers to the jth month in a year;
$D \neq 0$;
$D <= 2 \times E_{bess} \times (MDn\text{-}1 – (MD_n\text{-}1 – MD_n) \times j/12) \times$ No of days in the jth month))/ RtE_g;
E_{bess} refers to Energy Rating specified as under:
MD_{n-1} refers to minimum guaranteed dispatchable energy at the end of the previous year (as a % of Capacity at the COD);
MD_n refers to minimum guaranteed dispatchable energy at the end of the current year;
RtE_g refers to the guaranteed Round-Trip Efficiency;

C and D shall be as per the DSM/UI Reports published by the Regional RPCs or measurement at the Main ABT Meter at the Point of Interconnection.

For example, for the Project Capacity / Contracted Capacity of 150 MW, the BESPA shall entitle the off-taker to schedule discharge up to 300 MWh of energy from the BESS in each cycle, subject to the following:

I. TNPDCL will schedule charging of the BESS with equal amount of energy plus energy expected to be lost as conversion losses (determined from the guaranteed Round-Trip Efficiency (RtE) of the system).

Illustration: For a Project / Contracted Capacity of 150 MW/300 MWh, assuming an RtE of, 95% TNPDCL shall supply charging power to the tune of 315.8 MWh, to expect a discharge of 300 MWh as per the desired schedule.

II. Energy scheduled for discharge in a given cycle during a year shall be more than or equal to the Min. Dispatchable Energy Capacity at the End of Year as specified under this Clause.

Note:

1. The Scheduled capacity shall be subject to the System Power Rating specified in contracted capacity of this agreement.

2. The BESSD shall take separate, metered connection for the Auxiliary Power load of BESS.

3. The name plate ratings shall be achievable during discharge for the full range of environmental conditions at the project site when the battery is fully charged. In any case, the BESS shall be capable of being discharged at reduced power levels from that specified above. However, the energy discharged from the battery shall not require to be greater than the nameplate watt-hour rating specified herein.

4. The SLDC shall, in accordance with Applicable Laws and Regulations there under, issue instructions to the BESSD for dispatch of electricity to the Grid during such period and in such volume as it may specify in its instructions. The BESSD shall clearly specify the maximum recovery times required to restore the BESS for functional availability between duty cycles. However, in no case, the **same shall be more than 2 hours.**

5. **Operational Window:** Operational Window shall mean the expected hours/duration of system (capacity) availability on each day during the term of the Contract, excluding:

   a. Maximum BESS recovery time as specified in this document.
   b. Grid Outages (duly certified to this effect by the Grid Operator).
   c. Planned Maintenance Outage duly informed by the BESSD to the off-taker with at least one month's prior notice, subject to total no. of **planned outage period being not more than 34 hours in a two-month period.**

   BESSD will have to comply with the Charging and Discharging Schedule as intimated by SLDC/TNPDCL. Alternation if any in Charging. It is clarified that discharge of BESS shall take place subject to the transmission constraints at the TANTRANSCO substation. For example, discharge of power from BESS during peak Solar hours (say, 11:00 AM- 2:00 PM) may be subject to the Grid constraints.

6. In addition to above, the BESSD shall also submit Available energy Test Report for the Project Capacity as per IEC 62933-2-1 on Annual basis.

7. It shall be the responsibility of the BESSD to make periodic replacements/ replenishments of system capacities (to ensure annual guaranteed system ratings), if and when required, up to the Term of the Contract. Outage time as a

result of replacement will also be counted as an "Accountable BESS Outage" for the purpose of computing BESS Availability.

Illustration of SA & RtE

1. System Availability

Under a BSSPA between an off-taker 'X' and BESSD 'Y' for a capacity 'C', the Schedule and Actual Injection into/Drawl from the Grid from the Project, as per the DSM/ UI Reports published by the WRPC for a Sample day is shown below:

Date	Block	Drawl (from Grid) MW (Charging) (X)	Injection (into Grid) MW (Discharging) (Y)	Scheduled MW (Z)	Time-block Availability, (TA) = (Xi/Zi) + (Yi/Zi)
01-May-22	1	250	0	250	1
01-May-22	2	250	0	250	1
01-May-22	3	240	0	250	0.96
01-May-22	4	240	0	250	0.96
01-May-22	5	235	0	250	0.94
01-May-22	6	235	0	250	0.94
01-May-22	7	240	0	250	0.96
01-May-22	8	240	0	250	0.96
01-May-22	9	0	0	12.5	0
01-May-22	10	12.5	0	0	NA
01-May-22	11	0	0	0	NA
01-May-22	12	0	0	0	NA
01-May-22	13	0	0	0	NA
01-May-22	14	0	0	0	NA
01-May-22	15	0	0	0	NA
01-May-22	16	0	0	0	NA
01-May-22	17	0	0	0	NA
01-May-22	18	0	0	0	NA
01-May-22	19	0	0	0	NA
01-May-22	20	0	0	0	NA
01-May-22	21	0	0	0	NA
01-May-22	22	0	0	0	NA
01-May-22	23	0	0	0	NA
01-May-22	24	0	190	250	0.76
01-May-22	25	0	190	250	0.76
01-May-22	26	0	200	250	0.8
01-May-22	27	0	200	250	0.8
01-May-22	28	0	200	250	0.8
01-May-22	29	0	200	250	0.8
01-May-22	30	0	200	250	0.8
01-May-22	31	0	200	250	0.8
01-May-22	32	0	0	0	NA
01-May-22	33	0	0	0	NA

01-May-22	34	0	0	0	NA
01-May-22	35	0	0	0	NA
01-May-22	36	0	0	0	NA
01-May-22	37	0	0	0	NA
01-May-22	38	0	0	0	NA
01-May-22	39	0	0	0	NA
01-May-22	40	0	0	0	NA
01-May-22	41	0	0	0	NA
01-May-22	42	0	0	0	NA
01-May-22	43	12.5	0	12.5	1
01-May-22	44	245	0	250	0.98
01-May-22	45	240	0	250	0.96
01-May-22	46	240	0	250	0.96
01-May-22	47	235	0	250	0.94
01-May-22	48	240	0	250	0.96
01-May-22	49	250	0	250	1
01-May-22	50	250	0	250	1
01-May-22	51	250	0	250	1
01-May-22	52	0	0	0	NA
01-May-22	53	0	0	0	NA
01-May-22	54	0	0	0	NA
01-May-22	55	0	0	0	NA
01-May-22	56	0	0	0	NA
01-May-22	57	0	0	0	NA
01-May-22	58	0	0	0	NA
01-May-22	59	0	0	0	NA
01-May-22	60	0	0	0	NA
01-May-22	61	0	0	0	NA
01-May-22	62	0	0	0	NA
01-May-22	63	0	0	0	NA
01-May-22	64	0	0	0	NA
01-May-22	65	0	0	0	NA
01-May-22	66	0	0	0	NA
01-May-22	67	0	0	0	NA
01-May-22	68	0	0	0	NA
01-May-22	69	0	0	0	NA
01-May-22	70	0	0	0	NA
01-May-22	71	0	0	0	NA
01-May-22	72	0	0	0	NA
01-May-22	73	0	0	0	NA
01-May-22	74	0	0	0	NA
01-May-22	75	0	0	0	NA
01-May-22	76	0	0	0	NA
01-May-22	77	0	0	0	NA
01-May-22	78	0	0	0	NA
01-May-22	79	0	0	0	NA
01-May-22	80	0	230	250	0.92
01-May-22	81	0	235	250	0.94
01-May-22	82	0	235	250	0.94

01-May-22	83	0	230	250	0.92
01-May-22	84	0	210	250	0.84
01-May-22	85	0	200	250	0.8
01-May-22	86	0	190	250	0.76
01-May-22	87	0	185	250	0.74
01-May-22	88	0	0	0	NA
01-May-22	89	0	0	0	NA
01-May-22	90	0	0	0	NA
01-May-22	91	0	0	0	NA
01-May-22	92	0	0	0	NA
01-May-22	93	0	0	0	NA
01-May-22	94	0	0	0	NA
01-May-22	95	0	0	0	NA
01-May-22	96	0	0	0	NA
Total		**3905**	**3295**	**8025**	**29.7**
	NO. OF BLOCK IN COLUMN Z IS NOT ZERO				34
	SYSTEM AVAILABILITY				0.87

Note: For calculating the System Availability for day/month, schedule provided by Procure/SLDC to be considered. Shortfall in System Availability will be calculated as per below methodology. DSM / UI charges shall be treated separately as per applicable regulations and paid by BESSD.

If TNPDCL has scheduled for charging of BESS & discharge of BESS and BESSD has not charge & discharge the BESS according to schedule, then TA will be calculated as TA = (X/Z) + (Y/Z) for that time block.

If TNPDCL has not scheduled for charging of BESS & discharge of BESS, then TA will be NA for that time block.

If TNPDCL has not scheduled for charging of BESS and BESSD has taken charging power from grid, then TA will be NA for that time block.

If TNPDCL has not scheduled for discharge of BESS and BESSD has discharge power to the grid, then TA will be NA for that time block.

If TNPDCL has scheduled for charging of BESS & discharge of BESS and BESSD has charge & discharge the BESS near to zero or zero, then TA will be treated as Zero for that time block.

i is the ith Time block in the day.

The System Availability for the day is calculated as the mean of **Column TA**, for all time blocks where **Column Z is not zero**.

From the above table, Day's System Availability = 0.87

Similarly, the System availability shall be calculated for Monthly, 2880 time-blocks (96*30) in a Month (30 Days in a month considered in above), excluding time-blocks where Grid is unavailable or in case of Force Majeure.

Assuming the following parameters:

a. Total Contract Capacity = 250 MW, **C**
b. Quoted monthly Capacity charges = 5 lakhs/MW/month, **D**
c. Annual system availability (as per procedure above) is calculated to be 0.87, **B** d. n = 12

Liquidated Damages on account of shortage in annual system Availability, as calculated from formula provided in ARTICLE-4:

Liquidated damages = (A – B) x C x D x n x 2

= (0.95-0.87) x 250 x 5 x 12 x 2
= Rs. 2400 lakhs

2. System Round Trip Efficiency

The present illustration is for calculating the Daily System Efficiency as demonstration only. The same methodology shall be used for calculation of monthly system efficiency as per ARTICLE-4.

System Efficiency $= \frac{\text{Total of Column (Y)}}{\text{Total of Column (X)}} = \frac{3295}{3905} = 0.8437 \sim 0.84$ (rounded off to 2 decimal places).

Assuming:

a. monthly System Efficiency = 0.84,
b. Total Monthly Drawl from Grid (Charging Power) = 41.1 MUs

Liquidated Damages is calculated @ Rs. 2 for excess loss of energy considering expected System Efficiency to be 85%

Excess conversion losses = (0.85-0.84) * Total Drawl from the grid in the month (i.e., Charging Energy)

Liquidated Damages for the month = Rs. 0.01x 41.1 x 2

= Rs. 0.822 Millions

= Rs. **8.22 lakhs**

Schedule-B Right-to-Use/Land Lease/Sub-Lease Agreement

(to be attached herewith separately for each Project)

SCHEDULE-C: PERFORMANCE BANK GUARANTEE (PBG)

(to be attached herewith separately for each Project)

SCHEDULE-D: COMMISSIONING PROCEDURE

1. Commissioning Procedure for the Projects selected shall be as determined by TNGECL.
2. BESSD shall submit the copy of this RFS as well as BESPA signed with TNPDCL to TNGECL and give advanced intimation to TNGECL regarding commissioning of the project.
3. BESSD shall also submit the documents relating to the charging approval and other applicable approvals to TNGECL and TNGECL shall certify commissioning of the project or part thereof only after verification of such documents.
4. BESSD shall take into consideration the provisions of part commissioning provided in the BESPA and certify part commissioning of the project in line with the BESPA provisions.
5. TNGECL may provisionally certify commissioning of the project on the date of commissioning after witnessing that the rated capacity of the project is in operation and energy is flowing into / out of the grid subject to final certification after verification of other documents.
6. The commissioning of the project shall be witnessed by Committee Constituted by TNGECL which shall comprise officials of TANTRANSCO and TNPDCL.

SCHEDULE-E

TECHNICAL AND REGULATORY REQUIREMENTS TO BE FOLLOWED FOR BATTERY ENERGY STORAGE SYSTEMS

1. Codes and Standards

The BESS shall comply with the following Codes and Standards or equivalent Indian Standards, as applicable.

Standard/Code (or Equivalent Indian Standards)	Description	Certification Requirements
IEC62485-2	Safety requirements for secondary batteries and battery installations - to meet requirements on safety aspects associated with the erection, use, inspection, maintenance and disposal: Applicable for Lead Acid and NiCd/NiMH batteries	Applicable only for Lead Acid and NiCd/NiMH batteries
UL1642orUL1973, Appendix E (cell) or IEC 62619 (cell) + IEC 63056 (cell)	Secondary cells and batteries containing alkaline or other non-acid electrolytes - Safety requirements for secondary lithium cells and batteries, for use in industrial applications	Required for Cell
UL1973 (battery) or (IEC62619(battery) + IEC 63056 (battery))	Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail (LER)Applications / Secondary cells and batteries containing alkaline or other non-acid electrolytes -Safety requirements for secondary lithium cells And batteries, for use in industrial applications	Either UL 1642 or UL1973or(IEC62619 +IEC63056)for the Battery level
IEC62281/UN 38.3	Safety of primary and secondary lithium cells and batteries during transport: Applicable for storage Systems using Lithium Ion chemistries	Required for both Battery and Cell.
IEC61850/ DNP3	Communications networks and management systems.(BESS control system communication)	
UL 9540 or (IEC TS 62933-5-1 + IEC 62933-5-2)	Electrical energy storage (EES) systems - Part 5-1: Safety considerations for grid-integrated EES systems–General specification/Standard for Energy Storage Systems and Equipment	EitherUL9540or(IEC 62933-5-1 + IEC 62933-5-2)is required For BESS system level

IEC62933-2-1	Electrical energy storage (EES) systems - Part 2-1: Unit Parameters and testing methods - Specification	Tests for Class B applications: 1. Duty Cycle Round Trip Efficiency Test 2. Equipment and Basic Function Test 3. Available energy Test 4. Insulation test

Power Conditioning Unit Standards for BESS	
IEC62477-1	Safety requirements for power electronic converter systems and equipment -Part 1: General
IEC62477-2	Safety requirements for power electronic converter systems and equipment - Part 2: Power electronic converters from 1 000 V AC or 1 500 V DC up to 36 kV AC or 54 kV DC
IEC61000-6-2Ed. 2	Electromagnetic compatibility (EMC) -Part 6-2: Generic standards - Immunity standard for industrial environments
IEC61000-6-4Ed. 2.1	Electromagnetic compatibility(EMC) -Part 6-4: Generic standards - Emission standard for industrial environments
IEC62116Ed.2	Utility-interconnected photovoltaic inverters-Test procedure of is landing Prevention measures
IEC 60068-2-1:2007	Environmental testing-Part2-1:Tests –Test A: Cold
IEC 60068-2-2:2007	Environmental testing-Part 2-2:Tests –Test B:Dry heat
IEC 60068-2-14:2009	Environmental testing-Part2-14:Tests-TestN:Changeoftemperature
IEC 60068-2-30:2005	Environmental testing - Part 2-30: Tests - Test Db: Damp heat, cyclic (12 h + 12 h cycle)

1. **System Testing and Commissioning**

The BESS shall be commissioned as per commissioning criteria and procedures specified by the CEA.

2. **Identification and Trace ability**

Cells/Racks/Packs Assembly shall meet seismic requirement for the plant location of the BESS. Labeling of cells/batteries shall include manufacturer's name, cell type, name-plate rating, date of manufacture and date of expiry of parts and labour warranty.

3. Other Sub-systems/Components

Other subsystems/components used in the BESS must also conform to the relevant international/national Standards for Electrical Safety for ensuring Expected Service Life and Weather Resistance.

4. Fire Protection

The BESSD shall design and install a fire protection system that conforms to national and local codes. The fire protection system design and associated alarms shall take into account that the BESS will be unattended at most times. For high energy density technologies, the BESSD shall also obtain thermal run away characterization of the battery storage systems.

5. Authorized Test Centres

Batteries/ Power Conditioning Units deployed in the power plants must have valid test certificates for their qualification as per above specified IEC/ BIS Standards by one of the ILAC member signatory accredited laboratories. In case of module types /BESS/equipment for which such Test facilities may not exist in India at present, test certificates from reputed ILAC Member body accredited Labs abroad will be acceptable**.**

6. Warranty

BESSD shall procure performance guarantees from the OEM to ensure minimum performance levels for predefined application(s) as per the terms of the RfS. The Warranty shall clearly indicate life expectancy given discharge profiles provided for the application.

7. Performance Monitoring

As part of the performance monitoring, the following shall be carried out:

a) The BESSD must install necessary equipment to continuously measure BESS operating parameters (including but not limited to voltage, current, ambient conditions etc.) as well as

energy input into and energy output from the BESS along with Metering arrangement in accordance with extant regulations. They will be required to submit this data to TNGECL and SLDC online and/or through a report on regular basis every month for the entire duration of contract.

b) The BESSD shall provide access to TNGECL /MNRE or their authorized representatives for installing any additional monitoring equipment to facilitate on-line transfer of data.

c) All data shall be made available as mentioned above for the entire duration of the Contract.

d) The plant SCADA should be OPC version 2.0a (or a later version including OPC UA) compliant and implement appropriate OPC-DA server as per the specification of OPC Foundation. All data should be accessible through this OPC server for providing real time online data (BESS parameters) to TNGECL / MNRE. This time series data shall be available from the Project SCADA system to facilitate monitoring and should include among others as stated before, below parameters to facilitate daily, monthly and annual

Report for performance monitoring.

e) Web-based monitoring should be available, which should not be machine dependent. The web-based monitoring should provide the same screens as available in the plant. Also, it should be possible to download reports from are mote web-client in PDF or Excel format.

8. <u>Other necessary criteria:</u>

a) BESS shall be capacity of operating in the frequency range of 47.5 Hz to 52Hz and be able to deliver rated output in the frequency range of 49.5 Hz to 50.5 Hz.

b) BESS shall be capacity of operating when voltage at the inter connection point on any or all phases dips/rises to the high or low levels. The levels applicable for wind/solar inverter-based generation may be referred as available in Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations.

c) The BESS performs regulations in one or several pre-defined ways (e.g. regulating its own output power according to the orders given by SCADA system) to achieve an active power balance between generation and demand to maintain the power system frequency within a reasonable range.

d) BESS shall operate to maintain voltages as per specified voltage ranges in Grid standards. BESS shall have feature to detect the voltage of interconnection point, and regulate voltage independently. The response time of the BESS shall not exceed the

value specified in relevant standards or grid codes.

e) BESS shall operate in a manner to promote the power system reliability and improve the power quality. When power quality problems, such as voltage dip, flicker, unsatisfactory power factor, etc., occur in power system, the BESS could eliminate these problems by flexible active and reactive power output in this function.

f) The BESS shall provide reliable protection and not be limited to as an over voltage/under-voltage protection, over current protection, low-temperature/over-temperature protection of battery, DC insulation monitoring, etc.

g) BESS is required to have the following basic functions :

i) Monitoring: Monitor operational parameters, equipment status and communication status, alarm and faults of main equipment and BESS system, etc.

ii) Information exchange : Receive and process information with SLDC /RLDC/NLDC including operation parameters, switching information, various alarms and alerts, protective action signals, control information, etc.

iii) Control: Including control mode and parameter setting with SLDC/RLDC/NLDC.

h) The static information like detailed write-up on present operation methodology of BESS, forbidden zones, number of cycle limits, Auxiliary consumption details, capability curve, simulation models (RMS/PSCAD) along with description or any specific information about BESS shall also be furnished as and when required by SLDC/RLDC/NLDC.

9. <u>Safe Disposal of unit Batteries from the BESS :</u>

The Developer will comply with the requirements under Hazardous & other Waste (Management and Trans boundary Movement) Rules, 2016, as amended from time to time, and Battery Waste Management Rules, 2022 on 24th August 2022, as amended from time to time, as applicable. The BESSD shall ensure that all Unit Battery modules from the plant after their 'end of life' (when they become defective/ non-operational/ non-repairable) are disposed in accordance with the "e-waste (Management and Handling) Rules, 2016 and Battery Waste Management Rules, 2022" notified by the Government and as revised and amended from time to time and Battery Waste Management Rules, as and when notified by the Government of India.

SCHEDULE – F – SHAREHOLDING

- The BESSD shall indicate its shareholding in the company indicating the controlling shareholding while signing of BESPA with TNGECL/TNPDCL.
- However, in case the Project is being set up by a listed Company, this condition will not be applicable.
- Following shall not be considered as change in shareholding as mentioned above:
    a. Infusion of Fresh equity capital amongst the existing shareholders/promoters at the time of Bid Submission to meet equity requirements.
    b. Conversion of CCDs, CCPs etc. already issued to existing shareholders.
    c. Death, marriage, Divorce, minor attaining major (any legal heir who was minor at the time of signing of BESPA), insolvent, insanity of existing shareholders.
    d. Transfer of shares to IEPF.
    e. Issue of Bonus Shares.
- In case of Project Developed (BESSD) through SPV: The BESSD executing the project, if being a single company, shall ensure that its shareholding in the SPV/ Project Company executing the BESPA, shall not fall below 51% at any time prior to COD of the Project. In the event BESSD is a consortium, then the combined shareholding of the consortium members in the SPV/ Project Company executing the BESPA, shall not fall below 51% at any time prior to COD. However, in case the Project is being set up by a listed Company, this condition will not be applicable.
- In case of the BESSD itself executing the BESPA, it shall ensure that controlling shareholding of the BESSD remains unchanged until the COD. However, in case the Project is being set up by a listed Company, this condition will not be applicable.
- In case of BESSD having multiple promoters (but none of the shareholders having more than 50% of voting rights and paid-up share capital), it shall be considered as a BESSD under joint control. In such cases, the shareholding pattern in the BESSD as submitted at the time of bidding, shall be maintained upto the COD.

- Any change in the shareholding after COD can be undertaken only with the approval of TNPDCL.

SCHEDULE – G – ESCROW AGREEMENT FORMAT

THIS ESCROW AGREEMENT is entered into on this the day of 20__ AMONGST

1. ……..Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at…….. (hereinafter referred to as the "BESSD" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. ……(insert name and particulars of Lenders' Representative) and having its registered office at…… acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3. ……..(insert name and particulars of the Escrow Bank) and having its registered office at…….. (hereinafter referred to as the "Escrow Bank" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4. The _____, established under the _____, represented by its _____ and having its principal offices at _____ (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

The BESSD, Lender Representatives, the Escrow Bank and the Authority shall collectively be referred as Parties and individually as Party, as the context requires.

WHEREAS:

A. The Authority has entered into a Battery Energy Storage Purchase Agreement dated_____ with the BESSD (the "BESPA") for the _____ Project (the "Project") on Public Private Partnership (the "PPP") basis in the state of Tamil

Nadu, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

C. The BESPA requires the BESSD to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Agreement" means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

"BESPA" means the Battery Energy Storage Purchase Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the BESSD, and shall commence from the date on which a notice is delivered by the Authority or the Lenders' Representative, as the case may be, to the BESSD asking the latter to cure the breach or default specified in such notice;

"Escrow Account" means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"Parties" means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually;

"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

"Sub-Accounts" means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the BESPA shall, unless repugnant to the context, have the meaning ascribed thereto in the BESPA.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2 of the BESPA shall apply, mutatis mutandis, to this Agreement.

2. ESCROW ACCOUNT

2.1. **Escrow Bank to act as trustee**

2.1.1 The BESSD hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the BESSD in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The BESSD hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the BESSD, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the BESSD shall have any rights hereunder as the beneficiaries of or as third-party beneficiaries under this Agreement.

2.2. **Acceptance of Escrow Bank**

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the BESSD, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the BESSD or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3. **Establishment and operation of Escrow Account**

2.3.1 Within 30 (thirty) days from the date of this Agreement, the BESSD shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the BESSD shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4. The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the BESSD. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5. Rights of the Parties: Save and except as otherwise provided in the BESPA, the rights of the Authority, the Lenders' Representative and the BESSD in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the BESSD shall have no other rights against or to the monies in the Escrow Account.

2.6. Substitution of the BESSD: The Parties hereto acknowledge and agree that upon substitution of the BESSD with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the BESSD under this Agreement on and with effect from the date of substitution of the BESSD with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1. **Deposits by the BESSD**

3.1.1. The BESSD agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

a. All funds constituting the Financial Package; received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt, if any, and the Authority;

b. All funds received by the BESSD from its shareholders, in any manner or form;

c. Any revenues from or in respect of the Project, including the proceeds of any deposits, capital receipts or insurance claims, as the case may be; and

3.1.2. The BESSD may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2. **Deposits by the Authority**

3.2.1. The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

a. An amount equivalent to the first two months' Estimated Capacity Charges, within 5 working days from COD. During the remainder of the BESPA tenure, the Authority shall ensure that the Escrow Account is funded with an amount equivalent to next two months' Capacity Charges.

b. Termination Payments and

c. All payments made by the Authority, including the monthly Capacity Charges, after deduction of any outstanding payments.

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any amounts due and payable to it by the BESSD, and the balance remaining shall be deposited into the Escrow Account.

3.3. **Deposits by Senior Lenders**

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to

or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4. **Interest on Deposits**

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the BESSD in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1. **Withdrawals during BESPA Tenure**

4.1.1. At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the BESSD may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

a. All taxes due and payable by the BESSD for and in respect of the Project;

b. All payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

c. O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

d. Any amounts due and payable to the Authority;

e. Monthly proportionate provision of Debt Service due in an Accounting Year;

f. all payments and Damages certified by the Authority as due and payable to it by the BESSD pursuant to the BESPA;

g. Monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt, if any;

h. any reserve requirements set forth in the Financing Agreements; and

i. Balance, if any, in accordance with the instructions of the BESSD.

4.1.2. No later than 60 (sixty) days prior to the commencement of each Accounting Year, the BESSD shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2. **Withdrawals upon Termination**

Upon Termination of the BESPA, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

a. All taxes due and payable by the BESSD, for and in respect of the Project;

b. 90% of Debt Due, excluding Subordinated Debt, if required to be as per the terms of this Agreement;

c. all payments and Damages certified by the Authority as due and payable to it by the BESSD pursuant to the BESPA, including any claims in connection with or arising out of Termination;

d. Outstanding Debt Service including the balance of Debt Due;

e. Outstanding Subordinated Debt;

f. Incurred or accrued O&M Expenses;

g. Any other payments required to be made under the BESPA; and

h. Balance, if any, in accordance with the instructions of the BESSD;

Provided that the disbursements specified in Sub-clause (i) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3. **Application of insufficient funds**

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4. **Application of insurance proceeds**

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilized for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

5. OBLIGATIONS OF THE ESCROW BANK

5.1. **Segregation of funds**

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received and shall be segregated from other funds and property of the Escrow Bank.

5.2. **Notification of balances**

7 (Seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the BESSD and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3. **Communications and notices**

In discharge of its duties and obligations hereunder, the Escrow Bank:

a. May, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the BESSD upon a certificate signed by or on behalf of the BESSD;

b. may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

c. shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the BESSD or any other person hereunder or in connection herewith; and

d. shall, within 5 (five) business days after receipt, deliver a copy to the BESSD of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4. **No set off**

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5. **Regulatory approvals**

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1. **Escrow Default**

6.1.1. Following events shall constitute an event of default by the BESSD (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

a. the BESSD commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;

b. the BESSD causes the Escrow Bank to transfer funds to any account of the BESSD in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

c. the BESSD commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2. Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the BESPA**.**

7. Termination of Escrow Agreement

7.1. Duration of Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the BESSD in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2. Substitution of Escrow Bank

The BESSD may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts

deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3. **Closure of Escrow Account**

The Escrow Bank shall, at the request of the BESSD and the Lenders' Representative made on or after the payment by the BESSD of all outstanding amounts under the BESPA and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the BESSD. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1. **Supplementary Escrow Agreement**

The Lenders' Representative and the BESSD shall be entitled to enter into a Supplementary Escrow Agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the BESSD in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITIES

9.1. **General indemnity**

9.1.1. The BESSD will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third-party claims for any loss, damage, cost and expense arising out of any breach by the BESSD of any of its obligations under this Agreement or on account of failure of the BESSD to comply with Applicable Laws and Applicable Permits.

9.1.2. The Authority will indemnify, defend and hold the BESSD harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the BESSD's obligations under the BESPA or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3. The Escrow Bank will indemnify, defend and hold the BESSD harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the BESSD's obligations under the BESPA other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2. **Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1. **Dispute resolution**

10.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Nani Palkhivala Arbitration Centre, Chennai (the "Rules") or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be Chennai and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1. **Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State of Tamil Nadu shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2. **Waiver of sovereign immunity:**

The Authority unconditionally and irrevocably:

a. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

b. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

c. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

d. consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

11.3. **Priority of agreements**

In the event of any conflict between the BESPA and this Agreement, the provisions contained in the BESPA shall prevail over this Agreement.

11.4. **Alteration of term**

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

11.5. **Waiver**

11.5.1. Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

a. Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
b. shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
c. shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2. Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6. **No third-party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7. **Survival**

11.7.1. **Termination of this Agreement**

a. shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8. **Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9. **Successors and assigns**

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

11.10. **Notices**

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11. **Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12. **Authorised Representatives**

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

11.13. **Original Document**

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

SIGNED SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lender's representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE ESCROW BANK by
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE AUTHORITY by:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

SIGNED, SEALED in the presence of:

SCHEDULE – H – VESTING CERTIFICATE

1. The MD of_____represented by_____(the "**TNPDCL**") refers to the BESPA dated_____(the "**BESPA**") entered into between the Authority and "**BESSD**" for the Project.
2. The Authority hereby acknowledges compliance and fulfilment by the BESSD of the obligations set forth in Clause XY of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the BESSD in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the BESSD to rectify and remedy any defect or deficiency in any of the obligations set forth in Clause XY and/or relieving the BESSD in any manner of the same.

AGREED, ACCEPTED AND For and on behalf of BESSD by:

Signature
Name
Designation
Address

AGREED, ACCEPTED AND For and on behalf of Authority by:

Signature

Name Designation Address

In presence of

A)

B)