

**AMENDED AND RESTATED POWER PURCHASE AGREEMENT  
DATED AS OF NOVEMBER 12, 2006**

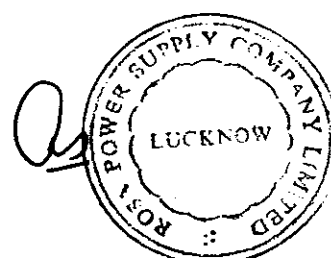
**BETWEEN**

**UTTAR PRADESH POWER CORPORATION LIMITED**

**AND**

**ROSA POWER SUPPLY COMPANY LIMITED**

**(AS APPROVED BY UTTAR PRADESH ELECTRICITY  
REGULATORY COMMISSION)**





उत्तर प्रदेश UTTAR PRADESH

THIS AMENDED AND RESTATED POWER PURCHASE AGREEMENT (this "Agreement") entered into on the November 12, 2006 at Lucknow, between:

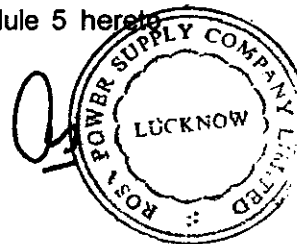
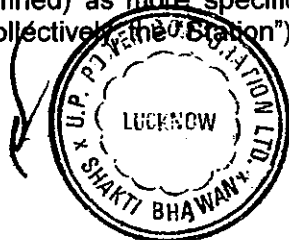
Uttar Pradesh Power Corporation Limited, a Company registered under the Companies Act, 1956, having its head office at 14, Ashok Marg, Shakti Bhawan, Lucknow, 226 001, Uttar Pradesh, India (hereinafter referred to as the "UPPCL" which expression shall, unless repugnant to the context or meaning thereof, include its legal successors, permitted assigns and legal representatives) of the First Part AND,

ROSA POWER SUPPLY COMPANY LIMITED, a Company incorporated under the Companies Act, 1956, having its Registered Office at 4th Floor, Trade Tower, 94 Mahatma Gandhi Marg, Lucknow, 226 001, Uttar Pradesh, India (hereinafter referred to as "ROSA", which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and legal representatives), of the Second Part;

WITNESSETH

WHEREAS:

- A. ROSA intends to design, construct, own and operate a new coal-fired thermal power generation Station at ROSA in the Shahjahanpur District, in the State of Uttar Pradesh consisting of two steam turbines with aggregate Nameplate Capacity of 600 MW (2 x 300 MW) together with coal-fired boilers and other associated equipment including, without limitation, all improvements contemplated to be constructed on and/or made to the Site (as hereinafter defined) as more specifically described in Schedule 1 and Schedule 5 hereto (collectively, "the Station").



B. The erstwhile Uttar Pradesh State Electricity Board (UPSEB) was unbundled into following corporations with effect from January 14, 2000:-

- (i) Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited (UPRVUNL);
- (ii) Uttar Pradesh Jal Vidyut Nigam Limited (UPJVNL); and
- (iii) Uttar Pradesh Power Corporation Limited (UPPCL).

UPPCL is the successor of the erstwhile UPSEB's obligations under this Agreement and Implementation Agreement.

C. The Station is to be implemented in accordance with the Power Purchase Agreement dated September 24, 1998 between ROSA and the UPSEB, the predecessor of UPPCL, as amended by the First Supplemental Agreement dated September 24, 1999 (collectively, the "PPA").

D. The erstwhile UPSEB (now UPPCL) had agreed to construct, own and operate the proposed External Interconnection Facilities (as more particularly described in Schedule 5).

E. The erstwhile UPSEB (now UPPCL) had agreed to purchase and accept delivery into the UPPCL System all electrical energy generated by the Station and to pay for the Capacity and electrical energy so generated and/or made available to UPSEB all upon and subject to the terms and conditions of this Agreement.

F. The erstwhile UPSEB and ROSA had executed a Draft Power Purchase Agreement on December 27, 1996 which was ratified by the Government of Uttar Pradesh on June 24, 1998.

G. ROSA had obtained the Techno Economic Clearance of Central Electricity Authority by its letter No.2/UP/22/94-PAC/11909-32 dated September 19, 1997.

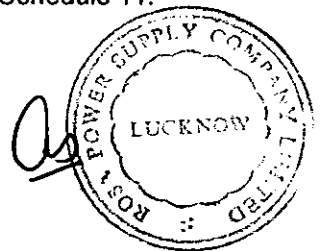
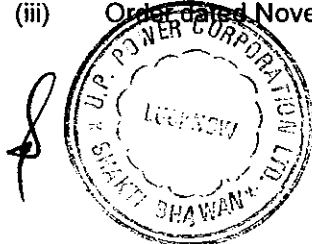
H. The Government of India has issued a Notification SC No.496 (E) dated June 9, 1998 affecting tariff calculations requiring changes in the Draft PPA dated December 27, 1996.

I. Pursuant to the enactment of the Uttar Pradesh Electricity Reforms Act, 1999 and the Electricity Act, 2003, and the issue of Central Electricity Regulatory Commission Tariff Regulations on March 26, 2004, the Uttar Pradesh Electricity Regulatory Commission has issued terms and conditions for determination of generation tariff on June 7, 2005 and the UP Power Policy, 2003 (amended in June, 2004) has been promulgated by the Government of Uttar Pradesh (GoUP);

J. In view of the above and keeping in mind the requirement of the Financing Parties who are providing the financial assistance for the Project, the Parties have mutually agreed to amend and restate the Provisions of the PPA;

K. This Agreement has been approved by UPERC by way of following orders, a copy of which forming part of this Agreement are provided in Schedule 11:-

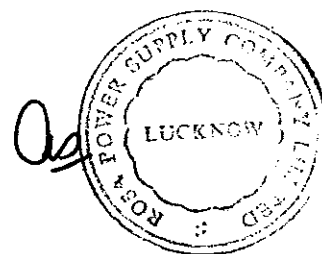
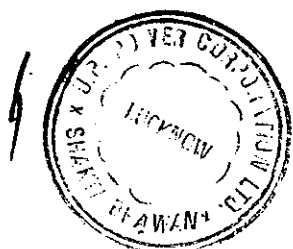
- (i) Order dated February 2, 2006
- (ii) Order dated November 1, 2006
- (iii) Order dated November 8, 2006



Both Parties hereby agree that in case of inconsistency between the provision of this Agreement and the aforesaid orders, if any, the aforesaid orders shall prevail.

- L. Availability Based Tariff (ABT) mechanism is currently applicable to the regional system and a similar mechanism would be made applicable to the generating plants within the state of Uttar Pradesh. The Parties hereby agree that as and when the relevant regulations about operationalization of ABT mechanism in Uttar Pradesh are made applicable by the UPERC, the same shall be followed by the parties.

NOW, THEREFORE, in view of the foregoing premises and in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the UPPCL and ROSA agree to amend and restate the PPA as follows:-



## ARTICLE 1

## DEFINITIONS AND INTERPRETATION

## Section 1.1 Definitions

As used herein, the following terms shall have the following meanings:

**Abandonment** A willful and unexcused cessation of performance of obligations by one Party under this Agreement for a continuous period of Ninety (90) days for reasons other than Force Majeure. Provided that termination of the Agreement due to default of the other Party or by mutual consent of both Parties or under Force Majeure conditions as provided herein shall not constitute Abandonment. Abandonment shall include construction Abandonment and operations Abandonment.

**Accepted Industry Practice** shall mean the practices, methods and standards, as changed from time to time, generally accepted internationally or use in electrical utility industry not inferior to Indian standards, in connection with the operation and maintenance of electric generating and transmission equipment of the type applicable to the Station and the Internal Interconnection Facilities, and which practices, methods and standards generally conform to operation and maintenance standards recommended by the Station's equipment suppliers and manufacturers having regard for the circumstances and operational requirements of the Station under this Agreement.

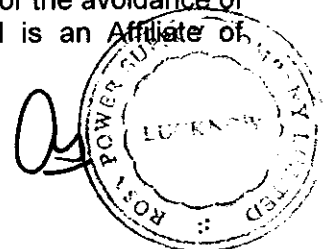
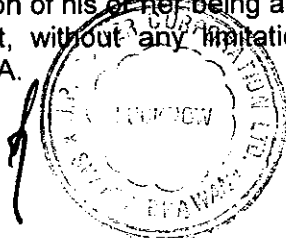
**Achievable Plant Load Factor** shall mean, with respect to a Unit or Station, Plant Load Factor of Eighty percent (80.00%).

**Act** shall mean the Electricity Act, 2003 as may be amended from time to time.

**Active Power** shall mean the product of voltage and the current and the cosine of phase angle between them, measured in units of watts or standard multiples thereof.

**Adjusted Plant Load Factor** shall mean the ratio, expressed as a percentage of Available Energy plus Deemed Energy minus Declared Capacity Penalty and the maximum of such units (kWh) (subject to Political Force Majeure and UPPCL Force Majeure conditions) of electrical energy that could theoretically be generated by the Station with reference to the Established Baseload Capacity, in any operating period (month, year or fraction thereof).

**Affiliate** shall mean, as to any Person, any other Person which directly or indirectly controls or is controlled under common control with, or is controlled by such Person. As used in this definition "control" (including with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise), provided that, in any event, any Person which owns directly or indirectly Fifty per cent (50%) or more of the securities having ordinary voting power for the election of directors or other ownership interests of any other Person (other than as a limited partner of such other Person) will be deemed to control such corporation or other Person. Notwithstanding the foregoing no individual shall be deemed to be an affiliate of a corporation solely by reason of his or her being an officer or director of such corporation. For the avoidance of doubt, without any limitation, Reliance Energy Generation Limited is an Affiliate of ROSA.



**Agreement** shall mean this amended and restated Power Purchase Agreement, including all Schedules hereto.

**Approval Date** shall mean August 2, 1994, which is the date of the approval by UPSEB of the proposal submitted with respect to the development, construction and operation of the Station.

**Auxiliary Consumption** shall mean, in relation to a period, the quantum of energy consumed by auxiliary equipment of the generating station and transformer losses within the generating station, and shall be expressed as a percentage of the sum of gross energy generated at the generator terminals of all the units of the generating station. For the purpose of the PPA, the normative Auxiliary Consumption shall be 9.00% of gross units generated at generator terminals with cooling tower and motor driven boiler feed pumps.

**Availability Declarations** shall mean from the Unit 1 Commercial Operation Date, written declarations made by ROSA and delivered to UPPCL pursuant to Section 6.3 and Schedule 8 hereof.

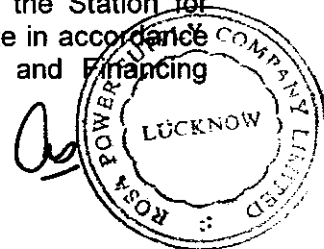
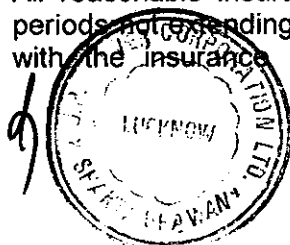
**Available Energy** shall mean with respect to any operating period (month, year or fraction thereof) the amount of Active Power that the "Station" generates (metered at the generator terminals) during such period.

**Business Day** shall mean any day other than a day on which commercial banks in Lucknow, Uttar Pradesh, India are authorized or required to be closed.

**Capacity** shall mean the capability of the Station measured in MW at any time to produce and deliver Active Power.

**Capital Cost** shall mean the total expenditure actually incurred by ROSA, in setting up and constructing the Station, on acquisition and development of land, on consultancy, design, supply, transport, construction, erection, testing, buildings including staff quarters, plant and equipment, material, work or facilities, required to enable the Station to deliver rated output, in accordance with the initial estimates approved by UPPCL/GOUP and the UPERC, and revised estimate (i) if due to Station Force Majeure (not insurable and not attributable to ROSA). UPPCL Force Majeure and Change in Law as commented upon by UPPCL/GOUP and approved by the UPERC (ii) if mutually agreed between UPPCL and ROSA as approved by the UPERC and (iii) if due to UPPCL default as approved by the UPERC, with due regard to efficiency and economy, and includes, inter alia.

1. Any development costs directly related to the Station.
2. Any reasonable financing costs (including all reasonable fees, premia and the like) to raise Debt and Equity (including reasonable standby loans to meet Station cost overrun, subject to ROSA subscribed to additional Equity) in accordance with the financial package approved by UPPCL and the UPERC.
3. Interest During Construction in accordance with the financial package approved by UPPCL and the UPERC.
4. All reasonable insurance costs relating to the construction of the Station for periods extending beyond Unit II Commercial Operation Date in accordance with the insurance package approved by UPPCL, UPERC, and Financing



Parties. ROSA shall use all reasonable endeavours to ensure that there is no unnecessary over insurance or duplicate of insurance cover for the Station.

5. All expenditure on outdoor yard equipment and switchgear, transformers and metering and protection equipment and the like, necessary to deliver the electrical energy from the Station to the UPPCL System in accordance with the grid technical limits.
6. Cost of spares procured along with the equipment, subject to the limitation that such cost does not exceed Two point Five per cent (2.5%) of the original project cost as on the date of first financial year closing after one year of the date of commercial operation of the generating station.
7. Cost of reasonable quantities of start-up fuels, no part of which is included in the cost of Infirm Power.
8. Cost of any capital additions as commented on by UPPCL/GOUP and thereafter approved by the UPERC subject to the provisions in Subsection 12.21, 12.22 and Article 14 or other relevant provisions.
9. Reasonable expenditure incurred at operation and maintenance charges in relation to each Unit after its Synchronisation Date but before its Commercial Operation Date no part of which is included in the cost of Infirm Power.

**Explanation 1 :**

Where ROSA has actually incurred any expenditure towards Capital Cost in one or more foreign currencies for the purpose of computing the Capital Cost, such expenditure shall be converted into the Rupee equivalent at the Current Rate of Exchange as on the dates on which the expenditure was incurred and no such adjustment for the purpose of Tariff fixation shall take place after the Unit II Commercial Operation Date except to the extent of Capital Expenditure as may be required due to Force Majeure or Change in Law. In respect of any such expenditure towards Capital Cost arising under the terms of any contract entered into prior to the Unit II Commercial Operation Date and payment for which is to be made following Commercial Operation Date the Current Rate of Exchange as on the actual due date of payment as approved by UPERC shall apply.

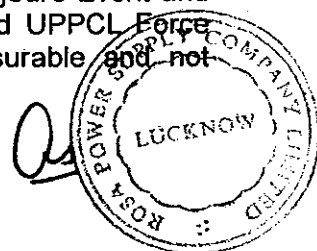
**Explanation 2 :**

For the purpose of clarification, the Capital Cost for the purpose of Tariff equals the sum of Debt and Equity reduced by the margin money towards Working Capital.

**Explanation 3 :**

It is clarified that Capital Cost means the lower of the following:

- (a) The total capital expenditure actually incurred on the Station.
- (b) Rs. 12,923 Million plus US \$ 296.6 Million, as approved and capped by the UPERC vide order dated November 1, 2006. This amount may be revised from time to time, to take into account any change in Capital Cost due to any expenditure resulting from Political Force Majeure Event and Change in Law, UPPCL default, mutual Agreement and UPPCL Force Majeure. In case of Station Force Majeure (not insurable and not



attributable to ROSA) increase in Capital Cost will be commented by UPPCL/GOUP and approved by the UPERC.

**Central Electricity Regulatory Commission** or **CERC** shall mean the Central Commission constituted in accordance with section 76 of the Electricity Act, 2003.

**Change in Law** shall have the meaning as specified in Subsection 12.19.

**Coal Supply Contract** shall mean the Agreement between ROSA and the Central Coalfields Ltd., relating to the supply of Primary Fuel to the Station as approved by UPPCL (or such other Agreements for the supply of Primary Fuel as may be entered into between ROSA and Primary Fuel Supplier from time to time in consultation with UPPCL, including but not limited to any of the purchase orders to be placed by Rosa for procurement of coal on spot purchase or short term contracts for procurement of coal on short-term basis from both domestic / international suppliers).

**Commercial Operation** shall mean the State of a Unit when it is capable of delivering Active Power and Reactive Power on a commercial basis to UPPCL as so specified by ROSA.

**Commercial Operation Date** or COD shall mean with respect to each Unit, midnight next following UPPCL's receipt of the Performance Test Report specified in Schedule 6 by the designated engineer and the result of the performance test showing that the tested capacity is not less than 95% of the Nameplate Capacity and as declared by ROSA to be capable of commercial operation and which shall not be more than one hundred and eighty (180) days from the Scheduled Synchronisation Date or such extension provided due to Force Majeure Events occurring between Synchronisation Date and Scheduled Commercial Operation Date.

**Explanation:**

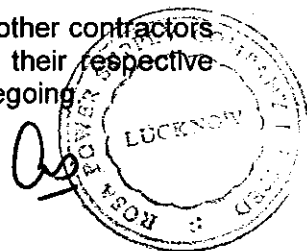
ROSA may, at any time by written notice to UPPCL but not later than one (1) month from the Date of Financial Closing, redesignate any date falling not more than nine (9) months before the Scheduled Commercial Operation Date of either Unit (as on the Effective Date) as the new Scheduled Commercial Operation Date for that Unit, and the expression 'Scheduled Commercial Operation Date' when used in this Agreement, including, without limitation, in the definition of Scheduled Synchronisation Date, shall mean the date so redesignated.

**Construction Contract** shall mean the fixed price contract entered into by ROSA with the EPC Contractor, for the design, supply, construction, commissioning and testing of the Station and placing the Station into Commercial Operation and containing the warranties with respect to the Capacity and performance of the Station. UPPCL will observe the finalisation of the Construction Contract. ROSA shall keep UPPCL advised about the details of the Construction Contract.

**Construction Period** shall mean with respect of each Unit the period from the Date of Financial Closing till the Commercial Operation Date of that Unit.

**Construction Schedule** shall mean the schedule setting forth the timing for the construction of the Station prepared by the EPC Contractor and approved by ROSA.

**Contractor** shall mean the EPC Contractor, O & M Contractor, and all other contractors to ROSA (and the respective sub-contractors of all the foregoing) in their respective capacities as such and the successors and permitted assigns of the foregoing.





**Control Centre** shall mean the relevant State Load Despatch Centre or Regional Load Despatch Centre as defined under the Act which shall issue Despatch Instructions to the Company.

**Core Business** shall mean the regulated activity of generation of electricity and shall exclude any unrelated business, such as consultancy services, etc, of ROSA.

**Cost of Fuel** shall mean the Cost of Primary Fuel plus the Cost of Secondary Fuel.

**Cost of Primary Fuel** shall have the meaning specified in Subsection 12.3(b) hereof.

**Cost of Secondary Fuel** shall have the meaning specified in Subsection 12.3(c).

**Current Rate(s) of Exchange** shall mean the market rate(s) of foreign exchange not exceeding the highest State Bank of India (SBI) TT selling rates applicable to any liability of ROSA in respect of any installment of the principal or any interest on any Foreign Debt or where applicable in respect of any Return on Foreign Equity as on the date on which such installment or as the case may be such Return on Foreign Equity becomes due.

**Daily Declared Capacity** shall be the Capacity of the Station at the generator terminals, declared by ROSA at 10.00 hours every day for the next 24 hours, or a modified declared Capacity through a written notice to UPPCL, for the purpose of calculating "Deemed Energy" and any "Declared Capacity Penalty" calculated pursuant to Schedule 8.

**Date of Financial Closing** shall mean the date upon which the Financing Documents relating to the Station have been executed and delivered by all the Parties thereto and the conditions precedent provided thereunder shall have been fulfilled or waived to such an extent as may be necessary to permit ROSA to have immediate access, subject only to giving notices of draw-down required thereby, to fund adequately the construction of the Station upon terms and subject to conditions satisfactory to ROSA and Financing Parties.

**Day** shall mean the 24 hour period beginning at 00:00 hours (New Delhi time).

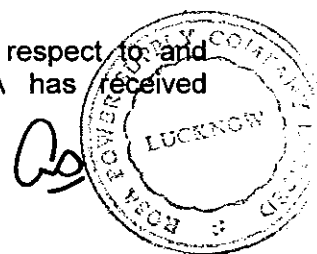
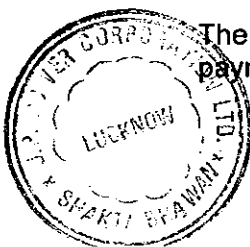
**Debt** means the amount of any loan, debenture or other similar obligation contracted or raised and received by ROSA under the Financing Documents, as more specifically set forth in Schedule 10 attached hereto, and actually expended (or to be expended), which shall not be greater than the principal amount of Debt specified in the applicable currency in the estimate of Capital Cost of the Station as set forth in the financial package to be approved by UPPCL/GROUP and the UPERC or any revised financial package as commented by UPPCL/GROUP and approved by the UPERC.

#### **Explanation 1**

Foreign Debt shall mean any Debt contracted or raised and received by ROSA under the Financing Documents, in a currency other than Rupees in cash or otherwise, the principal and interest on which is payable in such foreign currencies.

#### **Explanation 2:**

The principal amount of interest rates applicable to fees due with respect to and payment or amortization schedule for all Debt for which ROSA has received



commitments from lenders as of the Date of Financial Closing shall be subject to approval by UPPCL/GOUP and the UPERC or before such date. Any additional Debt for which ROSA may receive commitments thereafter shall constitute debt for purposes of this Agreement if and to the extent provided to ROSA on commercially reasonable terms as to amounts, rates of interest, fees payable, schedules for repayment, as commented by UPPCL/GOUP and approved by the UPERC. Such approval will not be unreasonably withheld or delayed. In addition, any Debt greater than that set forth in the financial package (that is to be approved by UPPCL/GOUP and the UPERC) will be subject to comments by UPPCL/GOUP and approved by the UPERC.

**Explanation 3:**

Where any part of the Debt contracted is in the nature of the value of any asset or any valuable service of any nature, the valuation thereof shall be subject to approval by UPPCL/GOUP and the UPERC.

**Debt Repayment** means the amount of any liability of ROSA for the repayment of one or more installments of the principal of any Debt (and Foreign Debt Repayment means such liability in respect of Foreign Debt) and includes, with respect to any Foreign Debt, an amount equal to the actual Rupee equivalent of the amount of any such liability at the Current Rate of Exchange as specified in Schedule 10.

**Explanation:**

Where any part of Debt includes in whole or in part any redeemable debentures. Debt shall include such amounts of amortization, which together with appropriate interest thereon, on a compounding basis, would meet the obligation of redemption of the Debentures together with any premium on the specified date or dates of redemption of the said debentures.

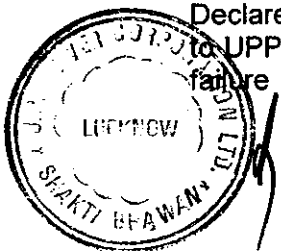
**Debt Security** shall mean the mortgages, hypothecation, security Agreements, guarantees and all other documents and instruments required by the Financing Parties as security for the Debt to be executed and delivered to the Financing Parties who provide the Debt.

**Declared Capacity Penalty** shall mean the penalty imposed on ROSA as a result of its failure to achieve the Capacity as instructed by UPPCL through Despatch Instructions, and which is less than or equal to the Daily Declared Capacity or most recent modification thereto as indicated to UPPCL or Control Centre in accordance with Section 6.2 and Schedule 8. The amount of any Declared Capacity Penalty will be calculated pursuant to Schedule 8.

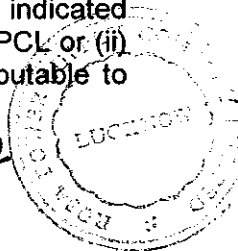
**Explanation:**

In case of trip out of a unit or both the Units, and intimated to UPPCL in an hour's time, no Declared Capacity Penalty will be levied for failure to achieve the Capacity as instructed by UPPCL or Control Centre through Despatch Instruction during that period of one hour.

**Deemed Energy** shall mean, for any Operating Period, the number of units of energy (kWh) which ROSA was in a position to generate during such operating period, with reference to actual level of generation then existing and with reference to the Daily Declared Capacity or the most recent modification thereto as last modified and indicated to UPPCL, but did not generate as a result of (i) Despatch Instruction from UPPCL or (ii) failure to take delivery of electricity by UPPCL due to grid disturbance attributable to



As



UPPCL as determined by Northern Regional Electricity Board (NREB) or similar authority but not due to any Force Majeure Event or (iii) payment default by UPPCL including any failure to provide/sustain agreed security package.

**Default Rate** shall mean the Working Capital Interest Rate plus Two per cent (2%).

**Demonstration Period** shall mean the period of seventy two (72) consecutive hours selected by ROSA in its absolute discretion for conducting Tests contemplated by Schedule 6 hereof.

**Depreciation** shall mean the sum of amount of depreciation and Advance Against Depreciation calculated as per the provisions of Clause 12.2 (d) of this Agreement.

**Explanation:**

Land used for ash disposal shall be treated as depreciable asset if approved by the UPERC

**Despatch Instruction** shall mean the instructions from the Control Centre in accordance with the IEGC, Accepted Utility Practices and this Agreement to schedule and control the generation at the Project in order to commence or not commence generation, or increase, decrease or cease the electrical energy delivered by the Project

**Development Stage** shall mean the period from the Approval Date to Unit II Commercial Operation Date.

**Directive** shall mean any present or future requirement, instruction, direction, order, regulation or rule of any Governmental Authority which is legally binding or which would customarily be observed by a reasonable and prudent owner. Operator or Contractor of facilities such as the Station and any modification, extension or replacement thereof from time to time in force.

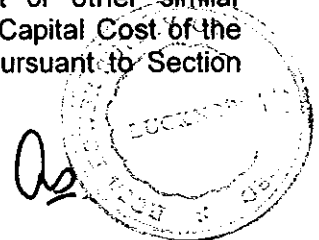
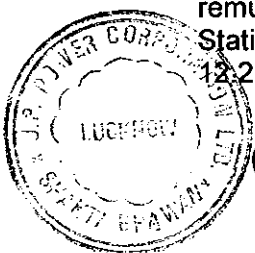
**Dollar or \$** shall mean the lawful currency of the United States of America.

**Due Date of Payment** shall mean in relation to any amount the 30<sup>th</sup> day after the receipt of invoice of that amount by UPPCL.

**Effective Date** shall mean the date of execution and delivery of this Agreement by the Parties.

**Emergency Conditions** shall mean a condition or situation (including system tripping) as contemplated by Subsection 6.5 (a) and 6.5 (b) hereof.

**Equity** means the amount of paid-up and subscribed share capital (including any share premium) contributed by the promoters, public or any other towards the share capital of ROSA, but only to the extent that the proceeds of such capital contribution are exclusively utilized on the Capital Cost of the Station, including, without limitation, to fund any increases thereof pursuant to Section 12.21 or Section 12.22, required to be invested in accordance with the approval of UPPCL/GROUP, the UPERC and the requirements of Financing Parties. Any other contribution by the promoters or any others, not forming part of Debt and not bearing any interest or other similar remuneration, the proceeds of which are exclusively utilized on the Capital Cost of the Station including, without limitation, to fund any increase thereof pursuant to Section 12.21 or Section 12.22, shall also constitute Equity.



**Explanation:**

Foreign Equity shall mean Equity paid up or contributed in a currency other than Rupees.

**Escrow Account** shall have the meaning as specified in Section 12.15 (c).

**Established Baseload Capacity** shall mean the Tested Capacity or Nameplate Capacity in Mega Watt of each of the Units measured at the generator terminal, whichever is higher, and will remain unaltered over the Terms of the Agreement.

**Event of Default** shall mean an event specified in Article 16.

**Experts** shall mean the experts appointed by the Parties hereto pursuant to Subsection 17.2 (b) hereof.

**External Interconnection Facilities** shall mean all of the facilities to be installed, owned, operated and/or controlled by UPPCL, including the 220 KV transmission lines, metering equipment, transformers and associated equipment and telemetering equipment described in Schedule 5 hereto.

**Financing Documents** shall mean the Agreements and documents between ROSA and the Financing Parties (other than ROSA and its Affiliates), as approved by the UPERC in consultation with UPPCL/GOUP, relating to the financing of the design, construction, commissioning, operation and/or maintenance of the Station and any collateral security pledged to the Financing Parties in respect thereof (other than by way of Equity or quasi-Equity participation) and shall without limitation include the Debt security.

**Financing Parties** shall mean the lenders, export credit agencies, multilateral and/or bilateral institutions, and others providing financing and refinancing to or on behalf of ROSA pursuant to the Financing Documents for the design, construction, commissioning, operation and/or maintenance of the Station or any portion thereof and any trustee or agent acting on behalf of such Parties.

**Fixed Charge** shall have the meaning specified in Section 12.2 hereof.

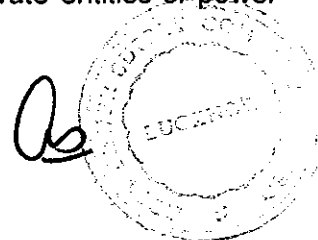
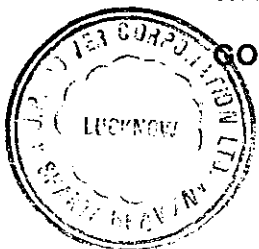
**Force Majeure Events** shall mean the events and circumstances described in Article 14 hereof.

**Forced Outage** shall mean, for any Unit or the Station, an interruption of such Unit's or the Station's generating Capacity, that is (i) not a Scheduled Outage; (ii) not the result of a Force Majeure Event; (iii) not the result of any act of or event or condition caused by UPPCL or the Control Centre or attributable to an event or condition on the UPPCL System; and (iv) not accruing due to Emergency Conditions.

**Fuel** shall mean the Primary Fuel and Secondary Fuel.

**Gazette** shall mean, for the purpose of Schedule 7, the Gazette of India which publishes from time to time resolutions passed under the authority of the Government of India relating to inter alia policies applicable to the development by private entities of power stations in India.

**GOI** shall mean the Government of the Republic of India.



**GOI Guarantee and Support Agreement** shall mean the guarantee and support Agreement if available, provided by GOI in respect of UPPCL's obligation under this Agreement.

**GOUP** shall mean the Government of the State of Uttar Pradesh.

**GOUP Guarantee** shall mean the guarantee provided by the Government of Uttar Pradesh in respect of UPPCL's obligation under this Agreement.

**Government Approval** shall mean any authorisation permit clearance license consent exemption or approval from or required by any Government Authority for the Station including without limitation those approvals set forth in Schedule 2 hereto.

**Governmental Authority** shall mean GOI, GOUP, the CERC, the UPERC or any regional municipal or local authority or regulatory department, body, political sub division, commission, agency, ministry, court judicial or administrative body, taxing authority or other authority having jurisdiction over either Party, the Station or the UPPCL System.

**IEGC** means the Indian Electricity Grid Code which sets out the rules, guidelines and standards notified from time to time by the CTU for the operation of the Grid System.

**Implementation Agreement** shall mean the Implementation Agreement dated February 23, 1999 as may be supplemented and/or amended from time to time.

**Incentive Charge** shall have the meaning specified in Section 12.4 hereof.

**Infirm Power** shall mean electrical energy produced by any Unit and delivered to UPPCL after Synchronisation Date and prior to the Commercial Operation Date of that Unit.

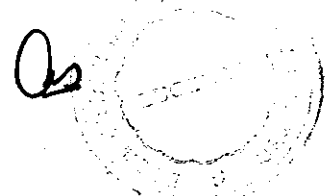
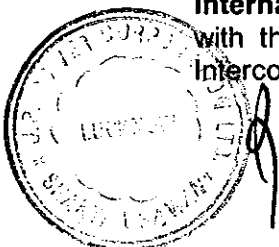
**Initial Tariff Period** shall mean the period from the Unit I Commercial Operation Date to Unit II Commercial Operation Date.

**Interconnection Points** shall mean the physical points identified in Schedule 5 hereto as the Interconnection Points adjacent to the Station which will be provided by ROSA and to which UPPCL is to interconnect the External Interconnection Facilities and the UPPCL System.

**Interest During Construction (IDC)** means the interest, if any, accrued on the Debt entered into by ROSA with the approval of UPERC, calculated on the balances of Debt actually remaining to be discharged, from time to time, as capitalised, at the rates of interest specified in terms of such Debt upto the Unit II Commercial Operation Date, as specified in Schedule 10.

**Interest on Debt** shall mean the actual interest payment liability devolving on ROSA arising after the Unit I Commercial Operation Date on the Debt of ROSA after taking into account the actual payment liability as regards Debt under the terms thereof as specified in Schedule 10, and includes the actual Rupee equivalent of such liability on Foreign Debt at the Current Rate of Exchange applicable thereto, and shall cease as soon as the Debt is fully redeemed.

**Internal Interconnection Facilities** shall mean all the facilities to be installed by ROSA with the Site to enable UPPCL to receive electrical energy from the Station at the Interconnection Points including all metering equipment, transformers and associated



equipment, relay and switching equipment, protective devices and safety equipment and telemetering equipment as more specifically described in Schedule 5 hereto.

**kcal**s shall mean kilocalories

**kV** shall mean kilovolts

**kW** shall mean kilowatt

**kWh** shall mean kilowatt-hour

**Law** shall have the meaning as specified in Section 12.18.

**Letter of Credit** shall mean an irrevocable revolving Letter of Credit as described in Section 12.15(a) hereof.

**MCR** shall mean Maximum Continuous Rating of the Unit as specified by the equipment manufacturer.

**Maintenance Programme** shall mean with respect to each Unit a programme of scheduled maintenance as specified in Section 6.9 hereof.

**Materially** (in relation to a Force Majeure Event) shall mean the inability of the Station to run at a high enough Plant Load Factor to receive its full Fixed Charge.

**Measured Energy** shall mean the energy measured in KWH or standard multiples thereof as measured at the Interconnection Points of the Station over a specified period of time.

**Metering Points** shall mean the physical points as specified in Schedule 5, Part-C, where the ROSA Meters and the UPPCL Meters are installed.

**MW** shall mean megawatt.

**MVA** shall mean mega-volt amperes.

**MWh** shall mean megawatt-hour.

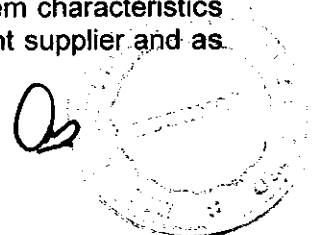
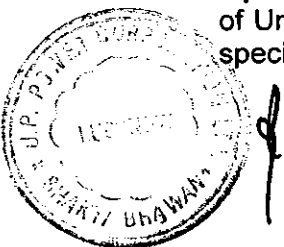
**Month** shall mean a calendar month according to the Gregorian calendar.

**Nameplate Capacity** shall mean with respect to each Unit, the Capacity of each Unit at the generator terminal, being 300 MW and with respect to the Station, the Capacity of the Station at the generator terminals, being 600 MW.

**Net Electrical Output** shall mean, for any Unit or the Station for any operating period, the Available Energy of such Unit or the Station during such operating period, net of Auxiliary Consumption.

**O & M Expenses** shall mean the total of plant operations, maintenance and insurance expenses as specified in Section 12.2 (e).

**Operating Characteristics** shall mean the major equipment and system characteristics of Unit I and Unit II as confirmed by the EPC Contractor and equipment supplier and as specified in Schedule 3.



**Operating Month** shall mean the period from the midnight following the Unit 1 Commercial Operation Date till the end of 2400 hours on the 14<sup>th</sup> Day of that Month if Commercial Operation Date of Unit 1 occurs before that date or till the end of 2400 hours of the 14<sup>th</sup> day of the next month if Commercial Operation Date occurs after 14<sup>th</sup> day of the particular Unit and thereafter the period commencing at 0000 hours on the 15<sup>th</sup> Day of the Month and ending at 2400 hours on the 14<sup>th</sup> day of the following Month.

**Operator** shall mean the company, if any, which will operate and maintain the Station pursuant to the O & M Agreement.

**Parties** shall mean, collectively, ROSA and UPPCL and individually either of them.

**Performance Test** means the test of a Unit's rated capacity carried out in accordance with paragraph II of Schedule 6 of the Power Purchase Agreement. Any reference to Tests in Section 5.6 or elsewhere shall include such Performance Tests.

**Person** shall mean any individual, corporation, company, partnership, joint venture, voluntary association, trust, un-incorporated organisation or Governmental Agency, instrumentality or political subdivision thereof.

**Plant Load Factor** shall mean the ratio, expressed as a percentage of the number of units (kWh) of electrical energy generated by the Station in any Tariff Year, to the maximum of such units (kWh) of electrical energy that could theoretically be generated by the Station with reference to the Established Baseload Capacity.

**Primary Fuel** shall mean coal.

**Reactive Power** shall mean the product of voltage and the current and the sine of the phase angle between them, measured in units of volt-amperes-reactive (VAR) and standard multiples thereof.

**Return on Equity** shall be computed on the equity base determined in accordance with Debt –Equity stipulation below @ 14% per annum.

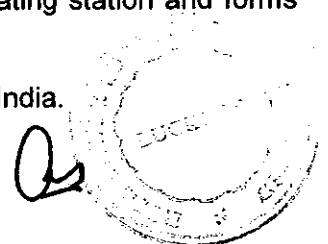
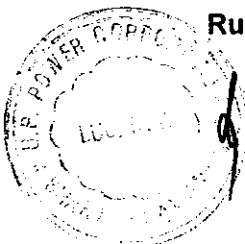
Debt–equity ratio as on the date of commercial operation shall be 70:30 for determination of tariff. If equity employed is more than 30%, the amount of equity for determination of tariff shall be limited to 30% and the balance amount shall be considered as the normative loan.

Provided that in case the actual equity employed is less than 30%, the actual debt and equity shall be considered for determination of tariff.

Provided that equity invested in foreign currency shall be allowed a return up to the prescribed limit in the same currency and the payment on this account shall be made in Indian Rupee based on the exchange rate prevailing on the due date of billing.

The premium, if any, raised by ROSA while issuing share capital and investment of internal resources created out of free reserve of the generating company, if any, for the funding of the project, shall also be reckoned as paid up capital for the purpose of computing return on equity, provided such premium amount and internal resources are actually utilised for meeting the capital expenditure of the generating station and forms part of the approved financial package.

**Rupees or Rs.** shall mean the lawful currency of the Republic of India.



**Scheduled Unit I Commercial Operation Date** shall mean such date as shall be not more than forty one (41) months from November 1, 2006, in accordance with UPERC Order dated November 8, 2006, subject to the extension of time by UPERC or due to Force Majeure Events.

**Scheduled Unit II Commercial Operation Date** shall mean such date as shall be not more than forty four (44) months from November 1, 2006, in accordance with UPERC Order dated November 8, 2006, subject to the extension of time by UPERC or due to Force Majeure Events.

**Scheduled Bank** shall mean any Scheduled Indian Bank as indicated by UPPCL and as reasonably acceptable to ROSA.

**Scheduled Outage** shall mean, as to any Unit, a planned interruption of the electric generating capability of such Unit for the performance of the Maintenance Programme pursuant to Section 6.9 hereof (including any interruption required for routine or other inspections of the Station or replacement of such Unit or any component thereof).

**Scheduled Synchronisation Date** shall mean with respect to each Unit such date as shall be declared by ROSA in writing, at least One Hundred and Twenty (120) days prior to such date, as being the date on which ROSA will attempt to cause a Unit to be electrically synchronised and connected to the UPPCL System and which shall not be more than one hundred and eighty (180) days prior to the Scheduled Commercial Operation Date for such Unit.

**Secondary Fuel** shall mean fuel oil and/or propane.

**Secondary Fuel Contract** shall mean a legally binding contract between ROSA and the Secondary Fuel supplier.

**Secondary Fuel Transportation Contract** shall mean the contract specified in Subsection 2.2(a) (vi).

**Site** shall mean the approximately 600 hectare Site known as ROSA near Rosa Village approximately 11 kms south of Shahjahanpur Town as more particularly defined in Schedule 1.

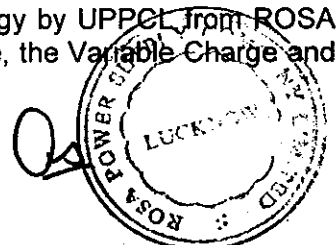
**Stabilisation Period** shall mean, as to any Unit, a period of One hundred Eighty (180) days commencing on the Commercial Operation Date of such Unit.

**Station** shall have the meaning specified in the first recital hereof.

**Station Contract** shall mean the Coal Supply Contract, Transportation Contract, Secondary Fuel Contract, Secondary Fuel Transportation Contract, Construction Contract, O & M Agreement (if any) and any other material contract to which ROSA is a Party relating to the development, construction, operation and/or maintenance of the Station.

**Synchronisation Date** shall mean, as to any Unit, the date upon which such Unit is synchronised into the UPPCL System via External Interconnection Facilities for the first time for commissioning, testing or initial start-up.

**Tariff** shall mean the rate for the purchase of electrical energy by UPPCL from ROSA under this Agreement, which shall comprise the Fixed Charge, the Variable Charge and the Incentive Charge as set forth in Article 12.





**Tariff Year** shall mean each twelve (12) Month period beginning at 00.00 hours on the 1<sup>st</sup> day of April of each year and ending Twelve (12) Months later (according to the Gregorian calendar) provided the First Tariff Year of the Term shall commence on the Unit II Commercial Operation Date and end at 2400 hours on the net 31<sup>st</sup> March and the last Tariff Year of the Term shall commence at 00.00 hours on the 1<sup>st</sup> day of April and end on the date of expiry of the Term. If any Tariff Year of the Term shall be less than Twelve (12) Months in duration all calculations relating to Tariff Year shall be adjusted on pro rata basis.

**Taxes** shall mean any tax, charge, cess, impost, tariff, duty or fee of any kind charged imposed or levied, directly or indirectly, by any Governmental Authority applicable to ROSA or the Station but excluding any tax or penalty imposed on ROSA by reason of ROSA's default.

**Taxes on Income** shall mean the taxes on the income streams of ROSA, from its core business, which shall be computed as an expense and shall be recovered from UPPCL.

**Term** shall have the meaning specified in Section 2.1 hereof.

**Tests** shall mean any one or more of the tests contemplated to be performed in accordance with this Agreement and referred to in Schedule 6 hereto and/or in Section 5.6 hereof.

**Tested Capacity** shall mean the Capacity of any Unit at the generator terminal established during the Tests carried out in the presence of both the Parties as specified in Schedule 6.

**Transfer Date** shall have the meaning as specified in Section 18.5

**Unit** shall mean either Unit I or Unit II

**Unit I Commercial Operation Date** shall mean the Commercial Operation Date of Unit I.

**Unit II Commercial Operation Date** shall mean the Commercial Operation Date of Unit II.

**UPERC Approval Date** shall mean the date of approval of this Agreement by the UPERC, i.e., November 1, 2006.

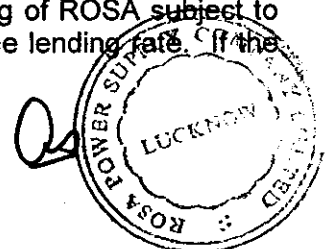
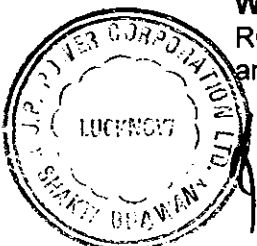
**UPPCL System** shall mean the electrical supply, distribution and transmission system owned, used or controlled by UPPCL and/or distribution companies in UP for the purpose of generating, transmitting and distributing electricity to UPPCL's customers.

**Uttar Pradesh Electricity Regulatory Commission** or **UPERC** shall mean the Uttar Pradesh Electricity Regulatory Commission referred to in Section 82 of the Act.

**Variable Charge** shall have the meaning as specified in Section 12.3.

**Working Capital** shall have the meaning specified in Section 12.2(c) hereof.

**Working Capital Interest Rate** shall mean the rates as may be actually obtained by ROSA from time to time based on lenders appropriate credit rating of ROSA subject to an upper limit of Two per cent (2%) over State Bank of India prime lending rate. If the



increase in the Working Capital Interest Rate is due to UPPCL default it shall be payable by UPPCL.

### Section 1.2 Interpretation

Unless the context of this Agreement otherwise requires, the following rules of interpretation shall apply to this Agreement.

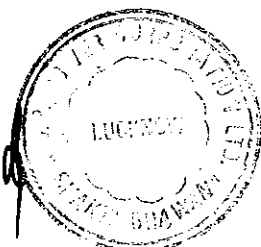
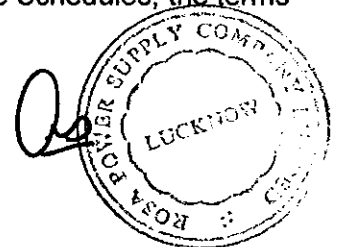
- (a) the singular includes the plural, and the plural includes the singular;
- (b) the words "hereof", "herein", "hereby", "hereto" and similar words refer to this entire Agreement and not any particular Article, Section, Schedule or any other Subsection of this Agreement;
- (c) a reference to any "Article", "Section", "Sub-section" or "Schedule" is a reference to a specific Article, Section, Sub-section or Schedule of this Agreement.
- (d) a reference to any law, statute, regulation, notification or statutory provision includes any amendment, modification or re-enactment thereof.
- (e) a reference to any agreement, contract or other document includes any amendment, supplement or other modification thereto and
- (f) a reference to any Person includes such Person's successors and permitted assigns under any legislation, statutory scheme, agreement, contract or other document.

### Section 1.3 Schedules

This Agreement includes the following attached Schedules

- |     |             |   |   |
|-----|-------------|---|---|
| (a) | Schedule 1  | - | Description of Station                      |
| (b) | Schedule 2  | - | Major Clearances                            |
| (c) | Schedule 3  | - | Generator Electrical Characteristics        |
| (d) | Schedule 4  | - | Fuel Specifications                         |
| (e) | Schedule 5  | - | Transmission and Interconnection Procedures |
| (f) | Schedule 6  | - | Tests                                       |
| (g) | Schedule 7  | - | Depreciation                                |
| (h) | Schedule 8  | - | Despatch Procedures                         |
| (i) | Schedule 9  | - | Metering Specifications                     |
| (j) | Schedule 10 | - | Capital Cost/Debt/Equity                    |
| (k) | Schedule 11 | - | UPERC Orders                                |

All such Schedules form an integral part of this Agreement, and this Agreement shall be construed in light of such Schedules, provided that, in the event of any inconsistency in the terms of the main body of this Agreement and the terms of the Schedules, the terms of the main body of this Agreement shall prevail.



## ARTICLE 2

## TERM OF AGREEMENT AND CONDITIONS PRECEDENT

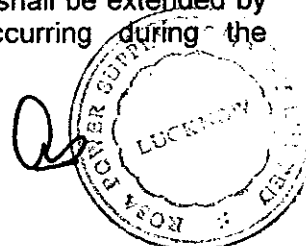
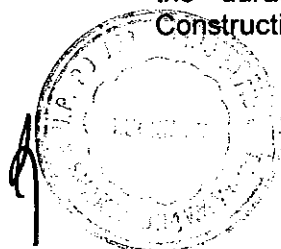
## Section 2.1 Term

- (a) This Agreement shall become effective on the Effective Date and shall continue in full force and effect, subject to earlier termination pursuant to Article 16. Article 18 and Section 2.7 hereof, for a period of twenty five (25) years from the Unit II Commercial Operation Date (the "Initial Term").
- (b) The Term of this Agreement can be extended beyond the Initial Term by delivering written notice by either Party not later than two (2) years prior to the end of the Initial Term, in which event the Term of this Agreement shall extend by mutual Agreement of the Parties for a mutually agreed period with such amendments as shall be mutually agreed by ROSA and UPPCL. Should the period of negotiations for the extension of the Initial Term of the Agreement extend beyond the expiry of the Initial Term of the Agreement, then, the terms and conditions, for the spill over period, until the negotiations are ended, will be mutually agreed by both the Parties.
- (c) Notwithstanding anything to the contrary contained herein, if either Party exercises its right of renewal as aforesaid and if ROSA and UPPCL are unable to agree on the terms and conditions applicable during the mutually agreed period of the extended term, then the Term of this Agreement shall end on the date of expiry of the Initial Term.
- (d) If at the expiry of the Initial Term, the Term of this agreement is not extended pursuant to the provisions of Section 2.1(b), then ROSA may, subject to applicable law, sell the Capacity of and any Active Power generated by the Station to any third party, or sell the Station and related assets to any third party. In such an event, UPPCL shall wheel such Active Power and UPPCL shall be entitled to recover wheeling charges for the same as stipulated by the UPERC.

Provided however that if ROSA exercises its option to sell the Station and related assets on expiry of this Agreement, UPPCL will have the first right to purchase the same from ROSA at a mutually agreed price, which shall not be lower than the market price of the Station and the related assets. The market price may be determined by Rosa by conducting a competitive bidding process for the assets.

Further, in case any agreement on price or other terms and conditions of sale is not reached within three (3) months of receipt of notice of offer by UPPCL, ROSA shall be at liberty to sell the Station and related assets to any third party.

- (e) Notwithstanding anything to the contrary contained in this Agreement, the Scheduled Commercial Operation Date of any Unit shall be extended by the duration of any Force Majeure Event occurring during the Construction Period.



- (f) Term shall mean the Initial Term and any additional period during which this Agreement is in effect as herein before provided.

## Section 2.2 Conditions Precedent

### (a) Conditions Precedent for ROSA

The obligations of ROSA under this Agreement shall become effective on the date specified in a notice from ROSA to UPPCL stating that the following conditions precedent have been fulfilled to ROSA's satisfaction or waived entirely by ROSA.

- (i) GOUP has executed and delivered to ROSA a legally binding GOUP Guarantee, in favour of ROSA, on terms satisfactory to ROSA, relating to :

~~(1)~~ the guarantee by GOUP of the obligations of UPPCL under this Agreement;

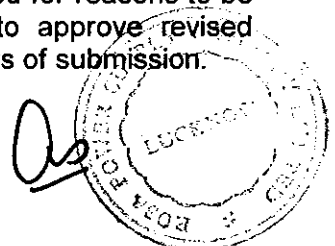
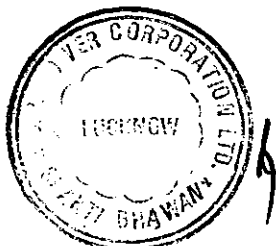
(2) all tax and regulatory clarifications and approvals within the jurisdiction of GOUP, and

(3) all necessary approvals, consents, exemptions, permits and agreements required by ROSA for the financing, design, construction, ownership, operation and maintenance of the Station at the Site under this Agreement and which are within the jurisdiction of GOUP.

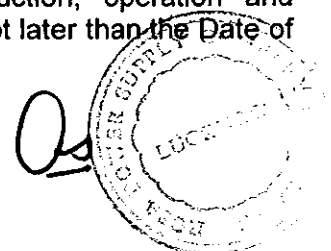
- ~~(ii)~~ UPPCL has agreed to deliver to ROSA on or before the Scheduled Synchronization Date of Unit 1, at its own cost, a revolving irrevocable Letter of Credit.

- (iii) Coal Supply Contract, ROSA and selected suppliers have entered into legally binding Coal Supply Contract, as approved by UPPCL, relating to the supply of Primary Fuel to the Station, UPPCL shall exercise its right of approval within Forty Five (45) days of receipt of the Coal Supply Contract from ROSA which can be extended by GOUP under unavoidable circumstances for a further period of 15 days failing which the Coal Supply Contract will be deemed approved by UPPCL. UPPCL may disapprove it within the said period for reasons to be recorded. UPPCL may exercise its right to approve revised contract as submitted within a period of 15 days of submission.

- (iv) Transportation Contract, ROSA and the Ministry of Railways have entered into a legally binding Transportation Contract as approved by UPPCL, relating to the transportation of Primary Fuel to the Station. UPPCL shall exercise its right of approval within Forty Five (45) days of receipt of the Transportation Contract from ROSA which can be extended by GOUP under unavoidable circumstances for a further period of 15 days failing which the Transportation Contract will be deemed approved by UPPCL. UPPCL may disapprove it within the said period for reasons to be recorded. UPPCL may exercise its right to approve revised contract as submitted within a period of 15 days of submission.



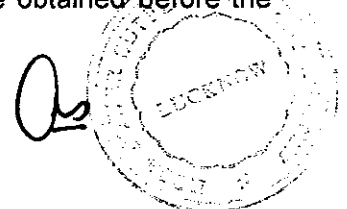
- (v) Secondary Fuel Contracts: ROSA and the selected suppliers have entered into legally binding Secondary Fuel Contract, as approved by UPPCL, relating to the supply of Secondary Fuel to the Station. UPPCL shall exercise its right of approval within Forty Five (45) days of receipt of the Secondary Fuel Contract from ROSA, which can be extended by GOUP under unavoidable circumstances for a further period of 15 days failing which the Secondary Fuel Contract will be deemed approved by UPPCL. UPPCL may disapprove it within the said period for reasons to be recorded. UPPCL may exercise its right to approve revised contract as submitted within a period of 15 days of submission.
- (vi) Secondary Fuel Transportation Contracts: ROSA and the selected transporter of Secondary Fuel have entered into legally binding Secondary Fuel Transportation Contract, as approved by UPPCL relating to the supply and transportation of Secondary Fuel to the Station. UPPCL shall exercise its right of approval within Forty Five (45) days of receipt of the Secondary Fuel Transportation Contract from ROSA, which can be extended by GOUP under unavoidable circumstances for a further period of 15 days failing which the Secondary Fuel Transportation Contract will be deemed approved by UPPCL. UPPCL may disapprove it within the said period for reasons to be recorded. UPPCL may exercise its right to approve revised contract as submitted within a period of 15 days of submission.
- (vii) Water Usage Contract: ROSA and the Department of Irrigation, GOUP have entered into legally binding Water Usage Contract relating to supply of water to the Station.
- (viii) UPPCL has agreed to establish an Escrow Account in favour of ROSA as a guarantee for the monthly reinstatement of the Letter of Credit as contemplated by Section 12.15 hereof and the terms of the Escrow Account are agreed to.
- (ix) ROSA shall have been granted all Governmental Approvals, either unconditionally or subject to conditions which do not materially prejudice ROSA's rights, benefits or its ability to perform its obligations under the Agreement, and such Governmental Approvals shall be in full force and effect, provided ROSA, subject to the approval of the Financing Parties, may in its discretion accept in lieu thereof, written confirmation from the relevant Government Authority that such Governmental Approvals will be granted and will be in full force and effect at such time or times as shall be required so as not to impede ROSA's construction of the Station.
- (x) To the extent same are within their respective jurisdiction, GOUP and/or UPPCL shall have provided, without cost to ROSA, all real property rights of access and agrees to and from the Station Site necessary and incidental to the construction, operation and maintenance of the Station commencing not later than the Date of Financial Closing.



- (xi) To the extent same are within their respective jurisdiction, GOUP and/or UPPCL shall have provided or caused to be provided all necessary permits and Governmental Approvals for the electricity, and water supply required for the construction of the Station.
  - (xii) Financial Closing Date: Confirmation that the Date of Financial Closing has occurred or will occur on terms satisfactory to ROSA.
  - (xiii) Construction Contract: ROSA is satisfied it can enter into a legally binding Construction Contract for the design, engineering and construction of the Station on terms satisfactory to ROSA and the Capital Cost approved by UPERC and UPPCL. ROSA shall inform UPPCL and UPPCL shall have the option of sending a Person to observe the final specifications being agreed to in the Construction Contract between ROSA and the Contractor.
  - (xiv) O & M Contract: ROSA is satisfied it can enter into a legally binding O&M Contract (if required) for the operation and maintenance of the Station.
  - (xv) Other Approvals, Consents, Concessions and Exemptions: ROSA has obtained all Governmental Approvals, consents, concessions and exemptions required by the Financing Parties in relation to the development, construction and commercial operation of the Station.
  - (xvi) Site: ROSA is satisfied it can procure the Site for the Station on terms satisfactory to ROSA.
  - (xvii) Rosa shall have received copies of resolutions adopted by the UPPCL's Board of Directors authorizing the execution, delivery and performance by UPPCL of this Agreement, as certified by a director of UPPCL
- (b) Except as may be waived by UPPCL, it shall be a condition precedent to the effectiveness of UPPCL's obligations under this Agreement other than UPPCL's obligations to use reasonable efforts to assist ROSA to achieve Financial Closing, that each of the following events shall have occurred.
- (i) UPPCL shall have received copies of the charter documents for ROSA as certified by ROSA's Company Secretary.
  - (ii) UPPCL shall have received copies of resolutions adopted by ROSA's Board of Directors authorizing the execution, delivery and performance to ROSA of this Agreement, as certified by ROSA's Company Secretary.
  - (iii) UPPCL shall have received an opinion of legal counsel to ROSA, reasonably satisfactory to UPPCL, with respect to ROSA's authority to enter into this Agreement and the enforceability of the provisions contained herein and that ROSA has obtained all Government Approval, if any, required to be obtained before the Date of Financial Closing.



*[Handwritten signature]*



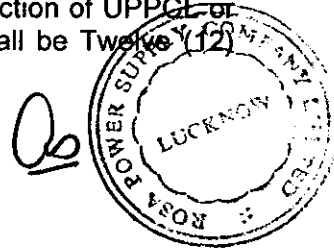
- (iv) UPPCL shall have received copies of the Financing Documents and confirmation letter from ROSA's financial advisor supporting the view that the Station can be financed as contemplated hereby.
- (c) Approval of Parties
  - (i) ROSA has received an opinion acceptable to it from the legal counsel of UPPCL relating to the enforceability of this Agreement against UPPCL and such other matters as ROSA may reasonably request in connection with the Station.
  - (ii) ROSA has received an opinion acceptable to it from the legal counsel of GOUP and GOI (if applicable) and the other respective Parties relating to the enforceability of the GOUP Guarantee, the Coal Supply Contract, the Transportation Contract, the Secondary Fuel Contract, Secondary Fuel Transportation Contract and any other contracts with GOUP and/or GOI and any respective departments or agencies thereof against GOUP, GOI and such other department and agencies respectively and such other matters as ROSA may reasonably request in connection with the Station.

### **Section 2.3 Obligation to use reasonable efforts to satisfy Conditions Precedent**

- (a) UPPCL shall use all reasonable efforts to assist ROSA in obtaining all Governmental Approvals, the Site, import and duty clearances, local governmental assistance, construction and backup power, and other services required for the construction, operation and maintenance of the Station, in each case, as contemplated by this Agreement. In addition, UPPCL shall use all reasonable efforts to ensure satisfaction in full of the conditions precedent set forth in Section 2.2 (a) hereof to the extent the fulfillment or satisfaction of such condition falls within its responsibility, influence or control.
- (b) UPPCL shall, at the request of ROSA, afford all reasonable assistance to ROSA in achieving the Date of Financial Closing, including, without limitation, the prompt execution and delivery of all documents required by the Financing Parties to protect or secure their respective interests in this Agreement and/or the Station, as required.
- (c) ROSA shall use all reasonable efforts to assist UPPCL and to ensure satisfaction in full of the conditions precedent as set forth in Section 2.2 (b) hereof to the extent the fulfillment or satisfaction of such condition falls within its responsibility, influence or control.

### **Section 2.4 Notice of Satisfaction of Conditions Precedent**

- (a) All conditions precedent specified in Section 2.2 (a) hereof shall be completed to the satisfaction of ROSA or waived in writing by ROSA prior to such date as shall be Twelve (12) months or mutually agreed extended period from the UPERC Approval Date. All conditions specified in Section 2.2(b) hereof shall be completed to the satisfaction of UPPCL or waived in writing by UPPCL prior to such date as shall be Twelve (12)



months or mutually agreed extended period from the UPERC Approval Date.

- (b) Upon the attainment or satisfaction of any conditions precedent, UPPCL or ROSA, as the case may be shall promptly deliver written notice thereof to the other.
- (c) The written notice shall include particulars and circumstances supporting ROSA's or UPPCL's conclusion that the relevant conditions precedent has been satisfied.
- (d) ROSA shall have the sole discretion to determine whether the conditions precedent to ROSA's obligations has been satisfied under this Agreement and UPPCL shall have the sole discretion to determine whether the conditions precedent to UPPCL's obligation has been satisfied under this Agreement.

### **Section 2.5 Non-fulfillment of Conditions Precedent**

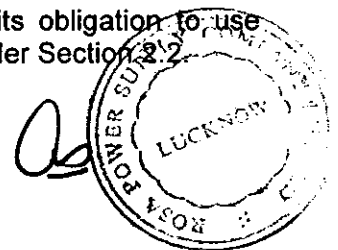
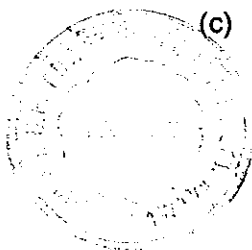
- (a) In the event of non-fulfillment of the conditions precedent:
  - (i) If the conditions precedent are not satisfied or waived within the time specified in Section 2.4 (a) and therefore subject to subsection 2.5(a) (ii) and Section 2.6, either Party may terminate this Agreement upon the expiry of Thirty (30) days after delivery of 'Intended Termination Notice" to the other Party.
  - (ii) UPPCL or ROSA may request that the deadline for completion of conditions precedent be extended to a date that is agreeable and consented to by the other Party. Neither Party will be unreasonable in giving or agreeing to any such extension.

### **Section 2.6 Waiver of Non-fulfillment of Conditions Precedent**

- (a) The conditions precedent as specified in Section 2.2(a) are for the sole benefit of ROSA and may be waived or removed by ROSA by written notice to UPPCL. UPPCL has the sole authority to waive conditions as specified under Section 2.2(b) of this Agreement by written notice to ROSA.

### **Section 2.7 Termination due to Non-fulfillment of Conditions Precedent**

- (a) This Agreement shall terminate after the expiry of the "Intended Termination Notice" provided under Subsection 2.5 (a) (i) unless ROSA or UPPCL, as the case may be, waives non-fulfillment of the conditions precedent within the notice period.
- (b) Subject to Subsection 2.7 (c) neither Party shall have any liability or obligations to the other arising from the termination of this Agreement due to non-fulfillment of conditions precedent.
- (c) A Party shall be liable to the other for breach of its obligation to use reasonable efforts to satisfy conditions precedent under Section 2.2





## ARTICLE 3

### DEVELOPMENT STAGE

#### Section 3.1 General

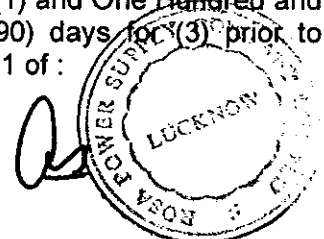
- (a) The Development Stage shall comprise the period from the Approval Date until the Unit II Commercial Operation Date.

#### Section 3.2 ROSA's Obligations

- (a) ROSA will identify, prepare, negotiate and enter into such preliminary agreements as may be necessary for the procurement of equipment, design, engineering, construction, financing, commissioning, testing of the Station and the Internal Interconnection Facilities.
- (b) ROSA will identify and make arrangements, as may be necessary, for the construction of the Station and other Internal Interconnection Facilities, including the commissioning of necessary site, soil, geological, hydrographic and other surveys.
- (c) ROSA shall acquire from the relevant Governmental Authority and maintain in full force and effect all Government Approvals and complete or have completed all environmental impact studies, which are necessary for the construction, operation and maintenance of the Station.
- (d) ROSA will identify and make such arrangements, as may be necessary, for design and construction of road and rail access to the Site.
- (e) ROSA will identify and make such arrangements, as may be necessary, for the design and construction of a colony to house the Station's permanent staff and for use during the Development Stage.
- (f) ROSA shall ensure rehabilitation and resettlement of displaced Persons from the Site as per governing Law.
- (g) ROSA shall reach financial close within Four (4) months from November 1, 2006 in accordance with UPERC Order dated November 8, 2006 and extension for financial close may be granted by mutual consent and UPERC approval unless the project is proven to be non-viable. If the financial close is not achieved within the aforesaid period, UPPCL has the right to terminate the Agreement without any liability on either Party.

#### Section 3.3 UPPCL'S Obligation

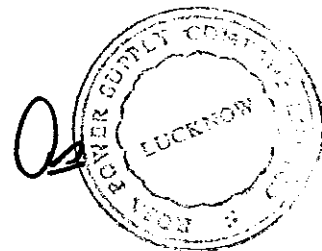
- (a) UPPCL shall, at its own expense
- (i) complete the construction and testing not later than Three Hundred and Sixty – Five (365) days for (1) and One Hundred and Eighty (180) days for (2) and Ninety (90) days for (3) prior to Scheduled Synchronization Date for Unit 1 of :



- (1) the transient stability and load flow study on the UPPCL system;
  - (2) the External Interconnection Facilities to the extent required for providing start-up power to the Station;
  - (3) complete External Interconnection Facilities including connections to the 220 KV systems of UPPCL in order to evacuate the entire Capacity of the Station;
- (ii) maintain the External Interconnection Facilities including the 220 KV transmission line healthy at all times to ensure reliable evacuation of power generated and import of Station Start-up Power.
  - (iii) acquire and maintain the transmission line right of way and advise ROSA of the location of the transmission line right of way;
  - (iv) co-operate and assist ROSA in identifying, preparing necessary applications and to liaison with all relevant Governmental Authorities in order for ROSA to obtain the necessary Government Approvals; and
  - (v) co-operate with and assist ROSA to liaison with all persons necessary for the procurement of equipment for, and the design, construction, financing, commissioning, testing of the Station; the electrical transmission facilities on the Stations' side of the Interconnection Points, and any other Internal Interconnection Facilities.

#### Section 3.4 Liability

- (a) Notwithstanding anything in this Article, neither Party shall have any liability for any delays under this Article caused by the other Party nor shall any such delay affect the validity of this Agreement or the obligations of the Parties thereunder, except as provided in Section 5.8 and Section 9.5.



## ARTICLE 4

### CONSTRUCTION

#### Section 4.1 ROSA's Construction Responsibilities

- (a) ROSA shall be responsible for the design, supply, construction, commissioning, testing and operation and warranty of
- (i) the Station;
  - (ii) the 220 KV sub-Station Switchyard and electrical facilities on the Station side of the Interconnection Point.
  - (iii) Internal Interconnection Facilities; and
  - (iv) The colony to be constructed on the Site and supporting facilities
- (b) ROSA shall notify UPPCL of any anticipated material changes to or delays in :
- (i) the Construction Schedule referred to in Section 4.3;
  - (ii) the commissioning and/or testing of any Unit of the Station or the Internal Interconnection Facilities; or
  - (iii) achieving the Scheduled Unit I Commercial Operation Date and/or the Scheduled Unit II Commercial Operation Date.
- (c) ROSA and UPPCL shall cooperate in good faith and use their best efforts to satisfy their obligations under this Agreement.

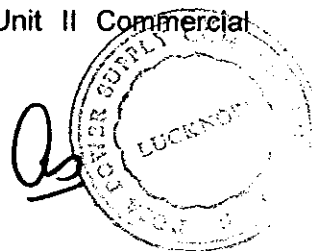
#### Section 4.2 The Site

- (a) The Station shall be located at the Site, which shall be purchased, leased or otherwise acquired by ROSA.

#### Section 4.3 Construction Schedule

- (a) ROSA shall provide notice to UPPCL of;
- (i) the construction for the Station Thirty (30) days prior to starting construction of the Station;
  - (ii) a start-up and test schedule for the Station Forty-Five (45) days prior to start-up and testing of each Unit to be commissioned.
- (b) ROSA shall submit progress report on the status of construction of the Station to UPPCL on a monthly basis until the Unit II Commercial Operation Date.

#### Section 4.4 Construction Power



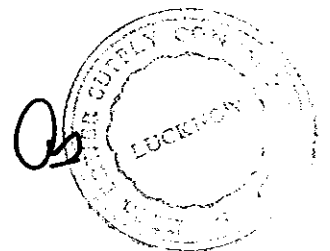
- (a) UPPCL shall install a transmission line to provide, deliver, maintain and sell subject to Section 6.13 hereof, electrical energy to ROSA at the Station Site in such quantities as ROSA may require and that UPPCL can make available to the best of its efforts for and after the Construction Period of the Station. ROSA shall provide for a back-up source of power as more specifically laid out in Schedule 5 which will be used for and after the Construction Period when UPPCL is unable to deliver power to the ROSA Site. UPPCL shall charge ROSA at UPPCL's most recently notified applicable tariff.

**Section 4.5 Construction Services, Infrastructure and Utilities**

- (a) UPPCL, if possible, will assist ROSA in procuring the services, facilities and equipment including fresh water supply and communications facilities needed in such quantities as ROSA may require both during and after the Construction Period.

**Section 4.6 Liability**

- (a) Notwithstanding anything in this Article, neither Party shall have any liability for any delays under this Article caused by the other Party nor shall any such delay affect the validity of this Agreement or the obligations of the Parties hereunder, except as provided in Section 5.8 and Section 9.5.



## ARTICLE 5

### SYNCHRONIZATION, TESTING AND COMMISSIONING

#### Section 5.1 Synchronization

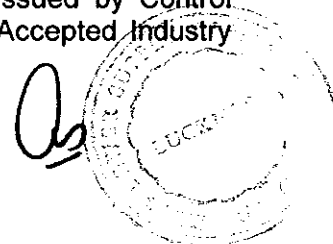
- (a) ROSA shall declare the Scheduled Synchronization Date of each Unit, in writing to UPPCL at least One Hundred and Twenty (120) days prior to such date. ROSA may change the Scheduled Synchronization Date for such Unit in writing no less than Four (4) weeks prior to the Scheduled Synchronization Date. However, this change will not affect the Scheduled Commercial Operation Date of the Unit except due to the occurrence of Force Majeure Events as specified in Article 14, occurring between the Synchronization Date and Scheduled Commercial Operation Date of the Unit.
- (b) ROSA shall give notice to UPPCL at least Seven (7) Days prior to the date of synchronization of each generating Unit. UPPCL shall have the right to have representatives present at the Station on each Synchronization Date.
- (c) UPPCL shall make such arrangements or changes to the External Interconnection Facilities or otherwise as shall be necessary to enable stable system operation and reliable power evacuation from the Station and power import into the Station as required, before the Scheduled Synchronization Date of any Unit.

#### Section 5.2 Procedures for Synchronization

- (a) ROSA and UPPCL shall mutually complete written procedures not later than one hundred and twenty (120) days prior to the Scheduled Synchronization Date of the Unit which will govern the integration of the Station and the output thereof into the UPPCL System.
- (b) The procedures will be mutually agreed upon based on the design of the Station and the design of the Internal Interconnection Facilities and External Interconnection Facilities. The procedures shall include Availability declarations for the Station (annual, monthly, weekly, and daily projections), dispatching procedures (which shall include monthly, weekly and daily dispatch schedules), the method of day-to-day communications, key personnel lists for both Station and the UPPCL Control, clearances and switching practices, outage scheduling, daily capacity and energy reports, Unit operations log and performance specifications of the Station.
- (c) ROSA will operate and maintain the Station in accordance with the procedures developed pursuant to this Section and Accepted Industry Practice.

#### Section 5.3 Voltage

- (a) ROSA shall operate the Station as per instructions issued by Control Centre and UPPCL subject to ROSA complying with Accepted Industry



Practice and conforming to the design values of the Station's electric generators specified in Schedule 3.

#### **Section 5.4 Technical Parameters of Generating Equipment**

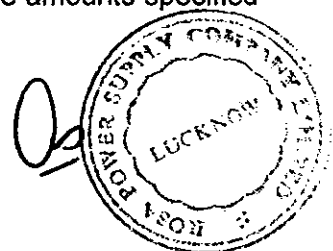
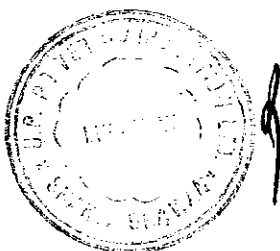
- (a) ROSA shall provide UPPCL with generator manufacturer's capability curves, relay types, and proposed relay settings for review and inspection by the UPPCL no later than twelve (12) months after the award of the Construction Contract.
- (b) UPPCL shall inform ROSA, in writing, within six (6) months after receiving any part of the above information, whether the proposed relay types and relay settings are acceptable. If these are not reasonably acceptable to UPPCL, ROSA agrees to cooperate with all reasonable requests of UPPCL to provide acceptable relay types and relay settings that are compatible with the UPPCL System and consistent with Accepted Industry Practice.
- (c) All information referred to in this Section 5.4 shall be submitted in a manner reasonably acceptable to UPPCL.
- (d) The generator and excitation data, shall be used for UPPCL's transient stability analysis.

#### **Section 5.5 Fuel**

- (a) ROSA shall procure and purchase pursuant to the Coal Supply Contract and the Secondary Fuel Contract respectively all Primary Fuel and Secondary Fuel required for the operation of the Station and generation of electric energy.
- (b) Nothing in this Agreement shall be construed to limit or prevent ROSA from purchasing additional spot-market Fuel from time to time in consultation with UPPCL.

#### **Section 5.6 Tests**

- (a) Pursuant to Schedule 6 hereof, ROSA will determine and prepare the test procedures necessary to demonstrate the performance and operational characteristics of the Station. All precautions shall be taken by ROSA to avoid disturbance to the UPPCL System during the Tests to the extent possible and in accordance with Accepted Industry Practices.
- (b) ROSA shall give not less than Seven (7) days prior written notice to UPPCL of any Tests to be performed at the Station.
- (c) UPPCL may send representatives at the Station during the Tests but the failure of such representatives to attend will not result in the postponement or failure of any such Test.
- (d) UPPCL shall accept into the UPPCL System all the electric energy generated during the Tests and shall pay to ROSA the amounts specified under this Agreement with respect to Infirm Power.



- (e) ROSA will provide UPPCL a summary of the Test results and other relevant data derived during the Tests as specified in Schedule 6.
- (f) UPPCL shall maintain the stability of the frequency, voltage and other electrical properties of the UPPCL System throughout the duration of the Tests so as to allow the Unit to be tested without distortion attributable to conditions prevailing on the UPPCL System. In the event of any instability affecting the voltage, frequency or other electrical properties of the UPPCL System during the Tests which has a materially adverse effect on the ability of a Unit to operate at the Capacity specified in the Construction Contract during the Tests, the results of the Tests shall, to the extent technically feasible, be adjusted to take account of such instability, but otherwise the Tests shall be void and shall be recommenced. In case the Test becomes void due to instability of frequency, voltage and other electric properties of UPPCL System, the cost of re-testing will be borne by UPPCL.

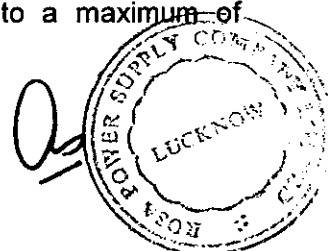
### Section 5.7 Entry into Commercial Operation

- (a) Each Unit shall go into commercial operation at midnight next following UPPCL's receipt of Performance Test report as specified in Schedule 6 by the designated engineer and the results of the performance tests showing that the Tested Capacity is not less than 95% of its Nameplate Capacity and as declared by ROSA to be capable of commercial operation. Such commencement of commercial operation shall not be more than One Hundred and Eighty (180) days from the Scheduled Synchronization Date or such extension provided due to Force Majeure Events occurring between Synchronization Date and Scheduled Commercial Operation Date.
- (b) The results from the Tests will be used to determine the Operating Characteristics of the Station.
- (c) As soon as practicable after the Commercial Operation Date, the Operating Characteristics of the Station, if required, shall be revised based on Test results.

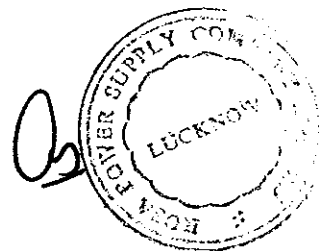
### Section 5.8 Liquidated Damages due to ROSA Default

- (a) Delay in Commissioning – If any Unit shall not achieve Scheduled Commercial Operation Date due to default on part of ROSA, but extended for such reasonable time as shall be required due to any Force Majeure Event, ROSA shall pay to UPPCL liquidated damages for such delay for an amount equal to as given below.

1. For Unit I - Rs.1.65 lakh for each day delay for first 180 days and thereafter Rs.16.68 lakh per delay upto another 180 days subject to a maximum of Rs.33 crore.
2. For Unit II - Rs.1.10 lakh for each day delay for first 180 days and thereafter Rs.11.12 lakh per day delay upto another 180 days, subject to a maximum of Rs.22 crore.



- (b) Capacity Shortfall Penalty: To the extent that the Tested Capacity of either Unit is less than the Nameplate Capacity at the end of the relevant Stabilisation Period, the Capital Cost of the Station shall be reduced on a pro rata basis by dividing the difference between the Nameplate Capacity and the Tested Capacity of such Unit by the Nameplate Capacity of the respective Unit. Further for either Unit, a liquidated damages of Rs.7000 per kilowatt of shortfall in Nameplate Capacity will be payable by ROSA if the shortfall in Nameplate Capacity is more than Two percent (2%) of the Nameplate Capacity, at the end of the relevant Stabilisation Period of either Unit.
- (c) ROSA shall pay the Capacity shortfall penalty within Twenty one (21) days from the date of the end of the Stabilisation Period.





## ARTICLE 6

### COMMERCIAL OPERATION AND MAINTENANCE

#### Section 6.1 Delivery of Capacity

- (a) ROSA hereby agrees with UPPCL that, subject to the provisions of this Agreement, it will operate and maintain the Station until the expiry of earlier termination of this Agreement so as to provide to UPPCL (Subject to any provision to the contrary contained in this Agreement) the Capacity capable of being supplied by the Station in accordance with the Operating Characteristics except to the extent:
- (i) anticipated by the Maintenance Programme during a period of Scheduled Outage as provided in Section 6.9 hereof;
  - (ii) that to do so would not be in accordance with Accepted Industry Practice;
  - (iii) necessary due to circumstances relating to safety (of either Personnel or Station or apparatus);
  - (iv) that to do so would be unlawful;
  - (v) provided for in Article 14 hereof;
  - (vi) necessary due to Forced Outage;
- or in any other circumstances that UPPCL so approves.
- (b) Subject to the provisions of Section 2.1 (d), Section 11.3 and Articles 16 and 18 and ROSA's internal requirements for electrical energy for its operation of the Station, ROSA shall not grant any other Party other than UPPCL right to the Capacity and Available Energy produced by the Station.

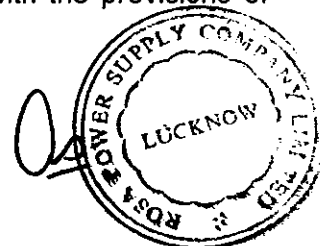
#### Section 6.2 Despatch Instructions and Delivery of Available Energy

- (a) ROSA shall deliver Active Power and Reactive Power to UPPCL at the Interconnection Points in accordance with Dispatch Instructions issued by UPPCL pursuant to Schedule 8 hereto. Notwithstanding anything to the contrary contained in this Agreement ROSA shall not be required to deliver Active Power and/or Reactive Power which is not within the range of the generator electrical characteristics set forth in Schedule 3 hereto.

#### Section 6.3 Availability Declaration

- (a) From the Unit I Commercial Operation Date ROSA shall submit to UPPCL "Capacity Availability Declarations" in accordance with the provisions of Schedule 8 hereto.

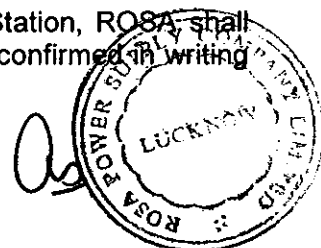
#### Section 6.4 Reduction and Resumption of Deliveries



- (a) UPPCL shall advise ROSA in the most expeditious manner, to be confirmed in writing, of any request for reduction or increase in the Station Capacity in the form of a Dispatch Instruction. Any reduction or increase required of ROSA hereunder shall be implemented and completed as soon as possible consistent with Accepted Industry Practice.
- (b) No Unit shall be despatched at less than Fifty per cent (50%) of its Established Baseload Capacity unless mutually agreed between UPPCL and ROSA subject to Section(s) 6.5, 6.6 and 6.7.
- (c) After a Unit has been off line due to a Scheduled Outage or in response to a Dispatch Instruction from UPPCL to reduce the Net Electrical Output of such Unit then :
- (i) if such Unit and its associated boiler have been out of operation for an extended period of time and cooled to ambient temperature, such Unit will be capable of being synchronized within Eight (8) hours and achieve full electrical output within Twelve (12) hours following receipt by ROSA of a Dispatch Instruction from UPPCL to start up; and
- (ii) if such Unit has been held in "stand-by" condition or up to Forty Eight (48) hours during which period the generating Unit and the boiler temperatures are maintained at appropriate levels, such Unit will be capable of being synchronized within Four (4) hours and achieve full electrical output within Six (6) hours following receipt by ROSA of a Dispatch Instruction from UPPCL to start-up.
- (d) Once a Unit has been synchronized within the UPPCL System, and has achieved full electrical output, its output may be increased or decreased at the rate up to two per cent (2%) of its Established Baseload Capacity per minute.
- Note : All the above numbers specified in Section 6.4 (c) and (d), are nominal and may be revised based on manufacturer's recommendations.
- (e) It will be UPPCL's obligation to provide Start-up Power on a continuous basis subject to Force Majeure conditions as specified in Article 14. In case ROSA is prevented from re-start of a Unit or both the Units due to lack of start-up power ROSA will be entitled for Deemed Energy.

### Section 6.5 Emergency Conditions

- (a) If, in the reasonable opinion of UPPCL, the condition or manner of operation of the UPPCL System or the Station poses an immediate threat of injury or material damage to any Person or to the UPPCL System, UPPCL shall be entitled to require ROSA by notice in the most expeditious manner and confirmed in writing to de-energise the Station if it is necessary or expedient to do so to avoid the occurrence of such injury or damage.
- (b) If in the reasonable opinion of ROSA, the condition or manner of operation of the UPPCL System or Station poses an immediate threat of injury or material damage to any Person or to the Station, ROSA shall inform UPPCL in the most expeditious manner to be confirmed in writing



and be entitled to de-energise the Station if it is necessary or expedient to do so to avoid the occurrence of such injury or damage.

- (c) ROSA shall re-energise the Station as quickly as practicable and in co-ordination with UPPCL after the circumstances leading to any de-energisation under this Section 6.5 have ceased to exist.

#### **Section 6.6 Emergency Plans**

- (a) ROSA will cooperate with UPPCL in establishing from time to time emergency plans, including recovery from a local or widespread electrical blackout voltage and frequency fluctuation in order to effect load curtailment and other similar plans which may be necessary.
- (b) ROSA will make available to UPPCL the technical references concerning start-up times and minimum load-carrying capability.

#### **Section 6.7 Delivery during Emergencies**

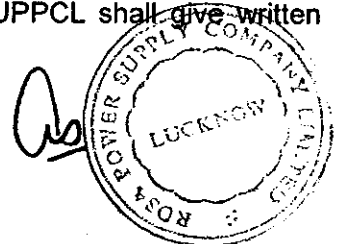
- (a) ROSA will during an Emergency Condition supply such power as the Station is able to generate and UPPCL is able to receive consistent with Accepted Industry Practice, ROSA will not be subject to any penalties or damages or be in breach of contract if it fails to generate power in excess of the lower of Nameplate Capacity and Tested Capacity.
- (b) If any Scheduled Outage occurs or would occur coincident with an Emergency Condition ROSA will make all good faith efforts to reschedule such Scheduled Outage or if such Scheduled Outage has commenced ROSA will, if so requested by UPPCL, attempt to expedite either the completion or temporary curtailment of the Scheduled Outage in accordance with Accepted Industry Practice.

#### **Section 6.8 Operation and Maintenance of the Station**

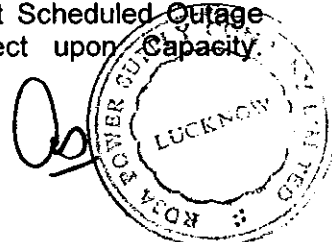
- (a) The Station will be operated and maintained in accordance with the O&M Agreement, if any, is entered into.
- (b) Subject to this Agreement, ROSA will operate and maintain the Station in accordance with Accepted Industry Practice and all applicable Laws.

#### **Section 6.9 Scheduled Maintenance**

- (a) Not later than Seventy (70) days before the beginning of each Tariff Year, ROSA shall submit to UPPCL and the Control Centre its proposed programme of maintenance for the Station for that Tariff Year and the following Four (4) Tariff Years which are to be mutually agreed to within Thirty (30) days in order to enable UPPCL to co-ordinate Scheduled Outages of other generating units, plant and equipment on the UPPCL System. UPPCL will not seek to determine or influence the nature of the maintenance which ROSA will carry out.
- (b) Within Thirty (30) days of its receipt of the proposal for the Maintenance Programme pursuant to paragraph (a) above UPPCL shall give written notice to ROSA and the Control Centre either:



- (i) that it is satisfied with such proposed Maintenance Programme in which case such proposed Maintenance Programme shall be the Maintenance Programme for the Tariff Year in question; or
- (ii) that it wishes certain adjustments to be made to such Maintenance Programme, provided that:
- (1) such adjustments may relate only to the timing and not to the scope or nature of the proposed maintenance;
  - (2) UPPCL must have reasonable grounds for requesting such adjustments based on the overall operation and maintenance of the UPPCL System; and
  - (3) no adjustments may be requested if and to the extent that it might result in breach of any Law or result in the Station being operated other than in accordance with Accepted Industry Practice.
- (c) Where UPPCL has given notice under Section (b) (ii) above, ROSA shall, after full discussion with UPPCL, promptly revise its proposed Maintenance Programme to take account of the Agreement reached between UPPCL and ROSA. The revised Maintenance Programme shall be delivered to UPPCL as soon as practicable and shall be the Maintenance Programme for the Tariff Year in question.
- (d) Subsequent to the establishment of the Maintenance Programme pursuant to Sections (b) and (c) above, UPPCL or ROSA may at any time propose amendments to the Maintenance Programme and shall be obliged to make such a proposal as soon as it becomes aware that such an amendment will be necessary. Such amendments shall be made to the Maintenance Programme only if they are agreed by both UPPCL and ROSA. The Parties shall agree to attempt to make such amendments whenever reasonably practicable. Either Party may seek further adjustments to the Maintenance Programme determined in accordance with this Section 6.9(d) which shall be agreed between the Parties whenever reasonably practicable. The Party which has not requested the amendment shall be entitled to withhold its Agreement to the amendment unless it is fairly compensated for the additional costs reasonably and necessarily required to be incurred by it as a result of agreeing to any such amendment.
- (e) Notwithstanding Section 6.9 (d) above, UPPCL shall be entitled to require ROSA to make an amendment to the Maintenance Programme including the postponement of a Scheduled Outage, if and to the extent that UPPCL considers that the amendment is required in order to preserve the safety and security of the UPPCL System as a whole. UPPCL shall hold ROSA harmless against and shall reimburse ROSA for any reasonable additional costs which ROSA may necessarily incur as a result of complying with a requirement of UPPCL under this Section.
- (f) ROSA shall not carry out maintenance of the Station which is neither contemplated by the Maintenance Programme nor required by Accepted Industry Practice to be carried out prior to the next Scheduled Outage unless such maintenance has no adverse effect upon Capacity.



Notwithstanding anything in this Article, ROSA shall have the right to carry out maintenance or reschedule Maintenance Programme on the Station in the event of a Forced Outage or to prevent an imminent Forced Outage.

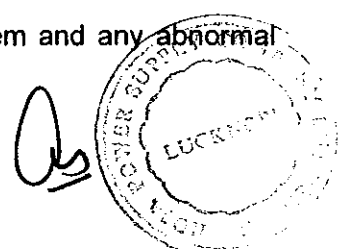
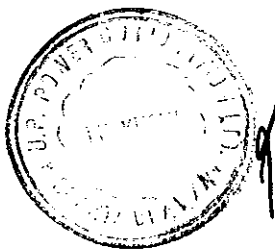
- (g) ROSA shall not without UPPCL's consent (such consent not to be unreasonably withheld or delayed) declare the Station to be available in excess of the levels anticipated by the Maintenance Programme during any period in which the Station is the subject of a Scheduled Outage.
- (h) UPPCL's right under this Section 6.9 may only be exercised reasonably, having due regard to all relevant factors, including the operational and economic interests of ROSA, those of other users of the UPPCL System, and those of UPPCL and the UPPCL System, but consistent with all applicable Laws and Directives and Accepted Industry Practice.

#### **Section 6.10 Modifications to the Station**

- (a) ROSA may modify the Station with prior approval of UPPCL provided :
  - (i) the modifications do not contravene Accepted Industry Practice; and
  - (ii) the modifications do not result in the Station being unable to operate within the UPPCL System and the modification should not be detrimental to the interest of UPPCL
- (b) Any benefits accrued in the form of Tariff as a result of the modification to the Station shall be shared between UPPCL and ROSA on mutually agreed terms and the cost of such modifications shall be added to the Capital Cost after approval of UPPCL and the UPERC.

#### **Section 6.11 Operating Records**

- (a) Each Party shall keep complete and accurate operating records and all other data required by each of them for the purpose of proper administration of this Agreement.
- (b) Subject to any Law to the contrary, all such records and data shall be maintained for a period of Five (5) years from the date such records or data were originally made.
- (c) ROSA will maintain an accurate and up to date operating log at the Station with records of but without limitation to
  - (i) Active Power and Reactive Power production for each clock hour;
  - (ii) Changes in operating status;
  - (iii) Scheduled Outages and Forced Outages;
  - (iv) All important events noticed during inspection; and
  - (v) Frequency and voltage in the UPPCL System and any abnormal conditions on the UPPCL System.



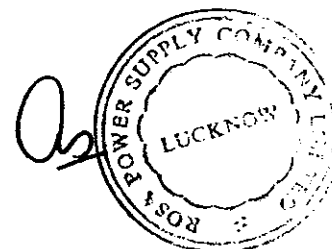
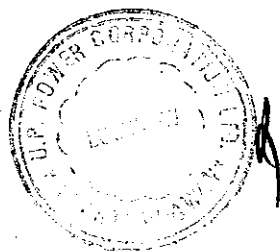
- (d) Either Party shall have the right from time to time, upon reasonable prior written notice to the other Party, to examine the said operating records and data of the other Party relating to this Agreement during normal business hours during the period such records and data are required to be maintained.

#### Section 6.12 Access to Station

- (a) Subject to Section 6.12 (b) hereof, ROSA will authorise specified representatives of UPPCL to have access to the Station, upon reasonable prior notice during normal business hours, as may be reasonably necessary for a purpose;
- (i) relating to the operation and maintenance of UPPCL System; or
- (iii) of reading and maintaining UPPCL Meters.
- (b) ROSA may refuse or restrict access to representatives of UPPCL or any other Persons for reasons relating to safety or security and all visitors will comply with any safety regulations imposed by ROSA.
- (c) Notwithstanding Article 15 hereof, UPPCL shall indemnify and hold harmless ROSA and its officers, directors, agents and employees from and against and shall reimburse ROSA for any loss, cost, consequential damages and liability, incurred by any such indemnified Party as a result of the exercise of UPPCL's right of access under this Section, unless caused by the action, negligence or willful misconduct of an officer of ROSA or any officer, director, sub-contractor, agent or employee of ROSA.
- (d) Notwithstanding anything mentioned above in Section 6.12, the Chairman/Board Member of UPPCL can authorise a UPPCL officer to visit the Station for a special inspection.

#### Section 6.13 Control of Sub-Station

- (a) The 220 KV sub-station will be supplied and installed by ROSA. The 220 KV outgoing lines will be supplied and installed by UPPCL. To facilitate operation over the long term, ROSA will control the 220 KV sub-station.

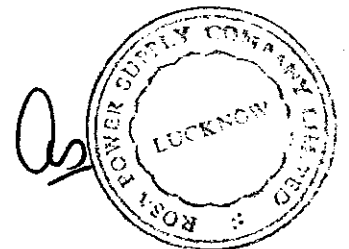


**ARTICLE 7****BASE LOAD CAPACITY****Section 7.1 Baseload**

- (a) The Parties acknowledge and agree that the Station shall operate as a "Baseload Facility" and no Unit shall be despatched at less than Fifty per cent (50%) of its Established Capacity, unless mutually agreed by UPPCL and ROSA, subject to the terms and conditions of this Agreement and Accepted Industry Practice. In this Section 7.1 "Baseload Facility" means a power generating facility which is intended to be despatched at all times at its declared level of availability. If ROSA is asked to dispatch below 50%, it has option to shut down the plant and deemed generation will be provided as per availability declaration.

**Section 7.2 Established Baseload Capacity**

- (a) After the Stabilisation Period, the Tested Capacity or the Nameplate Capacity of the Unit at the generator terminals whichever is higher shall be taken as the Established Baseload Capacity and shall not be altered during the Term of this Agreement.



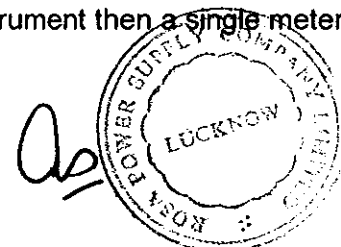
## ARTICLE 8

### METERING

#### Section 8.1 Installation of Meters

- (a) ROSA shall at its cost provide install and maintain one set of dedicated instrument transformers and meters for each Metering Point as detailed below to measure Active Power and Reactive Power delivered to UPPCL by ROSA and Active Power and Reactive Power received by ROSA from UPPCL.
- (i) HT Terminals of Generator Transformer(s)
  - (ii) HT Terminals of Station Transformer(s)
  - (iii) HV Generator Terminals
  - (iv) Each outgoing 220 KV Line
- Such meters (the "ROSA Meters") shall be connected to a current transformer voltage transformer of accuracy class as per IEC. The ROSA Meters shall be tested in an independent laboratory (agreed by the Parties) and ROSA shall supply to UPPCL a copy of the manufacturer's test certificate.
- (b) UPPCL will provide, install and maintain a set of meters identical to the ROSA Meters (the "UPPCL Meters") to take the same measurements at the Metering Points from the instrument transformers and meters referred to in Sub-section 8.1(a) above. The UPPCL Meters shall be connected to a current transformer and voltage transformer of accuracy class as per IEC. UPPCL may require ROSA to accommodate and provide the necessary space for and access to UPPCL Meters as it may require for the purpose of monitoring the Station, system conditions and output. ROSA shall also provide UPPCL access to the UPPCL Meters as UPPCL may reasonably require for the purpose of complying with its obligations under this Agreement in respect of the UPPCL Meters. The UPPCL Meters shall be installed in such a manner that they may be read by ROSA in accordance with this Agreement. The core selected for Instrument Transformers for UPPCL Meters shall be dedicated to these meters and no other load/meter shall be connected to the dedicated core of these Transformers.
- (c) Both the ROSA Meters and the UPPCL Meters and associated metering, CT/PT cable etc. shall as to their technical standards, description, accuracy and calibration comply fully with the requirements as specified in Schedule 9.
- (d) If the measurement of import and/or export of Active Power and/or Reactive Power can be combined into one instrument then a single meter (trivector meter) is acceptable.

#### Section 8.2 Inspection and Testing of Meters





- (a) The ROSA Meters shall be the property of ROSA and ROSA shall be responsible for the costs of their maintenance, replacement and calibration. The UPPCL Meters shall be the property of UPPCL and UPPCL shall be responsible for the costs of their maintenance, replacement and calibration.
- (b) Each Party shall, at its expense, inspect, calibrate and test the set of meters, monitors and where appropriate, associated circuits which it owns (including those at the ROSA substation) upon their installation and on a scheduled basis thereafter. These should be tested and calibrated atleast once every year. Each set of meters, monitors and where appropriate, associated circuits (including those at the ROSA substation) may also be inspected at any other reasonable time upon the request of the other Party and cost of such inspection shall be borne by the other Party.
- (c) If any set of meters, monitoring equipment or associated circuits (including those at the ROSA substation) is found not to comply with the requirements as specified in Schedule 9 they will be repaired or replaced at the expense of the Party which owns them as soon as practicably possible.
- (d) All the tests shall be conducted by the authorised staff of both the Parties jointly and the results and corrections so arrived at mutually will be applicable and binding on both the Parties.

### **Section 8.3 Sealing of Meters**

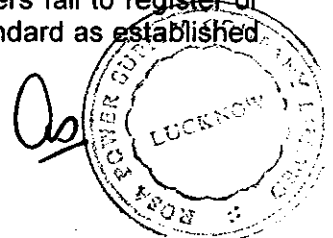
- (a) The ROSA Meters and the UPPCL Meters shall be sealed with a seal owned by each of the Parties and shall not be opened, calibrated or tested except in the presence of representatives of both UPPCL and ROSA. Each Party shall ensure (to the extent it is able to do so) that the meters, monitors and, where appropriate, associated circuits which it owns are sealed and kept secure between inspections and tests. If the seals need to be broken for repair or re-calibration the Party wishing to conduct such work may break the seals with the consent of the other Party which shall not be unreasonably withheld or unreasonably delayed.

### **Section 8.4 Metering of Energy**

- (a) The electrical energy generated by the Station shall be measured at generator terminals and also at other points mentioned in Section 8.1 (a) subject to Section 8.5 and 8.6 on the basis of meter readings of UPPCL Meter.

### **Section 8.5 Inaccuracy of Meters**

- (a) Should any one of the UPPCL Meters fail to register or upon test be found not to be within the accuracy standards as specified in Schedule 9, the billing for the period referred to in paragraph (c) below will be done on the basis of the value registered by the corresponding ROSA Meter.
- (b) Should both the UPPCL Meters and the ROSA Meters fail to register or upon test be found not to be within the accuracy standard as established



as specified in Schedule 9, the Measured Energy shall for the period referred to in paragraph (c) below be adjusted and agreed to between UPPCL and ROSA and in the absence of Agreement shall be referred to the Experts.

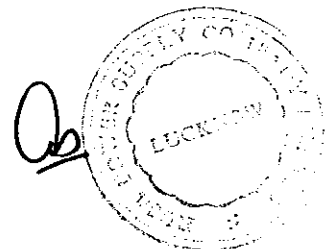
- (c) The period referred to in paragraphs (a) and (b) above is the actual period during which inaccurate measurements were made if such period can be determined or, if not readily determinable, the period between the date on which the error is detected and the date of the previous month's meter reading or the date of the last test of such meter, whichever occurs later. The correction shall be for the full value of the absolute error.

#### **Section 8.6 Meter Reading**

- (a) Representatives of both UPPCL and ROSA shall conduct joint visual readings of the UPPCL Meters and the ROSA Meters at 10:00 hours on the last day of each Operating Month. The Parties shall prepare joint statements recording the readings of such meters for the relevant Operating Month immediately following the reading of the meters and, if the readings are significantly different from each other and/or demonstrate a level of inaccuracy outside acceptable limits as specified in Schedule 9, the provisions of Section 8.5 shall immediately apply. If the representatives of UPPCL and ROSA are not available at the said hour, the meter(s) shall be read jointly at 10:00 hours on the following day, failing which the meter shall be read by ROSA in the presence of a notary who shall certify the meter readings.
- (b) As a safety measure the reading of both UPPCL Meters and ROSA Meters shall be taken daily at a fixed mutually agreed time and same shall be intimated daily by ROSA to UPPCL by phone/fax. UPPCL will compare these readings with the meter installed at the other end of the line and in case of any large deviation, joint inspection/testing will be carried out.

#### **Section 8.7 Records**

- (a) UPPCL and ROSA shall each compile and maintain meter records and other records needed to reflect the Available Energy and Measured Energy generated and delivered to UPPCL;
- (b) Such records will be subject to inspection by the other Party during normal business hours upon reasonable advance written notice.



## ARTICLE 9

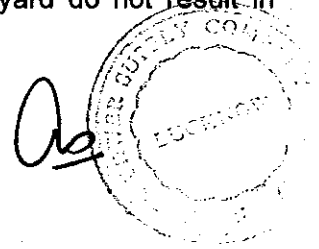
### INTERCONNECTION AND TRANSMISSION

#### Section 9.1 UPPCL's Obligations

- (a) ROSA will provide the data reasonably required by UPPCL to perform an interconnection study within Three (3) months following the Effective Date.
- (b) UPPCL shall complete an interconnection study under conditions agreed upon by the Parties within Six (6) months after the receipt of complete data from ROSA pursuant to Section 9.1 (a).
- (c) UPPCL shall (except to the extent that any third party acceptable to ROSA assumed the obligation) design, construct, own and maintain, at its expense, the External Interconnection Facilities consistent with Accepted Industry Practice.
- (d) UPPCL shall complete construction of the External Interconnection Facilities Ninety (90) days prior to the Scheduled Synchronisation Date for Unit I or any extension thereto due to any Force Majeure Event, in accordance with the Construction Schedule of the Station. But, provision for Start-up Power will be as per Section 9.3(a).
- (e) The Parties agree and acknowledge that the Station cannot be synchronised, tested and commissioned unless the External Interconnection Facilities and Internal Interconnection Facilities are completed prior to the Synchronisation Date for Unit I.

#### Section 9.2 Switchyard and Transmission Lines

- (a) ROSA shall design, construct, install, test, commission, own and maintain the 220 KV substation and 220 KV switchyard. The 220 KV Switchyard shall distribute the energy generated to a total of Seven (7) 220 KV Transmission Lines.
- (b) UPPCL shall design, construct, install, test, commission, operate, own and maintain at no cost to ROSA, the 220 KV Transmission Line and the other External Interconnection Facilities described in Schedule 5 and the UPPCL System.
- (c) Ownership of facilities and the responsibility between ROSA and UPPCL shall be as described in Schedule 5 and in Section 6.13.
- (d) ROSA will specify the requirements for protection, control and metering of the Internal Interconnection Facilities and External Interconnection Facilities to protect the Station.
- (e) UPPCL and ROSA shall use its reasonable efforts to ensure that power flows into the ROSA substation and/or the Switchyard do not result in metering inaccuracy.

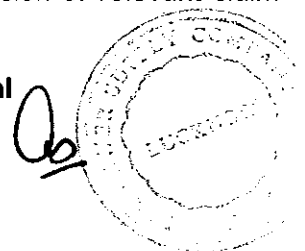
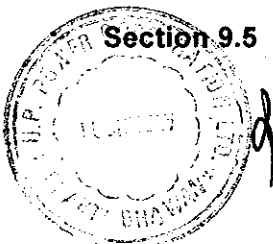


**Section 9.3 Start up and Stand by Power**

- (a) Normal Start-up and reserve stand-by power for the Station shall be provided by the ROSA Station Transformer. UPPCL shall make available Start-up Power One Hundred and Eighty (180) days prior to the Scheduled Synchronisation Date for Unit I or any extension thereto due to any Force Majeure Event in accordance with the Construction Schedule in the Station.
- (b) The Parties agree and acknowledge that completion and operation of the transmission lines and the Switchyard as provided in Schedule 5 hereto is essential for the Synchronisation, testing and commissioning of the Station.

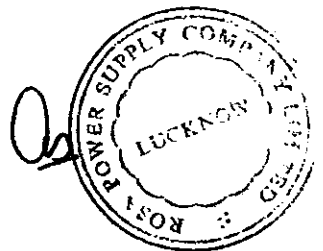
**Section 9.4 Construction of the External Interconnection Facilities**

- (a) UPPCL shall provide to ROSA quarterly reports on the status of the construction of External Interconnection Facilities.
- (b) If it is determined by ROSA in consultation with UPPCL that any facilities under the External Interconnection Facilities will not be completed and operational at Ninety (90) days prior to the Scheduled Synchronisation Date for Unit I. ROSA shall have the right, but not the obligation, without prejudice to Section 9.5, to construct and install such facilities on behalf of UPPCL. ROSA shall exercise its right Ninety (90) days prior to the scheduled date of completion of the External Interconnection Facilities by UPPCL. In the event, ROSA agrees to assist UPPCL in completing the construction of External Interconnection Facilities, ROSA shall complete the construction of facilities within a period and cost as mutually agreed between ROSA and UPPCL. Ownership of the assets thus created will be with UPPCL.
- (c) Where ROSA exercises its rights under this section, UPPCL shall afford all reasonable assistance to ROSA to perform the foregoing and UPPCL shall be deemed to provide all Government Approvals necessary for ROSA to exercise its rights under this Section 9.4.
- (d) Where ROSA exercises its rights under this Section 9.4, UPPCL shall notwithstanding Article 15 hereof, be liable for and shall reimburse and indemnify ROSA for all the costs incurred by ROSA arising from the exercise of its rights under this Section 9.4.
- (e) ROSA shall submit every fortnight a written claim for payment indicating the Costs incurred by ROSA arising from the exercise of its rights under this Section 9.4.
- (f) UPPCL shall pay to ROSA all the amounts specified in any claim for payment within Twenty One (21) days from the time the claim for payment is submitted to UPPCL ROSA shall have the right to revise or issue additional claims for payment under this Section based on additional or other information it may receive regarding the costs incurred by ROSA, within Thirty (30) days after the submission of relevant claim for payment to UPPCL.

**Section 9.5 Consequences of delay in installation of External**

**Interconnection Facilities.**

- (a) Notwithstanding any other provision in this Agreement, if Unit I Scheduled Commercial Operation Date is delayed due to : (i) the External Interconnection Facilities described in Section 9.2 and 9.4, and Schedule 5 (which are the responsibility of UPPCL) not being completed and operational Ninety (90) days prior to the Scheduled Synchronisation Date of Unit I for any reason not attributable to a default by ROSA or any Force Majeure, or (ii) any other UPPCL default (e.g. non-supply of start-up power), and it is certified by the designated engineer that Unit I is ready for Synchronisation, Unit I shall be deemed commissioned on the Scheduled Commercial Operation Date of Unit I and UPPCL shall, from the Scheduled Date of Commercial Operation of Unit I, pay for first Forty Five (45) days Fixed Charges to ROSA. After the 45<sup>th</sup> day UPPCL shall pay an amount equivalent to full Fixed Charges plus the incentive for the units generated for plant operation at 85% Plant Load Factor.
- (b) UPPCL shall indemnify and hold harmless ROSA from and shall reimburse ROSA for any and all manner of action, demands, suits, contracts, claims, damages and cost of any nature or kind whatsoever, including legal costs, whether in Law or Equity brought by any person(s) against ROSA or involving ROSA arising from failure or delay in completion of any of the External Interconnection Facilities described in Section 9.2 and 9.4 which are the responsibility of UPPCL to provide and install Ninety (90) days prior to the Scheduled Synchronisation Date of Unit I due to UPPCL default.

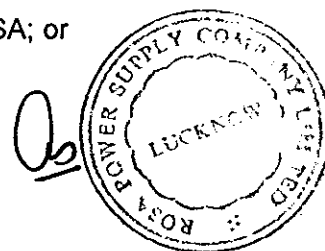


## ARTICLE 10

### REPRESENTATIONS, WARRANTIES, COVENANTS

#### Section 10.1 ROSA Representations and Warranties

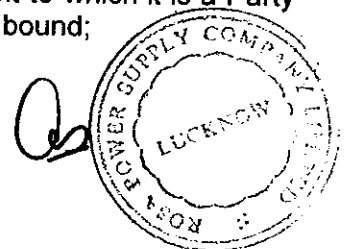
- (a) ROSA represents and warrants that
- (i) ROSA is a corporation duly registered under the Companies Act, organised and validly existing under the Laws of the Republic of India and has all requisite power and authority to conduct its business, to own its properties and to execute and deliver and perform its obligations under this Agreement.
  - (ii) the execution, delivery and performance by ROSA of this Agreement has been duly authorised by all necessary corporate or partnership action :
  - (iii) the execution, delivery and performance by ROSA of this Agreement does not :
    - (1) require further consent or approval of ROSA's Board of Directors or shareholders;
    - (2) violate any Governmental Approval or any Law;
    - (3) result in a breach of or a constitute a material default under ROSA's memorandum or any indenture, contract or agreement to which it is a party or by which its property may be bound, or
    - (4) place ROSA in material default under its memorandum and articles of association, or any indenture, contract or agreement to which it is a party or by which it or its property may be bound;
  - (iv) this Agreement is a legal, valid and binding obligation of ROSA, enforceable against ROSA in accordance with its terms, except as the enforceability may be created by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar Laws affecting creditors' rights generally and to the extent that the remedies of specific performance, injunctive relief and other forms of equitable relief are subject to equitable defences, the discretion of the court before which any proceedings therefore may be brought, and the principles of equity in general;
  - (v) there are no pending or to the knowledge of ROSA, threatened legal actions or proceedings involving ROSA before any Court or Administrative Body or Arbitral Tribunal or Arbitrator that might materially and adversely affect:
    - (1) the financial condition or operation of ROSA; or



- (2) the ability of ROSA to perform its obligations under this Agreement, or
- (3) the legality, validity or enforceability of this Agreement.
- (vi) the Station will be operated and maintained in accordance with operating procedures developed pursuant to Article 6 hereof, Accepted Industry Practice, and the Station will be operated in such a manner so as not to have a material adverse effect on the UPPCL's voltage level;
- (vii) the Station will be capable of delivering during normal operation, electricity to UPPCL in the form of 3 – phase, 3 – wire, Alternating Current of 50 hertz, at a nominal Voltage of 220 KV and at a power factor consistent with the generator electrical characteristics set forth in Schedule 3 hereto;
- (viii) the Station will be operated within a frequency range of 47.5 – 51.5 hertz. In the event that the frequency of the UPPCL System is or falls outside the above range ROSA shall isolate the Station from the UPPCL System.

### Section 10.2 UPPCL Representation and Warranties

- (a) UPPCL hereby represents and warrants that:
  - (i) UPPCL is a body corporate duly organized and validly existing under the Laws of India and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
  - (ii) the execution, delivery and performance by UPPCL of this Agreement have been duly authorised by all necessary action, and UPPCL shall deliver proof and confirmation of such authorisation to ROSA promptly;
  - (iii) the execution, delivery and performance by UPPCL of this Agreement does not and will not
    - (1) require any consent or approval of any Governmental Authority or other person or body, other than that which has been already obtained.
    - (2) violate any material provision of UPPCL's charter or other constitutive documents, any indenture, contract or Agreement to which it is a Party or by which it or its properties may be bound, or any material Law, rule, regulation, order, writ, judgement, injunction, decree, determination or award presently in effect having applicability to UPPCL.
    - (3) result in a breach of or constitute a material default under any indenture, contract or agreement to which it is a Party or by which it or its property may be bound;



- (iv) UPPCL is not in material default under its charter or other constitutive documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound;
- (v) this Agreement is a legal, valid and binding obligation of UPPCL, enforceable against UPPCL in accordance with its terms, except as the enforceability may be created by applicable bankruptcy, insolvency, reorganisation, moratorium or other similar Laws affecting creditors' rights generally and to the extent that the remedies of specific performance, injunctive relief and other forms of equitable relief are subject to equitable defences, the discretion of the court before which any proceedings therefore may be brought, and the principles of equity in general.
- (vi) there is no pending, or to the knowledge of the UPPCL, threatened legal action or proceeding affecting UPPCL before any Court or Administrative Body or Arbitral Tribunal or Arbitrator that might materially and adversely affect:
  - (1) the financial condition or operations of UPPCL;
  - (2) the ability of UPPCL to perform its obligations under this Agreement, or
  - (3) the legality, validity or enforceability of this Agreement, and
- (vii) the External Interconnection Facilities will be operated and maintained in accordance with
  - (1) operating and maintenance standards recommended by the External Interconnection Facilities' equipment suppliers;
  - (2) operating procedures developed pursuant to Article 6 of this Agreement; and
  - (3) Accepted Industry Practice.

### Section 10.3 Existence

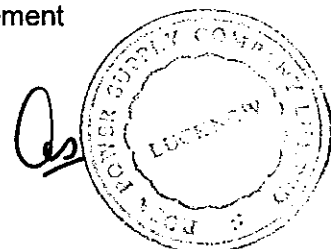
- (a) Each Party agrees to preserve and keep in force and effect its organisational existence and all material franchises, licenses and permits necessary for the proper conduct of its business including, with respect to ROSA, the business of constructing, owning and operating the Station.

### Section 10.4 Compliance with Laws

- (a) Each Party shall, at all times, comply with all material Laws applicable to it or in the event of any non-compliance, shall diligently contest any such Law in good faith if such non-compliance has no material adverse effect on the operation or maintenance of the Station. Each Party shall give all required notices and shall procure and maintain all Government Approvals necessary for its performance of this Agreement



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## ARTICLE 11

### SALE AND PURCHASE OF CAPACITY AND ENERGY

#### Section 11.1 Capacity and Energy

- (a) From and after the Unit I Commercial Operation Date, ROSA agrees to sell and deliver, and UPPCL agrees to purchase the Capacity and Net Electrical Output of each Unit subject to such Dispatch Instructions as may be in effect and the terms and conditions of this Agreement. ROSA shall follow the directions of UPPCL or the Control Centre to back down generation and to resume generation, in each case consistent with the Station's technical limits, Accepted Industry Practice and this Agreement and the other arrangements between ROSA and UPPCL regarding communication and co-ordination of operations (Dispatch Instruction). UPPCL shall not be required to reimburse ROSA for any incremental costs or damages in respect of Dispatch Instructions issued in compliance with the foregoing.

#### Section 11.2 Sale and Purchase of Infirm Power

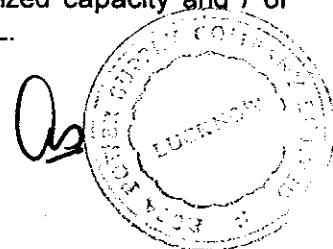
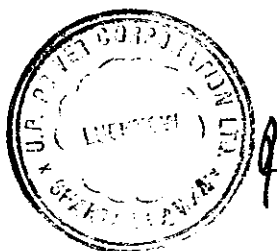
- (a) ROSA shall set and the UPPCL shall purchase all Infirm Power generated by a generating Unit prior to the Commercial Operation Date of such Unit.

#### Section 11.3 Sale of Power to Third Parties

- (a) In case of termination of this Agreement pursuant to Section 16.3 (d), ROSA will be allowed to sell any capacity and / or power generated by the Station to third parties after intimating UPPCL, in accordance with the laws applicable at the time of such termination.
- (b) In case of UPPCL default, ROSA will, without prejudice to UPPCL's obligation under this Agreement, be allowed to sell any capacity and / or power generated by the Station to third parties for so long as the Event of Default is continuing unremedied. From the proceeds of such sale, the surplus amount received over Variable Charges shall be adjusted against the Fixed Charge liability of the UPPCL in respect of the quantum of such capacity and / or power sold by ROSA to third parties as provided below.

In case the surplus amount over Variable Charges is higher than the Fixed Charge liability of the UPPCL in respect of the quantum of such capacity and / or power sold by ROSA to third parties, such excess amount shall be retained by the ROSA. In case the surplus amount over Variable Charges is lower than the Fixed Charge liability of the UPPCL in respect of the quantum of such capacity and / or power sold by ROSA to third parties, such shortfall amount shall be payable by the UPPCL.

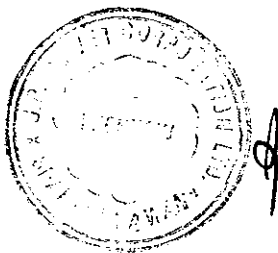
- (c) If UPPCL, for any reason whatsoever, is unable to or elects not to / does not off take any capacity and / or power generated / to be generated by the Station, ROSA shall be free to sell the unutilized capacity and / or power to any other party under intimation to UPPCL.



From the proceeds of such sale, the surplus amount received over Variable Charges shall be adjusted against the Fixed Charge liability of the UPPCL in respect of the quantum of such capacity and / or power sold by ROSA to third parties as provided below.

In case the surplus amount over Variable Charges is higher than the Fixed Charge liability of the UPPCL in respect of the quantum of such capacity and / or power sold by ROSA to third parties, such excess amount shall be retained by the ROSA. In case the surplus amount over Variable Charges is lower than the Fixed Charge liability of the UPPCL in respect of the quantum of such capacity and / or power sold by ROSA to third parties, such shortfall amount shall be payable by the UPPCL."

UPPCL shall provide wheeling facilities on non discriminatory basis for such sale of power pursuant to Sections 11.3 (a), 11.3(b) and 11.3 (c) and ROSA will pay wheeling charges for the same as stipulated by the UPERC.



## ARTICLE 12

### TARIFF, BILLING & PAYMENT, CHANGE IN LAW

#### Section 12.1 Two-Part Tariff

- (a) UPPCL shall pay to ROSA the Tariff for each Tariff Year as set out in this Article. Tariff will be determined on a two-part basis comprising Fixed Charge and Variable Charge and shall be computed for each Tariff Year.

#### Section 12.2 Fixed Charge

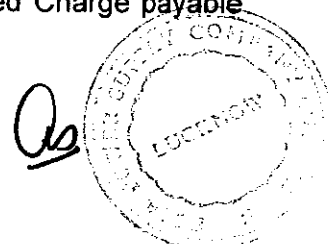
- (a) The Fixed Charge shall mean with respect to any Tariff Year during the Term of the Agreement the aggregate of the following for such year;
- (i) Interest on Debt : at actuals as per the financial package approved by the UPERC;
  - (ii) Interest on Working Capital;
  - (iii) Depreciation; as per GOI guidelines (Schedule 7);
  - (iv) O & M Expenses;
  - (v) Taxes on Income (not including any tax/penalties, if any, imposed by reasons of ROSA default);
  - (vi) Return on Equity.

Not later than Ninety (90) days prior to the Unit I Commercial Operation Date, ROSA shall deliver to UPPCL a calculation of its estimate of the Fixed Charge (except Taxes on Income) for the Operating Months from the Unit I Commercial Operation Date till Unit II Commercial Operation Date ("Initial Tariff Period").

Not later than Thirty (30) days prior to the Unit II Commercial Operation Date, ROSA shall deliver to UPPCL a calculation of the estimated Fixed Charge for First Tariff Year and thereafter not later than Thirty (30) days prior to the commencement of each Tariff Year of the Term, ROSA shall deliver to UPPCL a calculation of the Fixed Charge (based on its best estimates) of the ensuing Tariff Year.

In estimating the various elements of the Fixed Charge, ROSA will calculate such estimate in the currency in which such element (or any part thereof) is denominated. Foreign currency amounts will be converted into Rupees at the Current Rate of Exchange as on the date of the said estimate.

The Fixed Charge (excluding Taxes on Income and any other Taxes) shall be payable every month as one twelfth (1/12) of the estimated amount for the Tariff Year. If the Initial Tariff Period or any Tariff Year is less than Twelve (12) months the amount of the Fixed Charge payable shall be reduced on a pro-rata basis.



- (b) Interest on Debt shall be computed on all outstanding loans, as included in the schedule of Debt Repayment, as per the Financing Document approved by the UPERC on the basis of actual rate of interest as specified in Schedule 10.
- (c) Working Capital shall be the aggregate of the following :
- i) Cost of Primary Fuel for two months consumption corresponding to Achievable Plant Load Factor that is a Plant Load Factor of 80%;
  - ii) Cost of Secondary Fuel for two months corresponding to Achievable Plant Load Factor that is a Plant Load Factor of 80%;
  - iii) O & M Expenses for One Month;
  - iv) Maintenance spares @ 1% of the Capital Cost escalated @ 6% per annum from the date of commercial operation; and
  - v) Receivables equivalent to two months of fixed and variable charges for sale of electricity calculated corresponding to Achievable Plant Load Factor that is a Plant Load Factor of 80%.

Rate of interest on Working Capital shall be on normative basis and shall be equal to the short term Prime Lending Rate of State Bank of India as on 1<sup>st</sup> April of the year in which ROSA is declared to be in commercial operation. Interest on working capital shall be payable on normative basis notwithstanding that ROSA has not taken working capital loan from any outside agency."

**(d) Depreciation**

For the purpose of tariff, Depreciation shall be computed in the following manner, namely:

- i) The value base for the purpose of depreciation shall be the historical cost of the asset;
- ii) Depreciation shall be calculated annually, based on straight line method over the useful life of the asset and at the rates prescribed in Schedule 7.

The residual life of the asset shall be considered as 10% and depreciation shall be allowed upto maximum of 90% of the historical capital cost of the asset. Land is not a depreciable asset and its cost shall be excluded from the capital cost while computing 90% of the historical cost of the asset.

- iii) On repayment of entire loan, the remaining depreciable value shall be spread over the balance useful life of the asset.



- iv) Depreciation shall be chargeable from the first year of operation. In case of operation of the asset for part of the year, depreciation shall be charged on pro rata basis.

#### Advance Against Depreciation (AAD)

In addition to allowable Depreciation, ROSA shall be entitled to Advance Against Depreciation, computed in the manner given hereunder:

AAD = Debt Repayment amount subject to a ceiling of 1/10<sup>th</sup> of Debt minus Depreciation.

Provided that Advance Against Depreciation shall be permitted only if the cumulative Debt Repayment upto a particular year exceeds the cumulative Depreciation up to that year;

Provided further that Advance Against Depreciation in a year shall be restricted to the extent of difference between cumulative Debt Repayment and cumulative Depreciation up to that year."

- (e) O & M Expenses

O & M Expenses shall be computed based on the appropriate guidelines of the appropriate electricity regulatory commission as applicable in the relevant Tariff Year.

- (f) The recovery of Fixed Charge will be allowed so long as the Adjusted Plant Load Factor is not less than the Achievable Plant Load Factor calculated at the end of each Tariff Year. If the Adjusted Plant Load Factor for the Station for any Tariff Year is lower than the Achievable Plant Load Factor for such Tariff Year, the actual amount payable to ROSA by UPPCL for such Tariff Year on account of Fixed Charge shall be reduced on pro-rata basis.

Explanation : Achievable Plant Load Factor shall be subject to UPPCL Force Majeure and Political Force Majeure.

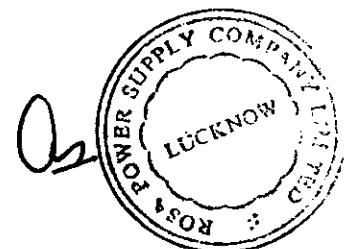
- (g) The Tariff determined as above does not include any duties, taxes, cesses or other levies demanded by and legally payable to GOI or GOUP or UPPCL or any other statutory authorities in India on the generation and/or sale of energy, and if levied and legally payable shall be payable by UPPCL to ROSA additionally along with the monthly Tariff bills.

#### Section 12.3 Variable Charge

- (a) Variable Charge shall mean the cost of Primary Fuel and the cost of Secondary Fuel.
- (b) The Cost of Primary Fuel (CPF) shall mean, for any Operating Month, the cost of Primary Fuel, calculated in accordance with the following formula :

$$CPF = \frac{[FC * kWh * (HR - FR * OCV)] + MTP}{GCV}$$

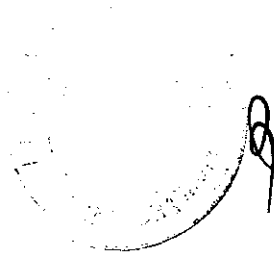
Where:



- (i) FC is the estimated average Unit cost of the Primary Fuel fired at the Station including the cost of procurement of Fuel under Coal Supply Contract and procurement of Fuel on spot purchase / short-term contract basis from domestic / international suppliers from time to time in consultation with UPPCL and expressed in Rs. per kg. The cost in Rs. per kg. shall include all costs of the Primary Fuel whether fixed or variable including any purchase costs, transportation charges, taxes, royalties, cost of handling and processing of the Primary Fuel. The computation of energy charges shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal dispatched by the coal supply company during the month at the rate of 0.8%. Notwithstanding anything to the contrary contained in this Agreement, the impact of the cost of 'Wagon Investment Scheme' shall be included as part of the cost of Primary Fuel, if it becomes necessary for executing legally enforceable Agreements with Indian Railways and Primary Fuel Supplier respectively, and for running the Station efficiently.
- (ii) KWh is the Measured Energy metered at the Interconnection Point during such Operating Month in Kilowatt hours.
- (iii) HR is the station heat rate at the Interconnection Point and shall be 2747 kcal/kWh based on normative gross station heat rate of 2500 kcal/kWh and normative Auxiliary Consumption of 9.0%.
- (iv) The normative Auxiliary Consumption for the purpose of tariff shall be 9.0%.
- (v) FR is the normative Secondary Fuel consumption rate at the Interconnection Point and shall be 2.20 ml/kWh based on normative secondary fuel consumption 2 ml/kWh and normative Auxiliary Consumption of 9.0%.
- (vi) OCV is the average gross calorific value of the Secondary Fuel fired at the Station expressed as Kcal/ml.
- (vii) GCV is the average gross calorific value of the Primary Fuel fired at the Station during the Operating Months expressed as Kcal/kg.
- (viii) MTP is the amount payable by ROSA by way of minimum take payments in respect of Primary Fuel and Secondary Fuel limited to the quantities required to achieve generation at Achievable Plant Load Factor (80%) in case of UPPCL Force Majeure, Political Force Majeure, UPPCL default and Despatch Instructions.
- (c) Cost of Secondary Fuel" (CSF) shall mean for any Operating Month the cost of Secondary Fuel calculated in accordance with the following formula:

$$CSF = KWH*FR*FO$$

Where :



- (i) KWh is the Measured Energy metered at the Interconnection Point during such Operating Month in Kilowatt hours.
- (ii) FR is the normative Secondary Fuel consumption rate at the Interconnection Point and shall be 2.20 ml/kWh based on normative secondary fuel consumption 2 ml/kWh and normative Auxiliary Consumption of 9.0%.
- (iii) FO is the estimated average unit cost of the Secondary Fuel fired at the Station expressed in Rs. per ml.

#### **Section 12.4 Incentive Charge**

- (a) For the Initial Tariff Period, the First Tariff Period and each subsequent Tariff Year of the Term UPPCL shall pay Incentive Charge at a flat rate of 25.0 paise / kwh for ex-bus energy generated in excess of ex-bus energy corresponding to Achievable Plant Load Factor.

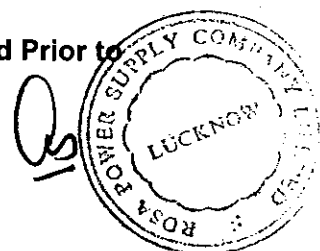
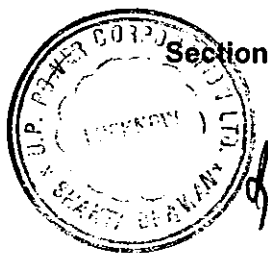
#### **Section 12.5 Records**

- (a) For the purposes of this Agreement, the assets, liabilities, Equity, revenue and expenses of ROSA shall be recorded and maintained in the accounts of ROSA in Foreign Currency and Rupees respectively based on the original source of the funds. For example, any portion of Capital Cost acquired from investment sources outside of India shall be denominated in Dollars and any Depreciation relating thereto shall be denominated in Dollars and any portion of Capital Cost acquired from investment sources within India shall be denominated in Rupees and any Depreciation relating thereto shall be denominated in Rupees. Likewise, Equity shall be recorded in the currency in which it was sourced.
- (b) Either Party shall have the right, upon reasonable prior written notice to the other Party, to examine and/or make copies of the records and data of the other Party relating to this Agreement (including without limitation, all records and data relating to or sustaining any payments made by or to ROSA) at any time during normal business hours during the period such records and data are required to be maintained. All such records and data shall be maintained for a maximum of Five (5) years after the creation of such record or data and for any additional time period required under Law or by regulatory agencies having jurisdiction over the Parties.

#### **Section 12.6 Payment for Infirm Power**

- (a) From the Synchronisation Date of each Unit to its Commercial Operation Date, UPPCL shall purchase all the Infirm Power generated by the Station. UPPCL shall pay to ROSA monthly payment of the Variable Charge for all Infirm Power purchased by UPPCL. Any payment agreed between the Parties and made by UPPCL other than the Variable Charge for the Infirm Power shall go towards reducing the Capital Cost of the Station.

#### **Section 12.7 Payment after Unit I Commercial Operation Date and Prior to Unit II Commercial Operation Date**



- (a) For the period commencing on the Unit I Commercial Operation Date upto the Unit II Commercial Operation Date, UPPCL shall pay to ROSA:
- (i) the Fixed Charge,
  - (ii) the Variable Charge, and
  - (iii) the Incentive Charge

calculated based on the assumption that Fifty per cent (50%) of the Capital Cost of the Station is attributable to Unit I.

#### **Section 12.8 Payment after Unit II Commercial Operation Date**

- (a) From the Unit II Commercial Operation Date and through out the Term, all as herein provided, UPPCL shall pay to ROSA, with respect to each Tariff Year of the Term the Fixed Charge, the Variable Charge and the Incentive Charge for the Station.

#### **Section 12.9 Payment of Fixed Charge and Variable Charge**

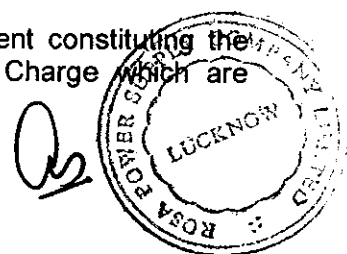
- (a) The Tariff shall be payable from the Unit I Commercial Operation Date, ROSA shall prepare and render to UPPCL within Five (5) days after the end of each Operating Month a statement detailing the UPPCL Meter Readings and ROSA's calculation of Fixed Charge, Variable Charge, Incentive Charge and any other amounts payable by UPPCL, pursuant to this Agreement. If, for any reason, UPPCL is unavailable to read UPPCL Meters on the last day of the Operating Month as provided in Section 8.6, ROSA and the notary as contemplated by Section 8.6 shall be entitled to read UPPCL Meters and the notary shall certify the reading for the purpose of enabling ROSA to prepare a statement of payment due to ROSA such Operating Month. If ROSA Meters are used for billing for any Operating Month, UPPCL and ROSA shall as soon as is practicable thereafter jointly read the UPPCL Meters at the Metering Points and make an equitable adjustment, if necessary, in the statement prepared by ROSA based on the ROSA Meters.

#### **Section 12.10 Annual Adjustment for Fixed Charge / Variable Charge**

- (a) Not later than Sixty (60) days after the end of each Tariff Year, ROSA shall deliver to UPPCL a statement of the calculation of the amount, if any, which UPPCL owes to ROSA or ROSA owes to UPPCL. This statement shall inter-alia include the following information with respect to such Tariff Year.
- (i) the annual Available Energy of the Station;
  - (ii) the Measured Energy,
  - (iii) the Fixed Charge,
  - (iv) the Variable Charge,
  - (v) the Incentive Charge,
  - (vi) Achievable Plant Load Factor and the Adjusted Plant Load Factor.

With full particulars, assumption and calculations in respect thereof.

- (b) To the extent that the actual amounts of any element constituting the Fixed Charge, Variable Charge and the Incentive Charge which are





incurred during any Tariff Year in accordance with this Agreement are different from the forecast amount estimated in accordance with Section 12.2. ROSA shall credit to UPPCL or UPPCL shall pay, as the case may be, an amount equal to the difference resulting therefrom. ROSA will submit supplemental bills to UPPCL for any such amounts payable to it or by it not later than Sixty (60) days from the end the Tariff Year.

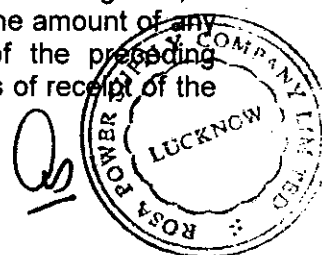
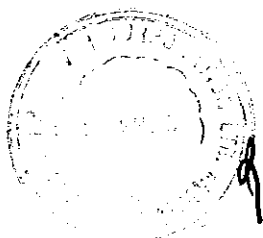
### Section 12.11 Claims for Income Tax

- (a) The Parties agree that the Taxes on Income liability of ROSA will be billed by ROSA and paid by UPPCL. ROSA will present to UPPCL a supplemental bill for Taxes on Income by the third week of the month proceeding the Operating Month when the Taxes on Income payment is due. UPPCL shall pay ROSA invoice within Seven (7) days of receipt of the supplemental bill for Taxes on Income via a Letter of Credit or Bank Draft / Certified Cheque.
- (b) Any under-recoveries or over-recoveries of tax on income shall be adjusted every year on the basis of income-tax assessment under the Income-Tax Act, 1961, as certified by the statutory auditors.
- (c) Provided that tax on any income stream other than the core business shall not constitute a pass through component in tariff and tax on such other income shall be payable by ROSA.
- (d) Provided further that the benefits of tax-holiday as applicable in accordance with the provisions of the Income-Tax Act, 1961 shall be passed on to UPPCL.
- (e) The Parties agree that the Taxes on Income liability of ROSA payable by UPPCL shall not exceed the value of Taxes on Income calculated using the values and figures for calculating Tariff as specified in sections 12.2, 12.3 and 12.4. Further, the Taxes on Income shall be recovered directly by ROSA from UPPCL and not as a component of Fixed Charges for the purpose of computation of Fixed Charge recoverable from UPPCL under the provisions of Section 12.2 (f).

### Section 12.12 Dollar Equivalency and Adjustment for variation in Exchange Rate

- (a) Extra Rupee liability towards interest payment and loan repayment corresponding to the normative Foreign Debt or actual Foreign Debt, as the case may be, in the relevant year shall be permissible provided it directly arises out of Foreign Exchange Rate Variation and is not attributable to Rosa or its suppliers or contractors. Rosa shall recover Foreign Exchange Rate Variation on a year to year basis as income or expense in the period in which it arises and Foreign Exchange Rate Variation shall be adjusted on a year to year basis.

As soon as practical, ROSA shall submit to UPPCL (i) in the event such difference is a positive number, a supplemental bill for an amount equal to such difference or (ii) in the event that such difference is negative, a statement setting forth the amount of such difference. The amount of any supplemental bill submitted in accordance with (i) of the preceding sentence shall be paid by UPPCL within Thirty (30) days of receipt of the



supplemental bill by UPPCL and the amount of any statement described in (ii) of the preceding sentence shall be reflected as credit in the Tariff bill for the next Operating Month of ROSA to UPPCL."

**NOTE:**

ROSA will make all reasonable efforts in consultation with UPPCL to reduce the impact of foreign exchange fluctuation throughout the Term of this Agreement including use of suitable existing (e.g., hedging, at UPPCL's cost) or future instrumentalities towards this end. If at a future date, maintaining Dollar account is allowed for Indian companies, ROSA will convert Rupees into Dollars on the dates of payment by UPPCL and disburse interest on foreign debt foreign debt repayment and 14% Return on Foreign Equity from such account.

**Section 12.13 Payment of Incentive Charge**

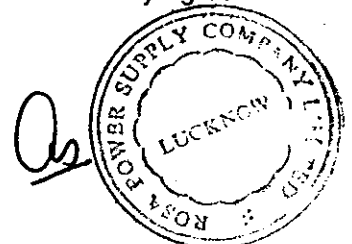
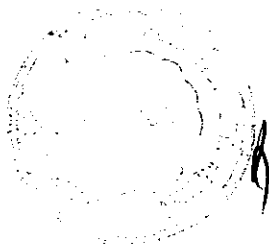
- (a) Incentive Charge as specified in Section 12.4 shall be payable monthly. ROSA shall compute the amounts due from UPPCL pursuant to Section 12.4 in each of the Operating Month in any Tariff Year once the Station achieves Plant Load Factor of Eighty per cent (80%). The obligation to pay Incentive Charge will be supported by a Letter of Credit.

**Section 12.14 Billing Disputes**

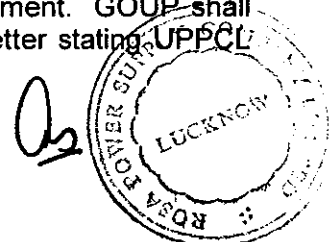
- (a) If either Party disputes the accuracy of a bill for any amount specified in this Article 12, the Parties shall use their best efforts to resolve the dispute in accordance with Article 17.
- (b) In case of any dispute in the bill amount the undisputed amount will be paid by UPPCL as per the agreed payment schedule. If the dispute is not resolved within five (5) working days of the receipt of the monthly bill, then the disputed amount shall be deposited in an Escrow Account. The dispute will be resolved by a Committee comprising the Chairman, UPPCL, the designated Director, ROSA and the Chairman UPERC (in the chair) within 25 days. The disputed amount shall be paid to ROSA on the 30<sup>th</sup> day irrespective of the decision and subsequently shall be adjusted in accordance with the decision of the committee.
- (c) Upon the resolution of the disputed amount in favour of UPPCL, such shall be due and payable to UPPCL with interest thereon, calculated at Default Rate, from the date on which such amount was paid by UPPCL to ROSA till the date of payment of amount due to UPPCL.
- (d) The existence of the dispute as to any bill shall not relieve either Party from compliance with other provisions of this Agreement.

**Section 12.15 Escrow Account and Letter of Credit**

- (a) On or before the Scheduled Synchronisation Date of Unit I and at all times thereafter, UPPCL shall cause to effect an irrevocable revolving Letter of Credit that is :
- (i) issued in favour of ROSA by a Scheduled Bank mutually agreed upon;



- (ii) revolving to continue during the Term of this Agreement,
  - (iii) valid for atleast One (1) year and has a face value of one month's billing amount based on Eighty Five Per cent (85%) Plant Load Factor for first three Operating Months following Unit I Commercial Operation Date and thereafter average monthly billing for last Three (3) Operating Months. The Letter of Credit shall be reinstated within Five (5) days of drawdown;
  - (iv) charges for opening and operating the Letter of Credit shall be borne by UPPCL.
- (b) ROSA shall present the monthly Tariff bill and any Supplemental bill (in each case denominated in Rupees) for payment under Letter of Credit mechanism. Letter of Credit shall be payable upon the execution and presentation of the following documents :
- (i) A certificate by an authorised officer of ROSA stating that the amounts specified in the certificate are due and payable by UPPCL to ROSA under this Agreement and supported by a meter reading statement accepted and signed by both ROSA and UPPCL or a certification by ROSA that UPPCL failed to sign the meter reading statement as per Section 8.6 (a).
  - (ii) Monthly energy consumption bill in a mutually acceptable format (to be agreed before the Date of Financial Closing) indicating details of Tariff.
  - (iii) Certificate from ROSA that the bill has been prepared/ drawn strictly in conformity with the accepted Tariff and that all admissible rebates/discounts have been allowed.
- (c) On or before the Scheduled Synchronisation Date of Unit I, UPPCL shall establish an Escrow Account ("Escrow Account") at a Scheduled Bank mutually agreed by UPPCL and ROSA. UPPCL shall at all relevant times maintain funds in the Escrow Account equivalent to 1.25 times monthly Tariff amount based on Eighty Five per cent (85%) Plant Load Factor for the purposes of guaranteeing the reinstatement of the Letter of Credit on a monthly basis under this Agreement as and when same becomes due and payable hereunder. If the Parties cannot agree on the Scheduled Bank, the matter shall be resolved pursuant to Article 17 hereof. In case of a default by UPPCL, in payment of any of the bills due to ROSA on the due date, ROSA shall have recourse to the Escrow Account. ROSA may, by written notice to the said bank, request the bank not to honour any of the cheques, hundies and requisitions presented to it by UPPCL, until after the claim of ROSA is first discharged out of the revenues accumulated in the Escrow Account. As soon as the said bill is paid by the bank from the Escrow Account or by UPPCL directly, the said notice shall cease to be in effect.
- (d) In the case of payment default by UPPCL under the Escrow Account Mechanism, ROSA shall have recourse to the GOUP Guarantee after Thirty (30) days of default from the Due Date of Payment. GOUP shall make payment within Thirty (30) days of receipt of letter stating UPPCL



payment default from ROSA. In case of termination payment, the decision shall be taken by GOUP within 30 days of receipt of letter from ROSA and the payment shall be made. Any delayed payment will attract interest at Default Rate.

- (e) Right to cease generation – The title for the Station on termination will pass to UPPCL only after full payment is made. ROSA does not have any obligation to run or allow running of the Station till the payment is made by the UPPCL, but will continue to receive all monthly tariff payments including Deemed Generation.

#### Section 12.16 Direct Payment

- (a) Notwithstanding the fact that a Letter of Credit has been opened, UPPCL has a right to make direct payment of any bill, issued by ROSA to UPPCL by cheque or otherwise and when such direct payment is made, ROSA shall not present the same bill to the Scheduled Bank against the Letter of Credit.

#### Section 12.17 Rebates, Late Charges

- (a) For payment of bills of Fixed Charges and Variable Charges through a Letter of Credit on presentation, a rebate of 2% shall be allowed. If the payments are made by a mode other than through the Letter of Credit, but within a period of one month of presentation of bills by ROSA, the rebate of 1 % shall be allowed.
- (b) In case the payment of bills of Fixed Charges and Variable Charges by UPPCL is delayed beyond a period of 1 month from the date of billing, a late payment surcharge at the rate of 1.25% per month shall be levied by ROSA on the outstanding amount of the bills and payable by UPPCL

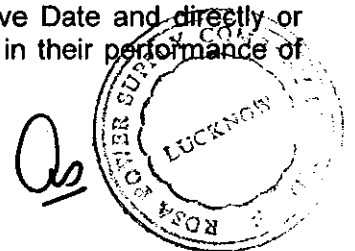
#### Section 12.18 Definition of Law

- (a) For the purpose of this Agreement, "Law" means any act, rule, regulation, notification, directive order or instruction having the force of Law enacted or issued by any Competent Legislature, Government or Statutory Authority of India, Court or Tribunal.

#### Section 12.19 Definition of Change in Law

- (a) For the purpose of this Agreement, "Change in Law" means :
- (i) any enactment and enforcement of any new Law;
- (ii) any amendment, alteration, modification or repeal of any existing Law by a competent court, tribunal or legislature in India or,
- (iii) any authoritative interpretation of an existing Law issued by a Competent Court, Tribunal, Government or Statutory Authority contrary to the existing official interpretation thereof.

in each case coming into effect after the Effective Date and directly or indirectly affecting the Parties to this Agreement in their performance of



their obligations under this Agreement and provision for which has not been made elsewhere in the Agreement.

#### **Section 12.20 Delays due to Change in Law**

- (a) In the event any Change in Law coming into force prior to the Scheduled Commercial Operation Date of any Unit causes any delay in Commercial Operation of the Unit, the Scheduled Commercial Operation Date of that Unit shall be extended by a reasonable time as mutually agreed between UPPCL and ROSA in accordance with Section 14.5

#### **Section 12.21 Additional Expenditure**

- (a) The amount of any additional expenditure incurred by ROSA with regard to the Station, which is reasonably necessary to comply with any Change in Law coming into force prior to Unit II Commercial Operation Date shall be added to the Capital Cost subject to comments by UPPCL/GOUP and approval of the UPERC. To the extent the amount of any such expenditure shall have been funded with Debt, Interest on Debt and Debt Repayment attributable thereto shall be reflected in the Tariff and to the extent the amount of any such expenditure shall have been funded with Equity the Return on Equity attributable thereto shall be reflected in the Tariff.

#### **Section 12.22 Additional Facilities and Modifications**

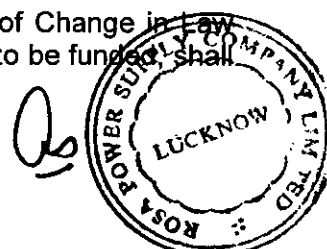
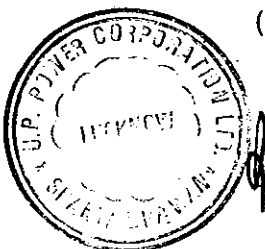
- (a) Where any Change in Law coming into force after the Unit II Commercial Operation Date requires the construction of any additional facilities or modifications of any existing facility of the Station, ROSA may incur such expenditure thereon as may be reasonably required to comply with such Change in Law and the amount of such expenditure shall be added to the Capital Cost subject to comments by UPPCL/GOUP and approval of the UPERC. ROSA shall provide UPPCL with as much prior notification of such additions or modifications and their costs as is reasonably practicable. To the extent the amount of any such expenditure shall have been funded with Debt, the Interest on Debt and Debt Repayment attributable thereto shall be reflected in the Tariff, and to the extent the amount of any such expenditure shall have been funded with Equity, the Return on Equity attributable thereto shall be reflected in the Tariff, benefits, if any, in the Tariff, accrued due to Change in Law shall go towards a reduction in the Tariff.

#### **Section 12.23 Other Increased Costs**

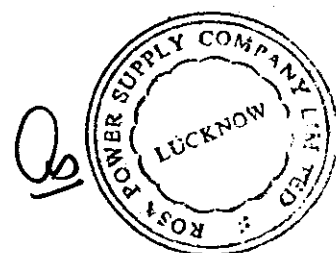
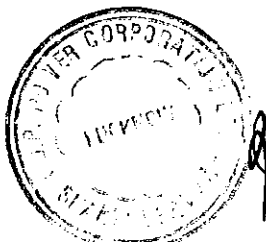
- (a) To the extent that ROSA incurs any other increase in costs, including operating and other Variable Costs, which are reasonably necessary to comply with any Change in Law and which are not covered by the escalation in the Tariff elsewhere provided in this Agreement, the amount of such costs, as approved by the UPERC, shall be paid by UPPCL to ROSA.

#### **Section 12.24 General**

- (a) The plan of remedial measures to mitigate the effect of Change in Law including how and by whom the costs of mitigation are to be funded, shall



be as may be mutually agreed upon and ROSA will be under no obligation to incur any additional expenditure to mitigate the effect of Change in Law unless and until such an agreement is reached. If no such agreement is reached within Three (3) months from the date of Change in Law, then for the purpose of Section 14.1(b)(v), it is agreed that adequate and reasonable time will not have been provided to make additional investment and accordingly that the Change in Law will (with effect from the date it affects ROSA) constitute a Political Force Majeure Event.



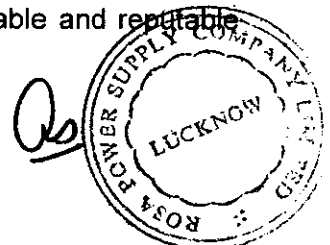
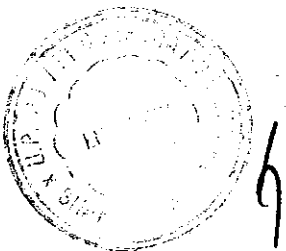
## ARTICLE 13 INSURANCE

### Section 13.1 Adequate Coverage

- (a) During the Construction Period of any Unit and thereafter for the entire Term of the Agreement, ROSA will take out, provide and maintain, or cause to be effected all such insurance coverage as may be required by the Financing Parties pursuant to the Financing Documents and such other insurance as may be available at reasonable rates of commercial premiums as ROSA shall think appropriate in the circumstances, as more specifically set forth in Schedule (all insurance premiums during the Construction Period shall be included as part of the Capital Cost). Such insurance to include without limitation:
- (i) Builders All Risk Insurance;
  - (ii) Comprehensive third Party Liability;
  - (iii) Workers' Compensation, Employees Group, Health and Medical etc;
  - (iv) Other such insurance coverage as may be required by the Financing Parties; and
  - (v) Such other insurance coverage as may be required by Law.

For greater clarify, if for a particular Station Force Majeure condition or group of such conditions, insurance cover is available but at unreasonable terms then ROSA shall inform UPPCL the position and UPPCL will have the right to tell ROSA to take out such insurance, the entire costs of which shall be added to the Project Cost if it is for the Construction Period, and shall be reimbursed separately if it is for during commercial operation subsequent to Construction Period:-

- (b) Not later than Four (4) Months before the Scheduled Commercial Operation Date for each Unit, ROSA will seek to obtain quotations for insurance of the Station from such reliable and reputable insurers, as adequately covering such risks and in such amounts as ROSA shall in its discretion think fit, covering such risks and in such amounts as ROSA shall in its discretion determine, provided such insurance coverage shall be in such form, shall be in the amount and shall provide the coverage required by:
- (i) the Financing Documents; and
  - (ii) the Law
- (c) Not later than Two (2) months prior to the expiry of any of the insurance from time to time in force in respect of any parts of the Station that have attained the Commercial Operation Date, ROSA will seek to obtain quotations for insurance of the Station from such reliable and reputable



insurers, as ROSA shall in its discretion think fit, covering such risks and in such amounts as ROSA shall in its discretion determine, provided such insurance coverage shall be in such form, shall be in the amount and shall provide the coverage required by :

- (i) the Financing Documents; and
  - (ii) the Law
- (d) ROSA will provide to UPPCL, for information, a list of the proposed insurance policies and coverage intended for the Station within a reasonable time after obtaining the quotations for insurance of the Station.

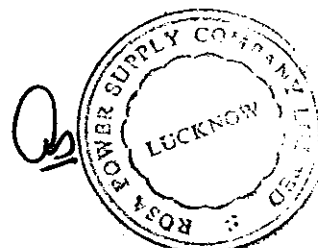
### Section 13.2 Certificates

- (a) No later than Thirty (30) days following the first day of each Tariff Year or as soon as practicable after receipt of such certificates or confirmations from the insurers, ROSA will furnish to UPPCL copies of certificates evidencing proof of insurance coverage to this Section.
- (b) The certificates of proof of insurance coverage shall indicate, without limitation;
  - (i) the nature and extent of any risks covered;
  - (ii) the amount of coverage;
  - (iii) the level of deductible;
  - (iv) any significant exclusions from coverage;
  - (v) the name(s) of the insurers; and
  - (vi) the amount of the premiums.
- (c) ROSA will not cancel, fail to renew or change the terms of any of the insurance described in this Section 13.2 without Ten (10) days prior notice to UPPCL.

### Section 13.3 Application of Proceeds

- (a) All insurance claims shall be made payable to ROSA, who may, subject to its obligations under the Financing Documents and other agreements, apply the proceeds of such claims to offset the Capital Cost increase to which the insurance coverage is related ROSA will make adequate insurance coverage consistent with ROSA's obligation under the Financing Documents and the Law. ROSA will fully bear the escalation in cost of insurance coverage, if any, over and above that addressed in Section 12.2 (e) with the passage of time, during the Term of this Agreement.

### Section 13.4 Failure to Insure

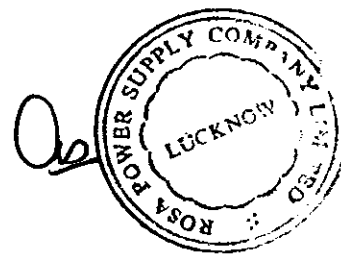




- (a) A failure by ROSA to obtain the insurance coverage or certificates of insurance as required by this Article shall neither relieve ROSA of the insurance requirements set forth herein nor relieve or limit in any way ROSA's obligations and liabilities under any other provision of this Agreement.

**Section 13.5 Assistance**

- (a) UPPCL will use reasonable efforts to assist ROSA to obtain any insurance required to be placed in any insurance market outside India if so requested by ROSA.



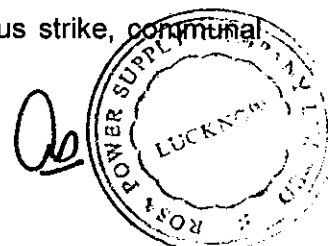
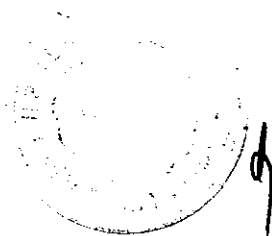
## ARTICLE 14

## FORCE MAJEURE

## Section 14.1 Force Majeure Events

A "Force Majeure Event" shall mean any event or circumstance or a combination of events or circumstances, which are beyond the reasonable control, either directly or indirectly, of a Party claiming Force Majeure, occurring on or after the Date of Financial Closing, that Materially and adversely affects the performance by such affected Party of its obligation under or pursuant to this Agreement, provided however, that such material and adverse effect could not have been prevented, bypassed, overcome, or remedied by the affected Party through the exercise of due diligence and reasonable care or its compliance with Accepted Industry Practice. It is clarified that Materially in relation to Force Majeure shall mean the inability of the Station to operate at a high enough Plant Load Factor to meet its full Fixed Charge obligations. Force Majeure Events shall include, without limitation, the following events and circumstances, but only to the extent they satisfy the above requirements.

- (a) Station Force Majeure: events and circumstances of the following types (Station related Force Majeure), except to the extent they constitute or are caused by events and circumstances of Political Force Majeure;
- (i) any material effect of the natural elements including lightening, drought, fire, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or storms;
  - (ii) explosion, accident, breakage or breakdown of facilities, plant or equipment, structural collapse, failure of or defects in major forging or casting or other items or major equipment which require long lead time to obtain either a replacement or repair, or chemical contamination (other than resulting from an act of war), in each case not attributable to failure to follow Accepted Industry Practice;
  - (iii) geological or ground conditions that were not reasonably foreseeable, as a result of which construction is delayed or no longer financially or technically reasonable viable;
  - (iv) air crash, shipwreck, train wreck or failure or delay of transportation that were not reasonably foreseeable;
  - (v) strikes, work to rule actions, go slows or similar labour difficulties occurring outside of India (excluding such events which are Site specific and attributable to ROSA);
  - (vi) damage or loss caused by meteorities or objects falling from the sky including aircraft and other flying devices or vehicles including the effects caused by the pressure waves of aircraft or objects travelling at supersonic speeds;
  - (vii) riots, acts of terrorists, civil commotion, religious strike, communal violence or sabotage.

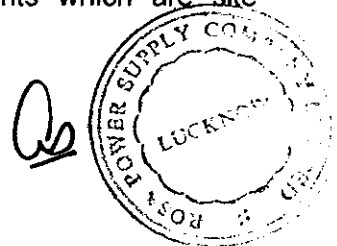


- (viii) diseases, epidemics, plagues or quarantines specific to the Station or the station colony.
- (ix) any unavailability of equipment, facilities or materials that was not reasonably foreseeable, and
- (x) any event or circumstances of a nature analogous to any of the foregoing.

**Explanation :**

A Force Majeure Event shall include the effects or consequences of any event or circumstances, or a combination of events or circumstances, which materially or adversely affects the performance of ROSA's obligations under this Agreement. Any Force Majeure Event described in the foregoing clauses of this Section 14.1(a) affecting the performance of any person that is Party to any Station Contract shall also constitute Station Force Majeure.

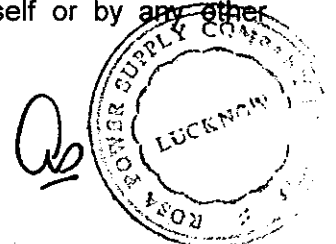
- (b) Political force Majeure : Political events or circumstances of the following types (Political Force Majeure) which involve India and/or the State of Uttar Pradesh;
  - (i) acts of war (whether declared or undeclared, actual or threatened), invasion, armed conflict, blockade, embargo, explosion, sanction, revolution, riot, communal or religious violence, sabotage, kidnapping or acts of terrorism;
  - (ii) actual or threat of chemical or radioactive contamination or ionising radiation resulting from acts of war at or near the Site not attributable to ROSA;
  - (iii) widespread diseases, epidemics, plagues or quarantines;
  - (iv) riots, acts of terrorists, civil, commotion, religious strike, communal violence or sabotage not attributable to ROSA;
  - (v) Change in Law which requires additional capital investment but does not provide for adequate and reasonable time to make the investments (only for such reasonable excess period which is required to make that investment).
  - (vi) expropriation, requisition confiscation, nationalisation export or import restrictions, requirements, action or omissions to act on the part of any Governmental Authority. GOI and/or Goup preventing or impairing performance of this Agreement or any other Station Contract provided such adverse action or inaction did not result from ROSA's or any of its Contractors non-compliance with any applicable Law;
  - (vii) strikes, work-to-rule actions, go-slow or similar labour difficulties occurring inside India (excluding such events which are site specific and attributable to ROSA or UPPCL);



- (viii) inability despite due diligence to obtain, renew or maintain required licenses, permits or Governmental Approvals, provided such adverse action or inaction did not result from ROSA's or any of its Contractors non-compliance with any applicable Law;
  - (ix) the failure of any Governmental Authority, whose failure to perform under their obligations to ROSA shall result in the Station's operations being affected Materially, provided such adverse action or inaction did not result from ROSA's or any of its Contractors non-compliance with any applicable Law. However, fuel supply risk shall not be attributable to UPPCL. Non-availability of water arising from any act or omission of any Governmental Authority will constitute Political Force Majeure;
  - (x) any event or circumstance or a combination of the same of a nature analogous to any of the foregoing beyond the reasonable control of the Parties and affecting the performance of their obligations hereunder.
- (c) UPPCL Force Majeure : events or circumstances of the following types which affects the External Interconnection Facilities and prevents UPPCL from evacuating power produced by the Station, except to the extent they constitute or are caused by events and circumstances of Political Force Majeure;
- (i) any material effect of the natural elements including lightening, drought, fire, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado or storms;
  - (ii) any material effect of diseases, epidemics, plagues or quarantines;
  - (iii) explosion, accident, breakage or breakdown of facilities structural collapse failure of or defects in major forging or casting or other items or major equipment which require long lead time to obtain either a replacement or repair, or chemical contamination (other than resulting from an act of war), in each case not attributable to failure to follow Accepted Industry Practice.
  - (iv) any unavailability of equipment, facilities or materials that was not reasonably foreseeable.
  - (v) air crash, shipwreck, train wreck or failure or delay of transportation that were not reasonably foreseeable; and
  - (vi) any event or circumstance of a nature analogous to any of the foregoing.

**Explanation:**

UPPCL shall not be entitled to claim Force Majeure based upon an interruption of services due to action taken by itself or by any other Governmental Authority.

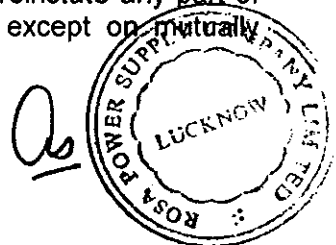


## Section 14.2 Notification Obligations

- (a) Where a Party affected by any of the events described in Section 14.1 claims relief under this Agreement (the "affected Party"), the rights and obligations of both Parties shall be suspended for the duration of the Force Majeure Event subject to Section 14.3 and 14.5 hereof and subject as otherwise provided in this Agreement, provided that:
- (i) the affected Party gives the other Party written notice indicating its intention to claim relief under this Article and describing the particulars of the Force Majeure Event as soon as reasonably practicable, after its occurrence but not later than Five (5) days after the date on which such Party knew or should reasonably have known of the commencement of the Force Majeure Event. Notwithstanding the above if the Force Majeure Event results in a breakdown of communications rendering it not reasonably practicable 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 the reinstatement of communications, but not later than Seven (7) days after such reinstatement.
  - (ii) the affected Party uses its reasonable efforts to remedy its inability to perform;
  - (iii) the affected Party prepares and provides weekly reports to the other Party indicating its progress in remedying the effects of the Force Majeure Event, and
  - (iv) the Force Majeure Event was not caused by the Affected Party's negligent or intentional acts, errors or omissions, or by its negligent failure to comply with, any material Law, rule, regulation, order or ordinance, or any material breach or default under this Agreement.
- (b) The suspension of performance shall not be greater in scope or longer in duration than that reasonably necessary due to the Force Majeure Event.
- (c) The Affected Party shall provide the other Party with written notice when it is able to resume performance of its obligations under this Agreement.
- (d) Nothing in this Article, shall :
- (i) excuse the obligations of a Party that are required to be completely performed prior to the occurrence of a Force Majeure Event; or
  - (ii) excuse the obligations of a Party to make payment under this Agreement.

## Section 14.3 Parties Obligations in case of a Force Majeure Event

- (a) Neither Party shall be obliged to take any steps or actions that would, in the opinion of that Party, render its performance of this Agreement uneconomical, including, settlement of a labour dispute, or entering into Station Contracts. Neither Party shall be obliged to reinstate any part of the Station damaged by a Force Majeure Events, except on mutually agreed terms.



- (b) Wherever the affected Party's performance of any or all of its obligations under this Agreement has been rendered uneconomical due to a Force Majeure Event, the Parties shall seek to negotiate in good faith and develop and implement a plan of remedial and reasonable alternative measures to render the performance of the affected Party's obligations economical.
- (c) Where the Affected Party's performance of any or all of its obligations under this Agreement is deemed to be uneconomical by reason of a Force Majeure Event, the provisions of Article 18 under this Agreement shall, without prejudice to that Party's other obligations under this Agreement, apply.
- (d) In addition to the obligations of UPPCL to pay to ROSA all moneys which were payable and/or which accrued due prior to the commencement of the Force Majeure Event, UPPCL shall pay to ROSA during and/or with respect to the period of the duration of the Force Majeure Event the amount set forth in Section 14.5 hereof.

#### **Section 14.4 Uneconomic Performance**

- (a) ROSA's performance of any or all of its obligations under this Agreement shall be deemed to be uneconomical by reason of a Force Majeure Event if the Remedying Cost exceeds the Additional Income that could be earned by ROSA, after remedying the effects of the Force Majeure Event.
- (b) UPPCL's performance of any or all of its obligation under this Agreement shall be deemed to be uneconomical by reason of a Force Majeure Event if the Remedying Cost exceeds economic benefits.
- (c) In this section, "Remedying Cost" means the net economic costs expected to be incurred by ROSA or UPPCL (as the case may be) after setting off the proceeds of any insurance claims received or reasonably expected to be received by ROSA or UPPCL (as the case may be) arising from the loss, damage or expense suffered by the Station or External Interconnection Facilities as a result of such Force Majeure Event.

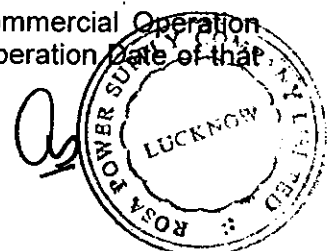
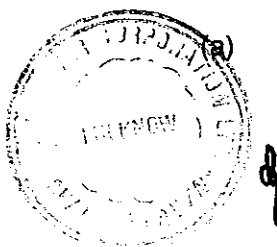
"Additional Income" means the present value of incremental income (net of tax) that ROSA could reasonably expect to earn by remedying the adverse effects of such Force Majeure Event on the Station. It will be calculated from the date the Station is expected to overcome the adverse effects of such Force Majeure until expiry of the Term of this Agreement. It will be calculated in accordance with Generally Accepted Accountancy Principles.

- (d) Any dispute on account of a claim of uneconomic performance by either Party shall be resolved in pursuance of Article 17.

#### **Section 14.5 Consequences of Force Majeure Event**

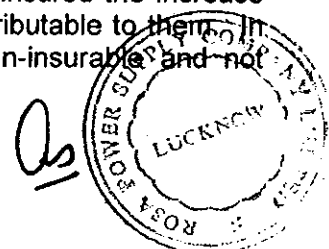
Notwithstanding anything contained in this Agreement:

If any Force Majeure Event occurs prior to the Commercial Operation Date of any Unit, then the Scheduled Commercial Operation Date of that

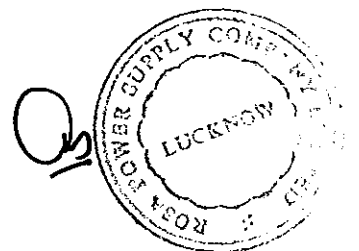
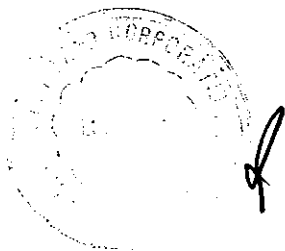


Unit shall be extended for a reasonable period of time relative to the duration and impact of such Force Majeure Event.

- (b) In the case of a Station Force Majeure Event, after Unit I Commercial Operation Date, UPPCL shall pay ROSA the Fixed Charge at Eighty per cent (80.00%) Plant Load Factor, for a period of not more than Forty Five (45) days. UPPCL shall be fully reimbursed for the above payment with interest from the insurance proceeds, within Twenty One (21) days following Forty-fifth (45<sup>th</sup>) day of the Station Force Majeure. The interest shall be payable by ROSA at the Working Capital Interest Rate and shall be payable for the number of days for which Fixed Charge is paid by UPPCL and for a period of Twenty One (21) days from the Forty-fifth (45<sup>th</sup>) day of the Station Force Majeure. In case the payment is made by ROSA prior to Twenty-first (21<sup>st</sup>) day after Forty-fifth (45<sup>th</sup>) day of the Station Force Majeure, interest payment shall be reduced on a pro-rata basis. In case of non-payment of the due amount by ROSA within Twenty One (21) days from the Forty-fifth (45<sup>th</sup>) day of the Station Force Majeure, the Default Rate of Interest shall be payable by ROSA for a period from the Twenty-first (21<sup>st</sup>) day till the actual date of payment by ROSA. If the insurance proceeds are not sufficient, then ROSA will pay the balance to UPPCL.
- (c) During any Force Majeure Event, if ROSA operates the Station at part load, UPPCL shall pay ROSA the Variable Charge, if any.
- (d) Following Unit I Commercial Operation Date, UPPCL shall pay to ROSA during the duration of any Political Force Majeure and UPPCL Force Majeure, Fixed Charge calculated on the basis that the Unit or Station shall be deemed during such period to be operating at Eighty per cent (80.00%) Plant Load Factor from the time of such Force Majeure Event. If any Political or UPPCL Force Majeure Event occurs prior to the Unit I Commercial Operation Date and the Financing Parties are not willing to reschedule Debt Repayments, UPPCL shall pay to ROSA the amount of Debt Repayment as it falls due as per the financing Documents. Any amount paid under this section in respect of Debt Repayment will be treated in accordance with Section 12.2(d).
- (e) For greater certainty, it is understood that periods of outage due to a Station Force Majeure Event, shall not be treated as deemed generation for the purpose of calculating Adjusted Plant Load Factor. Periods of outage due to Political and UPPCL Force Majeure Events shall be deducted from the total period of operation in that Tariff Year for the purpose of calculating Adjusted Plant Load Factor. During the period of a Political Force Majeure Event, or UPPCL Force Majeure Event, UPPCL shall pay the Fixed Charge at Eighty per cent (80.00%) Plant Load Factor.
- (f) The amount of additional capital expenditure incurred by ROSA with regard to the Station due to a Political Force Majeure Event shall be added to the Capital Cost, subject to UPERC Approval and net of any insurance proceeds received by ROSA. No increase in Capital Cost shall be allowed with regard to any expenditure incurred by ROSA on the Station due to any Station Force Majeure Events, if it is insurable. For such Station Force Majeure Event which cannot be insured the increase in Capital Cost shall be payable by ROSA if it is attributable to them. In case the Station Force Majeure is found to be un-insurable and not



attributable to ROSA the increase in Capital Cost will be as per the approval of the UPERC, provided the project remains commercially viable after the increase.





## ARTICLE 15

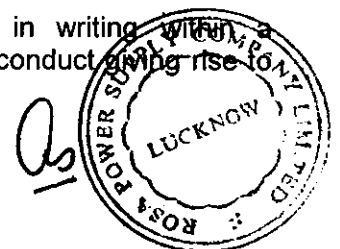
### LIABILITY AND INDEMNITY

#### Section 15.1 Limitation on Liability

- (a) Except as expressly provided in this Agreement, neither ROSA nor UPPCL nor 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 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 production or equipment used therefor, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of UPPCL, ROSA or others), strict liability, contract, breach of statutory duty, operation of Law or otherwise. UPPCL shall have no recourse against any officer, director or shareholder of ROSA or any Affiliate of ROSA or any of its officers, directors or shareholders. ROSA shall have no recourse against any officer of UPPCL, or any affiliate of UPPCL or any of its officers.
- (b) Notwithstanding this Article, a Party shall be liable to the other Party for any additional costs, Expenses or loss suffered, arising directly from a willful default of the Party's obligations under this Agreement.
- (c) For the purposes of this Article, 'Willful default' shall mean:
- (i) An intentional or reckless breach or disregard by a Party of its obligations under this Agreement;
  - (ii) a failure to take reasonable action to remedy a breach resulting from an error of judgement or mistake arising in good faith; or
  - (iii) a failure to remedy a breach resulting from an action in accordance with Accepted Industry Practice.

#### Section 15.2 ROSA Indemnity

- (a) ROSA agrees to defend, indemnify and save harmless UPPCL, its officers, directors, agents, employees and affiliates from and against any and all actions, claims, costs, demand, damages, expenses (including reasonable legal fees), judgements, liabilities, losses, proceedings and suits by any Person that are caused by or sustained on facilities owned or controlled by ROSA, unless caused by the action, negligence, or the willful misconduct of an officer of UPPCL, or any officer, director, subcontractor, agent or employee of UPPCL.
- (b) Any claims under this Section shall be made in writing within a reasonable period of time from the time of alleged conduct giving rise to



the claim, or within such shorter period as may be prescribed by any limitation statute applicable at the Site and/or the Station.

### Section 15.3 UPPCL Indemnity

- (a) UPPCL agrees and shall defend, indemnify and save harmless ROSA, its officers, directors, agents, employees and Affiliates (their respective officers, directors, agents and employees) from and against any and all actions, claims, costs, demands, damages, expenses (including reasonable legal fees), judgements, liabilities, losses, proceedings and suits by any Person that are caused by or sustained on facilities owned or controlled by UPPCL, unless caused by the action, negligence, or the willful misconduct of an officer of ROSA, or any officer, director, subcontractor, agent or employee of ROSA.
- (b) Any claim under this Section shall be made in writing within a reasonable period of time from the time of alleged conduct giving rise to the claim, or within such shorter period as may be prescribed by any limitation statute applicable at the Site and/or the Station.

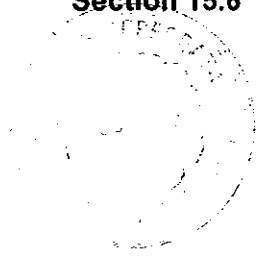
### Section 15.4 Notice of Proceedings

- (a) Where a Party receives a claim from a third party in respect of which it is entitled to be indemnified under Sections 15.2 or 15.3, it shall promptly notify the other Party of such claims.
- (b) Neither Party shall settle or compromise any claim, action suit or proceeding in respect of which it is entitled to be indemnified by the other Party without the prior written consent of that Party, such consent shall not be unreasonably withheld or delayed.

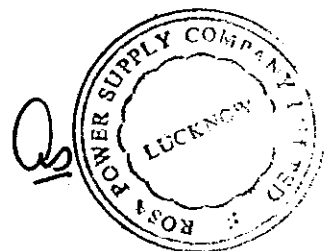
### Section 15.5 Conduct of Proceedings

- (a) A Party (the original Party) shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by the third party alleging or asserting against it arising out of any matter in respect of which it is entitled to be indemnified by the other Party (the "Indemnifying Party").
- (b) The reasonable costs incurred by the original Party to contest, defend and litigate any claim, action, suit or proceeding by any third party shall also be covered by the indemnity from the Indemnifying Party.
- (c) The Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense provided it gives prompt notice of its intention to do so to the original Party contesting or defending the suit or proceeding by the third party.
- (d) The Indemnifying Party shall reimburse the original Party for all reasonable costs previously incurred by it prior to the assumption of such defence by the Indemnifying Party.

### Section 15.6 Representation



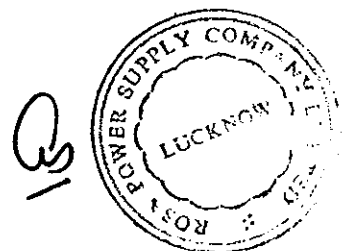
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- (a) The original Party shall have the right to employ its own counsel and such counsel may participate in such claim, action, suit or proceeding, but the fees and expenses of such counsel shall be at the expense of such original Party, when and as incurred, unless;
  - (i) the employment of counsel by such original Party has been authorised in writing by the Indemnifying Party;
  - (ii) the original Party shall have reasonably concluded that there may be conflict of interest between the Indemnifying Party and the original Party in the conduct of the defence of such action;
  - (iii) the Indemnifying Party shall not in fact have employed independent counsel, reasonably satisfactory to the original Party, to assume the defence of such action and shall have been so notified by the original Party; or
  - (iv) the original Party shall have reasonably concluded and specifically notified the Indemnifying Party either that there may be a specific defence available to it which are different from or additional to those available to the Indemnifying Party or that such claim, action, suit or proceeding involves or could have a materially adverse effect upon it beyond the scope of this Agreement.

**Section 15.7 Survival on Termination**

- (a) The provisions of this Article shall survive the termination or expiry of this Agreement



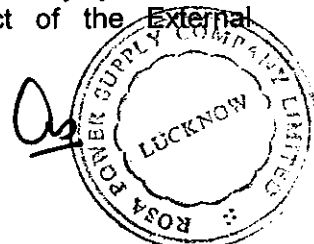
## ARTICLE 16

## DEFAULT AND REMEDIES

## Section 16.1 Events of Default

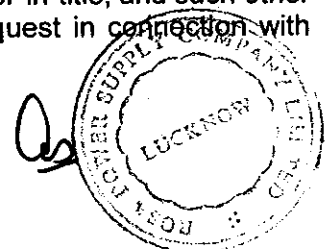
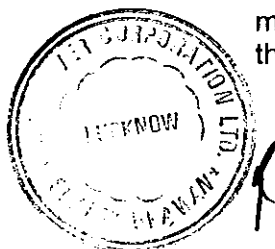
The occurrence of any one of the following shall constitute an Event of Default

- (a) Default by ROSA: ROSA will be in default of its obligations under this Agreement where;
- (i) ROSA fails to perform any of its major obligations under this Agreement;
  - (ii) ROSA commits a material breach of this Agreement;
  - (iii) ROSA directly or indirectly repudiates this Agreement;
  - (iv) ROSA fails to commence Construction within 180 Days after the Date of Financial Closing (as such period may be extended for any delay caused by an event of Force Majeure);
  - (v) ROSA abandons the construction after the commencement of construction without written consent of UPPCL;
  - (vi) ROSA fails to enter into Commercial Operation within Twelve (12) months of the Scheduled Commercial Operation Date for reasons other than Force Majeure Events or delay caused by an UPPCL Event of Default. The Twelve (12) months period may be further extended by mutual agreement of the Parties;
  - (vii) The dissolution, pursuant to Law, of ROSA except for the purpose of merger, consolidation, liquidation, reconstitution or reorganisation that does not affect the ability of the resulting entity to perform its obligations under this Agreement and provided that such resulting entity expressly assumes such obligations;
  - (viii) ROSA fails to make payments for amounts due under this Agreement to UPPCL within Thirty (30) days after the date following receipt of notice by UPPCL of such non-payment;
  - (ix) Should the Station's monthly average Daily Declared Capacity less Capacity mis-declaration (if any in that month), in each of 12 consecutive Operating Months, (starting with the first month after the Stabilisation Period for Unit II) fall below Fifty percent (50%) then ROSA will be in default. Periods of Force Majeure and Scheduled Maintenance shall be excluded from such calculation;
  - (x) The tampering by ROSA or its Contractors, employees or agents with the External Interconnection Facilities or the Metering System without prior written consent of UPPCL, except in situations where such actions are taken to prevent immediate injury, death or property damage, provided that in respect of the External



Interconnection Facilities, such tampering must have been deliberate and has resulted in material damage to the External Interconnection Facilities.

- (xi) The failure of ROSA to procure or maintain all material insurance required pursuant to Article 13.
  - (xii) Any assignment or transfer by ROSA in breach of Article 21.
- (b) Default by UPPCL: UPPCL shall be in default of its obligations under this Agreement where;
- (i) UPPCL fails to perform any of its major obligations under this Agreement;
  - (ii) UPPCL commits material breach of this Agreement;
  - (iii) UPPCL directly or indirectly repudiates this Agreement;
  - (iv) UPPCL fails to make payments for monthly Tariff bills due under this Agreement to ROSA within Thirty (30) days after the due date, following the receipt of written notice by ROSA of such non-payment;
  - (v) UPPCL shall be deemed to be in default of its obligations under this Agreement where GOUP fails to perform any of this major obligations under GOUP Guarantee and Implementation Agreement;
  - (vi) If there is any direct or indirect dissolution of UPPCL, or the transfer of property, assets or undertaking or any material part thereof, by one or a series of transactions, to any other person, unless;
    - (1) such dissolution is for the purpose of amalgamation, reorganisation or reconstruction;
    - (2) the resulting entity, person or successor-in-title unconditionally assumes the obligations of UPPCL under this Agreement. Station Contracts and any other contracts to which UPPCL is a party and which affect the Station and/or ROSA.
    - (3) This Agreement the GOUP Guarantee and Implementation Agreement, the Letter of Credit and Escrow Account remain in full force and effect and enforceable against all the Parties to such agreements including the resulting entity, person, or successor-in-title to UPPCL.
    - (4) ROSA has received an opinion, acceptable to it from the legal counsel to the resulting entity, person, or successor-in-title to UPPCL relating to the enforceability of this Agreement against that resulting entity, person or successor-in-title, and such other matters as ROSA may reasonably request in connection with the Station;



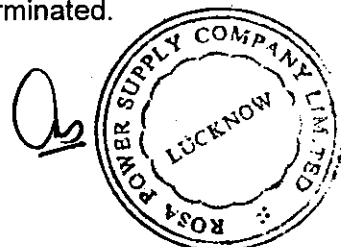
- (5) ROSA has received an opinion, acceptable to it from the legal counsel to GOUP relating to the enforceability of GOUP Guarantee and Implementation Agreement, the Coal Supply Contract, the Transportation contract, the Secondary Fuel Contract and any other contracts relating to the Station with GOUP and any respective departments or agencies thereof and such other matters as ROSA may reasonably request in connection with the Station;
- (6) The resulting entity, person or successor-in-title has the technical capability and operating experience sufficient to continue the performance of its obligations under this Agreement; and
- (7) The resulting entity, person, or successor-in-title has the financial standing to perform its obligations under this Agreement and a credit worthiness at least equal to that of UPPCL at the execution date of this Agreement.

### Section 16.2 Rights Preserved

- (a) The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by Law;
- (b) No action or failure to act by any Party shall constitute a waiver of any right or duty afforded to any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### Section 16.3 Remedies for Defaults

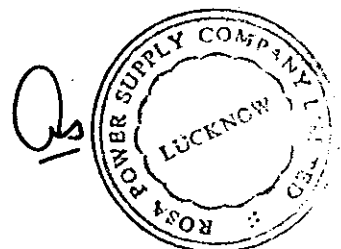
- (a) If the Event of Default is capable of rectification and the Party fails to cure the default within One Hundred and Eighty (180) days (and in case of payment default Thirty (30) days) of the receipt of notice of default from the other Party and such extended periods of time as mutually agreed upon between the Parties but not exceeding One Hundred and Eighty (180) days (except in case of payment default), the Party claiming remedy shall have the right to specific performance of this Agreement and/or terminate this Agreement by giving written notice ("Intended Termination Notice") to the defaulting Party of such default and non-defaulting Party's intention to terminate this Agreement;
- (b) The "Intended Termination Notice" by the non-defaulting Party shall be effective no earlier than One Hundred Eighty (180) days following the date of delivery of such notice to the defaulting Party.
- (c) Where an Event of Default is cured or remedied prior to the end of the One Hundred Eighty (180) days period or thirty (30) days in case of payment default following the date of delivery of such notice to the defaulting Party, then this Agreement shall not be terminated.



- (d) Where an Event of Default is not cured or remedied prior to the end of the One Hundred Eighty (180) days period (or in case of payment default Thirty (30) days period) following the date of delivery of the "Intended Termination Notice" to the defaulting Party, then this Agreement shall be terminated upon the expiry of the One Hundred Eighty (180) days notice period (or in case of payment default Thirty (30) days period), by the issuing of a "Termination Notice" by the non-defaulting Party;
- (e) Upon termination of this Agreement, the non-defaulting Party shall be excused and relieved of all obligations and liabilities under this Agreement, except for payment of amounts due before the Effective Date of such termination.
- (f) Upon termination of this Agreement, the non-defaulting Party, subject to the terms of this Agreement, may exercise any rights or remedies it has at Law or in Equity including any rights under Section 11.3 and / or under Article 18.

**Section 16.4 Specific remedies**

- (a) Except as expressly provided in this Agreement, if ROSA fails to generate and operate at the Achievable Plant Load Factor, then ROSA shall have no liability other than the pro-rata reduction in the Fixed Charge pursuant to section 12.2 that may be caused by such failure to generate.

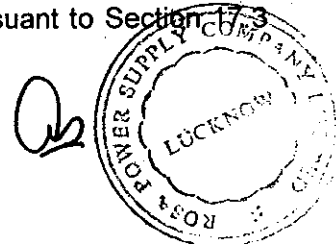
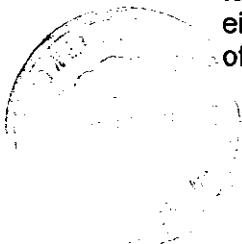


**ARTICLE 17****CHOICE OF LAW AND DISPUTE RESOLUTION****Section 17.1 Governing Law**

- (a) This Agreement shall be governed by and construed in accordance with the Laws of the State of Uttar Pradesh, India in effect as of Effective Date and where applicable, the Laws of the Republic of India, in effect as of Effective Date, subject to such concessions as shall be provided to ROSA by GOI and/or GOUP. However, for Section 17.3, the Law of the Republic of India as of the Effective Date shall be applicable.

**Section 17.2 Informal Dispute Resolution**

- (a) The Parties agree to attempt to resolve all disputes arising under this Agreement promptly, equitably, in good faith and using their best endeavours. To this end, the Parties agree to provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate discussions between them, their representatives or senior officer.
- (b) Each of ROSA and UPPCL shall designate, in writing from time to time, to the other Party representatives (hereinafter called the Parties "Experts") and a senior officer who shall unless otherwise expressly provided in this Agreement, be authorised in an equitable manner to exercise the authority of the Parties and to make decisions by mutual agreement. The full undisputed amount by either Party shall be paid in accordance with the terms of this Agreement.
- (c) Unless the Parties otherwise expressly agree, as a preliminary step to the commencement of arbitration pursuant to Section 17.3 of this Agreement, any dispute arising out of or in connection with this Agreement shall be referred, by either Party, to the parties "Experts", who shall commence discussions to resolve the dispute within Five (5) days of notification, in writing, of dispute.
- (d) If the "Experts" are unable to resolve the dispute under this Agreement within Fifteen (15) days of the commencement of discussions, such dispute shall be referred by such representatives, respectively, to a senior officer designated by ROSA and a senior officer designated by UPPCL who shall commence discussions within Five (5) days of notification of a dispute.
- (e) Notification of a dispute to senior officers designated by the Parties shall be in writing and shall state the circumstances and material facts giving rise to the dispute, the article or the articles of this Agreement in dispute and the remedy sought.
- (f) If the senior officers of the Parties are unable to resolve a dispute referred to them within Fifteen (15) days of the commencement of discussions either Party may refer the dispute to arbitration pursuant to Section 17.3 of this Agreement.

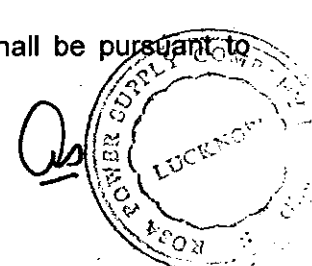
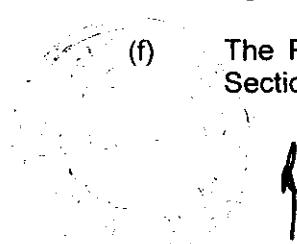




- (g) Each Party may appoint substitute or replacement Experts or senior officers from time to time and shall notify the other Party of the name, address and relevant qualifications of the substitute or replacement "Experts" or senior officers within Thirty (30) days of their appointment.
- (h) The "Experts" and senior officers appointed to resolve disputes under this Section shall meet as and when necessary. They shall use their best endeavours to meet in person, all discussion shall end up in a memorandum duly signed by both the Parties and/or their "Experts" and the same shall be binding on both the Parties.
- (i) Each Party shall bear the costs and Expenses of the "Experts" or senior officers appointed by it.

### Section 17.3 Arbitration

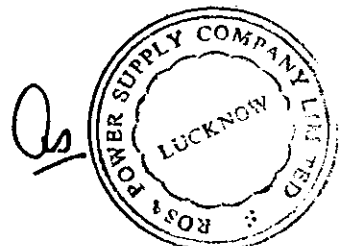
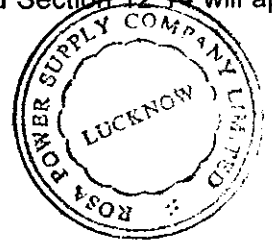
- (a) In the event any dispute cannot be resolved between the Parties pursuant to Section 17.2, then any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination or any question as to whether a matter is arbitrable, shall be referred to and governed by Arbitration & Conciliation Act, 1996.
- (b) The arbitration shall be conducted in New Delhi, India. The arbitration shall be conducted in English and all written documents used during the arbitration shall be in English. The award shall be speaking award.
- (c) The arbitral tribunal shall be composed of Three (3) arbitrators, appointed as follows :
  - (i) Each Party shall appoint an arbitrator, and the Two (2) arbitrators so appointed shall appoint a third arbitrator who shall act as Umpire of the tribunal;
  - (ii) If either Party fails to appoint an arbitrator within Thirty (30) days of receiving notice of the appointment of an arbitrator by the other Party, such arbitrator shall at the request of that Party, be appointed by such authority as to be decided in section 17.3(a).
  - (iii) If the Two (2) arbitrators to be appointed by the Parties fail to agree upon a third arbitrator within Thirty (30) days of the appointment of the second arbitrator, the third arbitrator shall be appointed by such authority as decided in Section 17.3 (a) at the written request of either Party.
- (d) The Parties agree that any decision or award of an arbitral tribunal pursuant to this Section 17.3 shall be a domestic award and final, conclusive and binding upon the Parties and any Person affected by it. The Parties also agree that any arbitration award rendered pursuant to this Section 17.3 may be enforced by any court of competent jurisdiction.
- (e) During any period of arbitration, there shall be no suspension of this Agreement.
- (f) The Parties specifically agree that any arbitration shall be pursuant to Section 17.3(a).



(g) This Section 17.3 is governed by Indian Law.

**Section 17.4 Disputed Amount of Monthly Bills**

If a dispute as to whether an amount is due arises and this Section 17.4 applies to that dispute, it will be referred to a Committee comprising the Chairman, UPPCL, the designated Director, ROSA and the Chairman UPERC (in the chair) within 5 days of the relevant invoice date. The disputed amount will be released from the Escrow Account into which it was placed pursuant to Section 12.14 and applied in accordance with the Committee's decision. If no ruling is given within 25 days the disputed amount will be paid to ROSA on the 30<sup>th</sup> day and Section 12.14 will apply once the dispute is finally resolved.



## ARTICLE 18

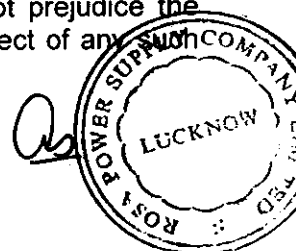
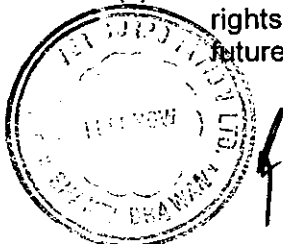
### TERMINATION AND BUY OUT

#### Section 18.1 Triggering Events for Termination

- (a) ROSA shall have the right to require UPPCL to purchase the Station and upon ROSA exercising the same. UPPCL shall purchase the Station from ROSA at any time during the Term of this Agreement in the event of the following.
- (i) a Political Force Majeure Event or UPPCL Force Majeure Event as described in Section 14.1 which occurs and continues for One Hundred and Eighty (180) days, unless UPPCL is taking such steps as are appropriate and reasonably available to it to remedy the effect of the UPPCL Force Majeure or Political Force Majeure as in Section 14.1(b) and 14.1(c) subsisting for 360 days;
  - (ii) an event of UPPCL default as described in Section 16.1 (b).
- (b) UPPCL shall have the right to require ROSA to sell the Station and upon UPPCL exercising the same, UPPCL shall purchase the Station from ROSA any time during the Term of this Agreement in the event of the following:
- (i) a Station Force Majeure Event as described in Section 14.1 which occurs and continues for One Hundred and Eighty (180) days, unless ROSA is taking such steps as are appropriate and reasonably available to it to remedy the effect of the Station Force Majeure Event as per Section 14.1(a) subsisting for 360 days;
  - (ii) an event of ROSA default in accordance with Article 16.1(a)

#### Section 18.2 Termination Procedure

- (a) Where either Party exercises its right to require the other to purchase/sell the Station it will provide an "Intended Termination Notice" to the other in accordance with Article 16.3 and 19.
- (b) Following the issuance of the "Intended Termination Notice", the Parties shall meet and consult for a mutually agreed period, not exceeding Six (6) months (the "Suspension Period") for the purpose of mitigating the consequences of the events and circumstances giving rise to the "Intended Termination Notice".
- (c) Where the Parties resolve all matters giving rise to the issuance of the "Intended Termination Notice" to their mutual satisfaction during the "Suspension Period" the relevant Party will revoke the "Intended Termination Notice".
- (d) Revocation of the 'Intended Termination Notice' shall not prejudice the rights of the relevant Party under this Agreement in respect of any future events or circumstances.



- (e) On expiry of the 'Suspension Period', if the Parties are unable to resolve all matters giving rise to the issuance of the 'Intended Termination Notice' the relevant Party will issue a 'Termination Notice'.

**Section 18.3 Operation of the Station**

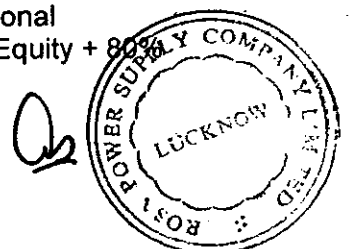
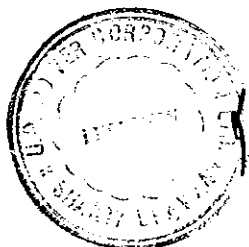
- (a) ROSA shall have the right but not the obligation, to operate the Station following issuance of the 'Intended Termination Notice' under this Agreement.
- (b) Where ROSA exercises its right to continue to operate the Station, both Parties shall continue to perform their obligations under this Agreement.

**Section 18.4 Compensation**

- (a) The Buy-out price shall be the sum of any or all of the following, depending upon various events as described in Section 18.1;
  - (i) Outstanding Debt – would include the outstanding Debt balance including the Working Capital facility, if any, plus accrued Interest on Debt, plus any amounts in respect of break costs (including swap break costs) or pre-payment penalties by ROSA to its Financing Parties;
  - (ii) Equity – Shall mean the Equity amount that was approved by UPPCL/GOUP and the UPERC at the Date of Financial Closing or as subsequently approved by UPPCL/GOUP and the UPERC;
  - (iii) Net Present Value of future Return on Equity – Shall mean the net present value of Return on Equity which is calculated at 14% for the period from the year of termination till the end of the Term of the Agreement. The discount rate for calculating Net Present Value shall be the SBI prime lending rate at the time of Buy-out, but not less than 10% and more than 14%;
  - (iv) Additional Termination Payment would include any statutory taxes, and duties payable in respect of the transfer of assets to UPPCL following Termination.

- (b) Buy Out Price in case of the following termination events shall be as follows:

|   |   |
|---|---|
| Station Force Majeure                         | Outstanding Debt + Additional Termination Payments + 40% of Equity  |
| Political Force Majeure & UPPCL Force Majeure | Outstanding Debt + Additional Termination Payments + Equity + 40% of Net Present Value of future Return On Equity |
| UPPCL Default                                 | Outstanding Debt + Additional Termination Payments + Equity + 80%   |



Of Net Present Value of future Return  
On Equity

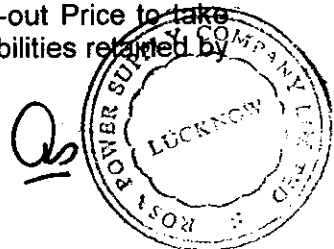
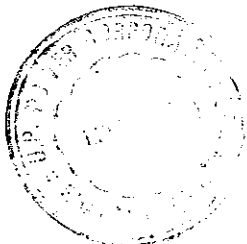
ROSA Default                      Outstanding Debt + Additional  
Termination Payments

### Section 18.5 Transfer

- (a) Following the issue of a "Termination Notice", under Section 18.2(a), wherein ROSA has exercised its right to sell the Station under Section 18.1(a) or wherein UPPCL has exercised its right to buy the Station under Section 18.1(b), UPPCL shall pay the Buy-out Price to ROSA within thirty (30) days of the receipt of the "Termination Notice" by the defaulting party, failing which ROSA shall be free to take such action regarding the Station and related assets as it deems fit. On the date the payment is made by UPPCL, i.e. the "Transfer Date", ROSA will deliver or make available to UPPCL such conveyance, transfer assignments and novation and other such documents reasonably required by UPPCL to vest in UPPCL the full benefits of the assets of the Station excluding the cash in hand and/or in Bank Accounts, trade and book debts or receivables accruing to ROSA prior to the transfer date as well as proceeds of any insurance or warranty claims made prior to the Transfer Date.

For greater clarity:

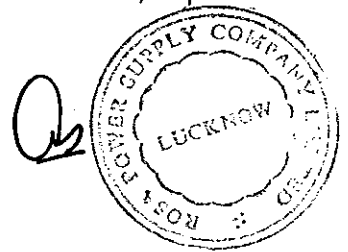
- (i) UPPCL shall only purchase the assets of the Company required to operate the project including land, plant and equipment, coal and oil stockpiles, spare parts, records, drawings and all other consumables. No warranties as to the condition of the property and assets of the Project shall be given except that ROSA agrees to assign to UPPCL the benefit of any warranties from third Parties existing on the Transfer Date;
- (ii) UPPCL shall not purchase any cash in hand and/or in bank accounts, trade and book Debt's or receivables accruing to the Company prior to the Transfer Date unless due consideration for these can be mutually determined by the Parties;
- (iii) all other assets existing at the Transfer Date that are not included in clauses (i) and (ii) above shall be for the benefit of the Company including the proceeds of any insurance or warranty claims made prior to the Transfer Date;
- (iv) the Company shall be responsible for all liabilities and obligations of the Company that have accrued prior to the Transfer Date. No Debt or other liability relating to the Project and incurred before the date of the Termination Notice will be assumed by UPPCL unless it chooses to and can reach Agreement of the same with the Company and, if necessary, the Financing Parties (where such Agreement is necessary in order to give legal effect to the assumption thereof by UPPCL) (subject to clause (v) below). Due allowance shall be made in computing the Buy-out Price to take account of liabilities assumed by UPPCL and liabilities retained by the Company;



- (v) the Company shall, if so required by UPPCL, use reasonable efforts to procure the novation (for failing that, assignment of the underlying rights held by the Company) to UPPCL of any Project Contracts on such terms as UPPCL may reasonably require.
- (b) On the "Transfer Date" the Station and all other equipment transferred pursuant to this Article 18 shall be transferred on an "as is" basis and any warranties, either expressed or implied by statute or otherwise, including warranties as to title, merchantability and/or fitness for any particular purpose, the absence of patent or inherent defects, description or otherwise of whatsoever nature, shall be excluded.
- (c) On the "Transfer Date", ROSA shall transfer all its rights, title and interest in the Station, free and clear of all liens, charges and encumbrances to UPPCL and this Agreement shall terminate.
- (d) After the "Transfer Date", ROSA shall be under no liability whatsoever to UPPCL in respect of the operation or otherwise of the Station by UPPCL or UPPCL's designee, and UPPCL shall indemnify and hold harmless ROSA against any liability to any person or entity arising from the use or operation of the Station after such transfer.

**Section 18.6 Survival of Provisions**

- (a) The provisions of this Article 18 shall survive the cancellation, expiration or termination of this Agreement.



**ARTICLE 19****NOTICES****Section 19.1 Notices**

- (a) All notices and other communication provided for and required under this Agreement including without limitation any modification of or waivers or consents under this Agreement, shall
- (i) be given or made in writing, and
  - (ii) telexed, tele-copied, sent by facsimile, mailed or delivered to the attention of the person indicated below.

If to ROSA :

Attention The Director  
Rosa Power Supply Company Limited  
4<sup>th</sup> Floor, Trade Tower,  
94, Mahatma Gandhi Marg,  
Lucknow-226 001, Uttar Pradesh, INDIA  
Fax No. 0522-3031005  
Tel.No. 0522-3031062

If to UPPCL:

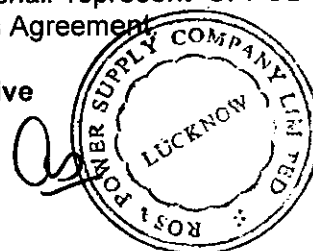
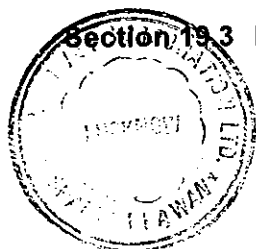
Attention The Chairman  
Uttar Pradesh Power Corporation Limited  
Shakti Bhawan,  
14, Ashok Marg  
Lucknow-226 001, Uttar Pradesh, INDIA

Fax No. 0522-2287827  
Tel No. 0522-2287785

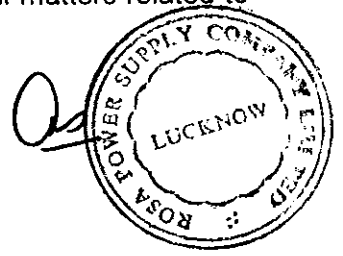
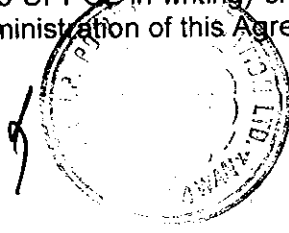
- (b) Each Party may designate such other address for Notices and/or the designated person for receipt of such notices. A Party changing its Address for Notices and/or the designated person shall give prompt notice of such change to the other Party.
- (c) Except as otherwise provided in this Agreement, all notices and communications shall be deemed to have been duly given and effective when made in accordance with this Section 19.1 and received by the other Party.

**Section 19.2 UPPCL's Authorised Representative**

- (a) UPPCL's Authorised Representative (or such other person as UPPCL shall notify to ROSA in writing) shall represent UPPCL in all matters relating to the administration of this Agreement.

**Section 19.3 ROSA's Authorised Representative**

- (a) Authorised Representative of ROSA (or such other person as ROSA shall notify to UPPCL in writing) shall represent ROSA in all matters related to the administration of this Agreement.





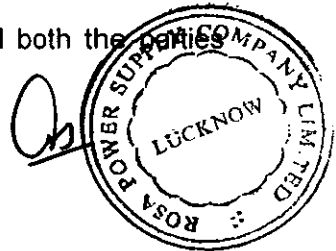
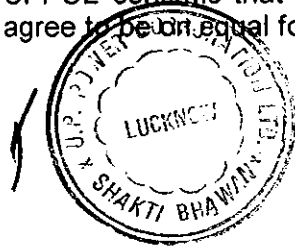
**ARTICLE 20**

**WAIVER OF IMMUNITY FROM SUIT AND EXECUTION**

**Section 20.1 Waiver of Immunity**

- (a) UPPCL hereby expressly and irrevocably agrees that it is without limitation subject to civil commercial and criminal Law with respect to the execution, delivery and performance of this Agreement and its obligations under this Agreement, UPPCL hereby irrevocably submits to the jurisdiction of Competent Courts from an interdictory order or injunction, enforcement of such order from attachment before judgement, from attachment in aid of execution of any arbitral award or judgement or from any other legal process in respect of or against its revenues, assets or properties.

UPPCL confirms that it has no sovereign immunity and both the parties agree to be on equal footing.



## ARTICLE 21

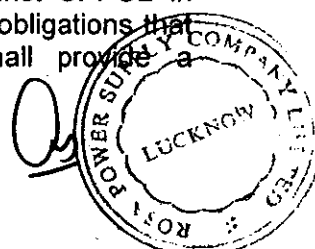
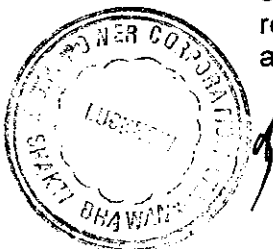
### MISCELLANEOUS PROVISIONS

#### Section 21.1 Amendments

- (a) This Agreement, including the schedules under this Agreement may only be amended with the written consent of the Parties or their successors or where permitted, assignees, and no oral waiver or amendment shall be effective under any circumstances whatsoever. No amendment of this Agreement shall be effective if the effect thereof is to render invalid or render unenforceable the guarantee given by GOUP pursuant to the GOUP Guarantee and Support Agreement.

#### Section 21.2 Assignments

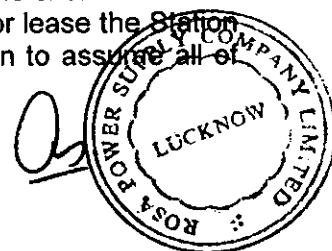
- (a) Neither Party shall assign this Agreement or any portion of this Agreement without the prior written consent of the other Party such consent not to be unreasonably withheld.
- (b) Notwithstanding the above, UPPCL shall have the right, with prior written notice to Rosa to assign this Agreement in whole or in part to any entity(ies) assuming all or part of UPPCL's rights and obligations hereunder; provided, however,
- (i) this Agreement, the Government Guarantee, the Implementation Agreement, the Letter of Credit, and the Escrow Agreement remains in full force and effect and enforceable by and against all the parties to such agreements including such assignee(s) and confirmation of the same has been received by Rosa;
  - (ii) Such assignee(s) has the technical capability and operating experience sufficient to continue the performance of its/their obligations under this Agreement;
  - (iii) Such assignee(s) has the financial standing to perform its obligations under this Agreement, and a creditworthiness at least equal to that of UPPCL at the Effective Date of this Agreement; and
  - (iv) Rosa shall be no worse off with respect to its rights under this Agreement.
- (c) Parties further agree that in case of assignment of all of the obligations under this Agreement by UPPCL, such assignee(s) shall provide a confirmation that they have assumed all obligations of UPPCL and shall be fully responsible for their performance under the Agreement.
- (d) In case only a portion of this Agreement is assigned such that certain obligations remain incumbent on UPPCL, UPPCL confirms that ROSA shall continue to be entitled to exercise its rights against UPPCL in respect of such unassigned portion and in respect of the obligations that are assigned, UPPCL alongwith the assignee(s) shall provide a



confirmation that co-ordinated efforts shall be taken to ensure that UPPCL alongwith such assignee(s) shall be fully responsible for the performance of the obligations hereunder and ROSA shall be entitled to exercise all rights in this regard.

- (e) Notwithstanding anything to the contrary contained herein, ROSA shall not require the consent of UPPCL for assignment of this Agreement or any portion of it to any co-developer or Affiliate prior to the Date of Financial Closing provided:
- (i) the assignee shall expressly assume the assignor's obligations under this Agreement, and
  - (ii) no such assignment shall impair any security given by ROSA under this Agreement.
- (f) Except expressly agreed by the other Party, no assignment, whether or not consented to, shall relieve the assignor of its obligations under this Agreement.
- (g) UPPCL shall consent to the assignment by ROSA of its right under this Agreement to the Financing Parties or any persons, their successors and assignees in connection with any financing or refinancing related to the construction, operation and maintenance of the Station, and shall execute documents reasonably satisfactory to ROSA upon request by ROSA to evidence such consent.
- (h) UPPCL shall consent to the encumbrance by ROSA of all or part of ROSA's rights or interests under any agreements related to the construction operation and maintenance of the Station including the amounts payable under these agreements as security for other agreements.
- (i) UPPCL agrees and acknowledges that the Financing Documents may provide that upon an event of default by ROSA under the Financing Documents the Financing Parties may under certain circumstances assume the interests rights and obligations of ROSA arising under this Agreement.
- (j) If any of the Financing Parties assume obligations under this Agreement, they shall not be personally liable for the performance of such obligations, except to the extent of all their right, title and interest in and to the Station and any and all contracts (excluding the Financing Documents).
- (k) Notwithstanding any such assumption by the Financing Parties, ROSA will not be released and discharged from and shall remain liable for any and all obligations to UPPCL arising or accruing under this Agreement prior to such assumption, or after such assumption for obligations which expressly survive the termination or expiration of this Agreement.

UPPCL agrees and acknowledges that the Financing Documents shall provide that upon an event of default by ROSA under the Financing Documents, the Financing Parties, may in addition to the exercise of their rights as set forth in this Section, cause ROSA to sell or lease the Station and cause any new lessee or purchaser of the Station to assume all of



the interests, rights and obligations of ROSA thereafter arising under this Agreement and UPPCL consents to such provisions.

- (l) This Clause may be amended to reflect the requirements of the Lenders and UPERC.

### Section 21.3 Successors and Assignees

This Agreement shall ensure to the benefit of and be binding upon the Parties hereto, their respective heirs, legal representatives, successors, assignees, administrators, executors, etc.

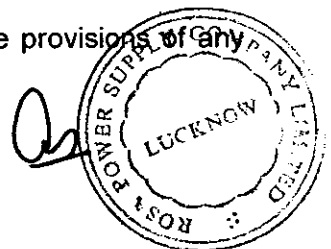
If, as a result of a law or statutory scheme or any Order by a Government Authority, the obligations of UPPCL under this Agreement are to be performed in whole or in part by one or more successor entities, Parties agree that the rights available in this Agreement shall be available against such successor entities and/or UPPCL as the case may be and ROSA will be no worse off with respect to its rights under this agreement as a result of such law, statutory scheme or Order of Government Authority.

### Section 21.4 Confidential Information

- (a) UPPCL acknowledges and understands that its position creates a relationship of confidence and trust between ROSA and UPPCL with respect to any confidential information which pertains to the business of ROSA to the business of any actual or potential client or customer of ROSA, and which may be made known to UPPCL by ROSA or by its Affiliate or obtained by UPPCL during the negotiation leading to this Agreement and during the Term of this Agreement.
- (b) Each Party agrees that except as directed by the other Party or a Court of competent jurisdiction it will not at any time during or after the Term of this Agreement disclose any confidential information to any person whatsoever or permit any person whatsoever to examine and/or make copies of this Agreement or any other reports, documents, computer programmes and source codes, that come into its possession or are under its control.
- (c) Each Party agrees to keep confidential in accordance with its customary procedures for handling confidential information of this nature, all non-public information provided to such Party by or on behalf of the other Party or any of its Affiliates in connection with this Agreement and identified as being confidential at the time the same is delivered to such Party.
- (d) A Party may disclose such confidential information :
- (i) at the request of any regulatory or other supervisory authority;
  - (ii) pursuant to subpoena or other judicial process;
  - (iii) when required to do so in accordance with the provisions of any applicable Law;



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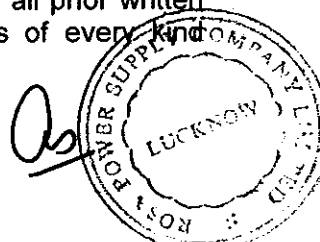
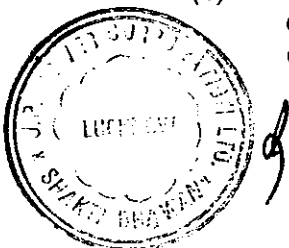
- (iv) to a Party's independent auditors, counsel and other professional advisors;
  - (v) to any other adviser or Financing Party involved in this Station;
  - (vi) to insurer(s) under any policy or policies of insurance under this Agreement or the Financing Documents;
  - (vii) in connection with any legal action or dispute arising out of any of the Station Contracts; and
  - (viii) to any assignee, or prospective assignee, so long as such assignee first executes and delivers to such Party a confidentiality agreement reflecting the foregoing terms and conditions.
- (e) For the purposes of this Agreement, "confidential information" includes trade secrets, processes, formulas, data and know-how, software, documentation, programme files, flow charts, drawings, techniques, source and object code, standards, specification improvements, inventions, techniques, customer information, financial and accounting data, statistical data, research projects, business development, financial and marketing plans, strategies, forecasts, computer programmes, customer lists, and information which has been assigned or otherwise conveyed to the Party and is of commercial or other value to the business in which the Party is engaged.
- (f) ROSA and UPPCL shall make available to each other such materials, documents and data except those protected by legal privilege or which is subject to any duty of confidentiality to any third party, as the other may reasonably request for the purposes of exercising its rights or carrying out its duties under this Agreement.

### Section 21.5 Counterparts

- (a) This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and either Party may execute this Agreement by signing any such counterpart.
- (b) This Agreement shall come into full force and effect when all the Parties have executed any one such counterpart.

### Section 21.6 Entirety

- (a) This Agreement represents the entire understanding of the Parties with respect to the specific subject matter of the Agreement, and is intended by the Parties to be the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement with respect to the electric energy sold and purchased thereunder, and supersedes all prior written or oral understandings, offers or other communications of every kind pertaining to the sale or purchase of energy and power to UPPCL or vice versa..
- (b) Except for any implementation agreement respecting the Station which is duly executed and delivered between the Parties hereto, all prior written or oral understandings, offers or other communications of every kind



pertaining to the sale of electric energy thereunder to UPPCL by ROSA are hereby abrogated and withdrawn.

### Section 21.7 Exclusion of Implied Warranties and Obligations

- (a) This Agreement expressly excludes any warranty, condition, duty, obligation or undertaking implied at or by Law, custom or otherwise arising out of any other agreement between the Parties, including any representation by either Party not contained expressly in a legally binding and enforceable document executed by both the Parties.
- (b) Each Party acknowledges, understands and confirms that it did not enter into this Agreement in reliance on any such warranty, condition, duty obligation or undertaking.

### Section 21.8 Expenses of Negotiations and Further Assurances

- (a) Each Party shall pay its own costs and expenses in relation to the negotiation, preparation, execution, delivery and carrying into effect of this Agreement.
- (b) Each Party shall from time to time on being requested to do so by the other Party shall co-operate with the other Party for carrying out or giving full effect to the terms of this Agreement.

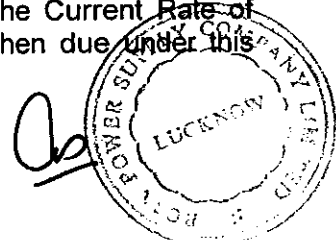
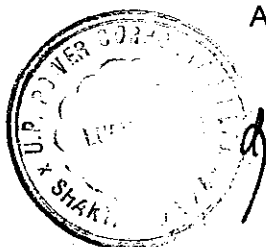
### Section 21.9 Headings

The table of contents, captions and section headings appearing in this Agreement are included solely for convenience of reference and are not intended to affect the interpretation or be determinative of any provision of this Agreement.

### Section 21.10 Judgement Currency

- (a) If, for the purpose of obtaining a judgement in any court with respect to any obligation of UPPCL under this Agreement, ROSA needs or requires to covert into foreign currency any amount payable in Rupees thereunder, then such conversion shall be made at the Current Rate of Exchange.
- (b) If pursuant to any such judgement;
  - (i) conversion is made on a day other than the day the payment is made by UPPCL; and
  - (ii) there is a change between the rate of exchange prevailing on the conversion date and that prevailing on the day of payment.

Then UPPCL shall pay any additional amounts, if any, that may be necessary to ensure that the amount paid in satisfaction of any judgement is the amount in Rupees that, when converted at the Current Rate of Exchange on the date of payment, is the amount then due under this Agreement in relevant currency.



- (c) Any amount due from UPPCL under this section shall be due as a separate debt and is not to be affected by, or merged into, any judgement being obtained for any other sums due or under or in respect of this Agreement.

### Section 21.11 Language

The Language of this Agreement is English. All notices, demands, requests, memorandum, statements, instruments, certificates or other communications given, delivered or made by, or on behalf of, either Party to the other Party, under or in connection with this Agreement shall be in English.

### Section 21.12 Legal Advise

Both Parties acknowledge that they have each carefully read and understood the Term of this Agreement and have had the opportunity to consult legal advice prior to executing this Agreement. This Agreement is enforceable by and against both the Parties.

### Section 21.13 No Partnership

- (a) The Parties are independent contractors.
- (b) Nothing in this Agreement creates, nor shall this Agreement or any other agreement or arrangement between the Parties be interpreted or construed to create an association, joint venture, or partnership between the Parties in this Agreement or between the Parties, or any one of them, and any other Person or Persons, nor shall any partnership, obligations or liability be imposed upon either Party.

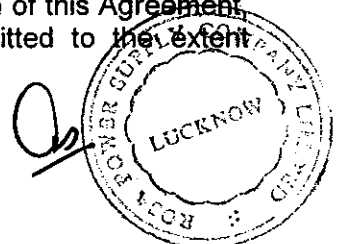
Neither Party shall have the right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

### Section 21.14 Third Parties

- (a) This Agreement is intended solely for the benefit of the Parties hereto and shall not confer any right of suit or action whatsoever on any third Party. Nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a party to this Agreement, except as expressly provided in this Agreement or by other agreement in writing.

### Section 21.15 Severability

- (a) All provisions of this Agreement are intended to be interpreted and construed in a manner to make such provisions valid, legal and enforceable.
- (b) The invalidity or enforceability of any phrase or provision shall in no way affect the validity or enforceability of any other portion of this Agreement, which shall be deemed modified, restricted or omitted to the extent necessary to make the Agreement enforceable.



- (c) Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

#### Section 21.16 Survival of Obligations

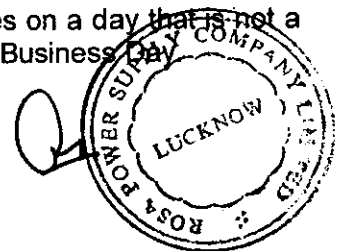
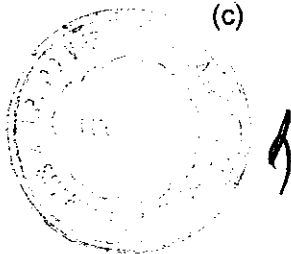
- (a) Cancellation, expiration or termination of this Agreement shall not relieve the Parties of their outstanding obligations under this Agreement.
- (b) The Parties outstanding obligations shall survive such cancellation, expiration or termination of this Agreement.

#### Section 21.17 Waiver and Preservation of Rights

- (a) No action or failure to act on the part of either Party to exercise, and no delay or forbearance in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement, shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, power, privilege or remedy under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
- (b) The duties and obligations imposed by this Agreement, and the rights and remedies available under this Agreement shall be cumulative and in addition to and not exclusive of or a limitation of any duties, obligations, rights and remedies otherwise imposed or available by Law.

#### Section 21.18 Time

- (a) Time referred to in this Agreement shall refer to the time in New Delhi, India.
- (b) In computing any period of time under this Agreement, the day of the act, event or default from which the prescribed or designated period begins to run, and the last day, shall be included.
- (c) Where the time for doing an act falls or expires on a day that is not a Business Day the time is extended to the next Business Day.





IN WITNESS WHEREOF, the Parties hereto have caused this Agreement executed as of the day, month and year first above written in the presence of the witness who have signed in their presence and in the presence of each other.

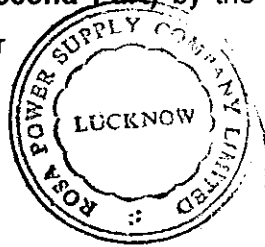
Signed and delivered by UPPCL (the First Part) by the hand of Shri S.K. Agarwal, Director (Finance)

*(Signature)*  
(S. K. Agarwal)  
Director (Finance) 12-11-06  
UPPCL

Witness:

*(Signature)*  
(S. P. PANDEY)  
EXECUTIVE ENGINEER  
PPA, Shakti Bhawan extn.  
LUCKNOW.

Signed and delivered by Rosa Power Supply Company Limited (the Second Part) by the hand of Shri Ashwani Kumar, Director



*(Signature)*

Witness: *(Signature)*  
(ALOK MUKHERJEE)  
Rosa Power Company Ltd.  
94, M.G. Marg, Lucknow

**SCHEDULE – 1****DESCRIPTION OF THE STATION**

The Description of the Station in this Schedule 1 contains a general description of the design of the Station as envisaged at the date of execution of this Power Purchase Agreement (in this schedule called the "Agreement"). The Parties acknowledge that changes may be necessary and/or required on the basis of further site investigations and during the development of the detailed design, construction and installation of the Station and its components and ROSA reserves the right to make any such changes in order to meet its overall objectives under the Agreement. To the extent there is any conflict between the provisions of the Schedule and the Agreement, the provisions of the Agreement shall prevail.

**(a) Introduction**

The Station will comprise two 300 MW (measured at the generator terminals) coal-fired thermal power plant units (the "Units") located at Rosa in the district of Shahjahanpur, in the State of Uttar Pradesh, India. The capacity and the power produced will be provided to UPPCL pursuant to this Agreement.

The Station will comprise the following facilities :

- i) Turbine Island containing two steam turbine generators with auxiliaries.
- ii) Boiler Island containing two steam generating units with auxiliaries.
- iii) Plant water facilities including river water abstraction facilities.
- iv) Waste water treatment and disposal
- v) Control Complex
- vi) Coal/Fuel facility including Waste disposal facility
- vii) Building and Support facilities
- viii) Electrical System and Switchyard, and
- ix) Housing Colony

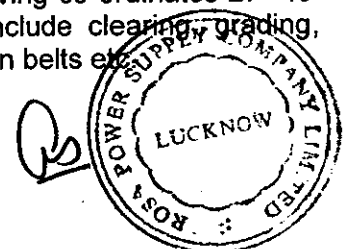
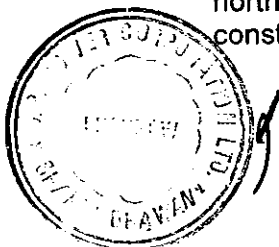
The two Units will be arranged in a slide-along configuration with one central control complex. This arrangement and layout will allow space for the addition of two more thermal generation units in the future.

The primary fuel for the Station will be coal supplied by Central Coalfields Limited/Coal India Limited from the Ashoka block of the North Karanpura Coal mines in Bihar, India. Heavy Oil (Low Sulphur Heavy Stock/Residual Fuel Oil) will be used as the secondary fuel for start-up and flame stabilisation at lower load. The ignition fuel will be Light Diesel Oil.

The Station will obtain water for its consumptive uses from the river Garrah flowing adjacent within 1 Km. from the site.

**(c) The Station Site**

Approximately 595 hectares of land will be developed for the plant, housing colony, water abstraction facility, rail link and the ash disposal area near the village of Rosa in the district of Shahjahanpur, in the State of Uttar Pradesh, having co-ordinates 27° 49' north and 79° 56' east (the "Site") Site development will include clearing, grading, construction of boundary walls/fencing roads, parking lots, green belts etc.



Access to the Site will be obtained from the Shahjahanpur – Hardoi SH-25 passing adjacent to the west of Site. Rail access will be obtained by constructing about 7.5 km. Spur line from the Lucknow-Moradabad section of the Northern Railway main line passing about 3 kms. east of Site (including a separate return spur including cross-over of the main line through a Flyover, as per directive of the Railways). The nearest Railway Station, Rosa Junction is about 4 kms. to the north – east of the Site.

**(d) The Station**

The Station will be oriented and located in a manner so as to minimise the drift from cooling towers and coal and ash particles blowing into the facilities.

Fly ash from the Station will be conveyed pneumatically and removed dry for commercial use or conditioned with recycled water and transported by covered tipper trucks/ high concentration slurry pumping to the ash disposal area site about 4.5 kms. away. Bottom ash will be dewatered at the station hydrobin and transported to the ash disposal site in similar manner.

The electric power generated 20kV will be stepped up to 220 KV and made available at the Station Switchyard from where UPPCL shall evacuate the power through the various 220 KV transmission lines to be constructed and terminated at the Station Switchyard by UPPCL.

Power for the Station start-up will be brought in through one of these 220 KV lines.

**(i) Turbine Island**

Each of the two steam turbine generators will be an indoor type tandem compound fully condensing turbine, single reheat, designed for operating steam conditions of 166 ata and 538 Deg. C. The gross output of each Unit at the generator terminals at maximum continuous rating (MCR) will be 300 MW.

The associated three phase, 50 Hz generator will be hydrogen / water-hydrogen cooled, rated at 370 MVA at 0.85 power factor.

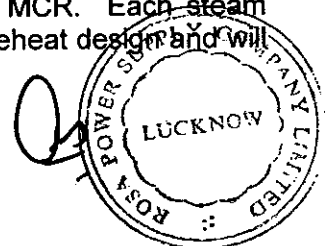
Each turbine generator will be provided with an automatic run-up and shut-down system complete with supervising instruments, seal oil unit, hydrogen system, controls and auxiliaries.

The condensate and feed water heating system for each unit will include one surface condenser, two 100% capacity condensate extraction pumps, six / seven stages of feed water heating, three 50% capacity boiler feed pumps and all auxiliaries.

One multi-cell mechanical draft / natural draft cooling tower constructed of fire-proof material per unit will be used to remove the latent heat energy from the condenser shell.

**(ii) Boiler Island**

Two (2) steam generating units shall be provided, each capable of delivering 1036 tph of steam at 175. ata and 541 Deg. C. at the superheater outlet at MCR. Each steam generating unit will be drum type, two pass, balanced draft, single reheat design and will have the necessary auxiliaries, including.



- \* Fuel preparation equipment consisting of motor driven heavy duty pulverisers, gravimetric coal feeders, two primary air fans.
- \* Heavy fuel oil burners
- \* Steam sootblowers
- \* Tri-sector type regenerative air preheaters with water washing devices.
- \* Steam coil air preheaters
- \* Draft plant consisting of Two 60% capacity each of ID and FD and PA fans
- \* Full complement of boiler valves, drains, piping and instrumentation
- \* Chemical feed systems
- \* Electrostatic Precipitator
- \* Bottom ash and mill rejects handling systems
- \* Fly ash handling system

### (iii) Plant Water Facilities

The Station will obtain water for its operation from the river Garrah flowing within 1 km west of the site through a river water abstraction facility to be created specially for the Station.

The water pre-treatment system will provide cooling tower make-up, service water, input to the demineralised water plant, fire protection water, potable water for the plant and housing colony etc. The system, to supply the treated water for two units shall be sized to meet the total water requirements of the plant and the housing colony

A demineralised water plant consisting of two 100% capacity streams to provide demineralised water for boiler make-up, auxiliary cooling circuit make-up, hydrogen generation plant, etc. will be provided.

### (iv) Waste Water Treatment

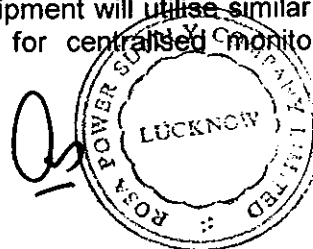
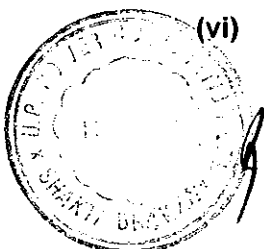
The waste water treatment system will treat the waste water from the DMW Plant regeneration, clariflocculator, cooling tower and boiler blowdowns, boiler/power house area and coal/ash handling plant area run-offs, sewage water etc., before releasing it to the natural stream, in order to ensure full compliance with CPCB/UPPCB norms. Storm water drainage shall be separately routed for the final discharge to the natural stream. Care will be taken to minimise the consumptive water requirement and surface water release by recirculating effluent from one system as input to another to the extent possible.

### (v) Control Complex

A single centralised control room will be provided to control and monitor the Station. The control and instrumentation systems will provide integrated operation of the Station by means of microprocessor based distributed digital control system and instrumentation. The systems will be designed for safe and reliable performance and ease of operation and maintenance.

The local control systems with stand alone equipment will utilise similar technology and will be linked to the central control system for centralised monitoring and alarm purposes.

### (vi) Coal/Fuel Facility



### Coal Delivery

The annual coal consumption for the Station is anticipated to be 2.7 million tonnes of coal based on the Gross Calorific Value of 3760 Kcal/kg.

Coal will be supplied by Coal India Limited from the Ashoka Block of the North Karanpura field in Jharkhand.

Coal will be brought in through the existing rail system by Indian Railways from North Karanpura approximately 870 kms rail distance away.

A new rail spur from the Lucknow – Moradabad section of the Northern Railway mainline passing through east of the site as well as a return spur with a fly – over to cross the mainline (total length of 7.5 kms approximately) will be constructed to bring coal directly into the Station premises, which will have an internal receiving yard of about 5 km long rail system, track hopper, automatic weighing system, etc.

### Coal Handling

The Station will have a two stream conveyor system along with screens, crushers, magnetic separators, automatic weighing and sampling systems up to the boiler bunkers for feeding sized coal. There will also be a stockyard for about 45 days storage of coal complete with Stacker – Reclaimer, emergency reclaim hoppers, etc. Each stream of the coal handling system will be of 1000 tph capacity.

### Heavy Fuel Oil Handling

Heavy Fuel oil will be used for start-up as well as for support firing at lower loads. This will be brought in by road tankers and unloaded to twin fuel oil storage tanks.

The Fuel oil transfer system will be complete with fuel transfer pumps, strip heating, day tanks and delivery system for each of the two units.

### (vii) Building and Support Facilities

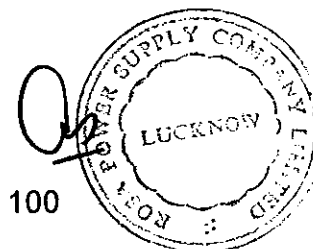
The boilers will be semi-open type. The penthouse, drum and burner level floors will be covered by metal cladding. Rest of the passages and walkways will be open to the elements. Chequered plates and anti-skid gratings will be provided excepting in the areas near the burners, which will have RCC floors.

An RCC dual-flue Chimney stack of 275 metres height will be provided for both the boilers.

The turbine building will be an all-steel frame structure with roof truss construction. The operating floors will be reinforced concrete slabs supported on permanent metal decking and steel framing.

In addition, the Station will include the following buildings and structures :-

- \* Switchyard Control Room
- \* Administrative Block
- \* Station Maintenance Building
- \* Water Treatment Building
- \* Auxiliary Boiler Building



- \* Fire/Service Water Pumphouse
- \* Diesel Generator Building
- \* Warehouses
- \* Storage Tanks, etc.

**(viii) Electrical System and Switchyard**

Each Generator will have its own 355MVA, 20/220 KV, three phase, 50 Hz. OFAF main output transformer (generator transformer) which will transfer power to the 220 kV section of the Switchyard. Isolated phase bus – ducts will connect the generators to the LV side of their respective generator transformers (GTs) and overhead line taps will connect the HV side of the GTs to the switchyard.

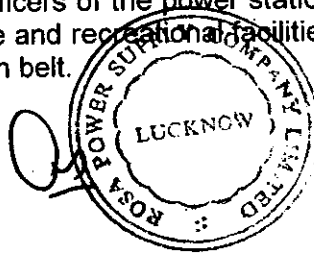
The unit auxiliary power system at each voltage level will have split bus, dual feed configuration, to be fed from the two Unit Auxiliary Transformers directly connected to generator output buses.

The common systems will normally receive power from the two station transformers (STs) connected to the 220 KV bus at the Switchyard.

The Station electrical system will consist of the 6.6 KV, 415V switchgear and other associated equipment to provide power to the plant auxiliary systems. It will also have a DC power source of different voltage levels for emergency services, C & I power supply etc.

**(ix) Housing Colony**

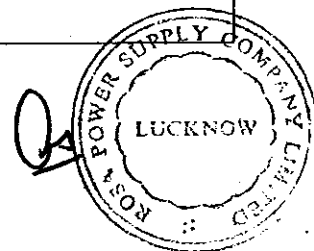
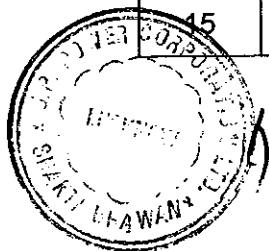
A housing colony for staff and officers of the power station will be built about 1 km from the Plant site. It will have service and recreational facilities apart from residential blocks and will be surrounded by a green belt.



**SCHEDULE – 2**  
**MAJOR CLEARANCES**

The following clearances have been / will be obtained with respect to the Station: -

| Sl. No. | Clearances  | Clearing Authority   |
|---------|---|--|
| 1.      | Publication/Sec.29(2)   | GOUP   |
| 2.      | Water availability  | CWC / GOUP   |
| 3.      | State Government Clearance  | GOUP / UPPCL   |
| 4.      | Pollution Clearance (Water & Air)                                       | UP Pollution Control Board   |
| 5.      | Environmental Clearance   | Ministry of Environment and Forests                                      |
| 6.      | Forest Clearance  | GOUP / Department of Forests   |
| 7.      | Civil Aviation Clearance for Chimney Height                             | National Airport Authority   |
| 8.      | Company Registration  | Registrar of Companies   |
| 9.      | Approval of PPA and various project agreements                          | UPPCL / UPERC  |
| 10.     | Project Cost / Tariff Approval  | UPPCL / UPERC  |
| 11.     | Rehabilitation & Resettlement of displaced Families by Land Acquisition | GOUP / Ministry of Environment and Forests                               |
| 12.     | Land Availability   | GOUP   |
| 13.     | Fuel Linkage  | Ministry of Coal   |
| 14.     | Financing   | UPERC/Ministry of Power/Dept. of Economic Affairs/Financial Institutions |
| 15.     | Transportation of Fuel  | Ministry of Railways   |



**SCHEDULE – 3****GENERATOR ELECTRICAL CHARACTERISTICS**

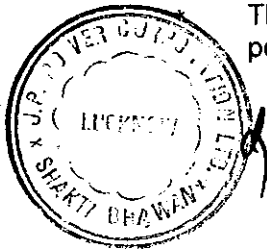
These will be finalised after concluding the Plant EPC contract.

A general description of the generator as specified is given below. The Parties acknowledge that changes may be necessary and/or required during the development of the detailed design, construction and installation of the generator and its components. ROSA reserves the right to make any such changes in order to meet its overall objectives under the Agreement. To the extent there is any conflict between the provisions of this Schedule and the Agreement, the provisions of the Agreement will prevail.

The Unit I and the Unit II generators shall be capable of operating in parallel with each other and with the UPPCL System. Each Generator shall be

- \* 50 Hz and able to operate within a frequency range of 47.5 Hz to 51.5 Hz.
- \* Having Static Excitation System/ Brushless Excitation System
- \* Having a Guaranteed Maximum Continuous Rating (MCR) of 300 MW at the Generator Terminals, at rated power factor of 0.85 lagging, rated terminal voltage, three phase, 50 Hz., and at rated Hydrogen pressure.
- \* Capable of operating at MCR at power factors from 0.85 lag to 0.95 lead without loss of stability and control.
- \* Provided with a Short Circuit Ratio between 0.55 and 0.60.

The Generator voltage range at rated frequency operation shall be plus minus five percent ( $\pm 5\%$ ).





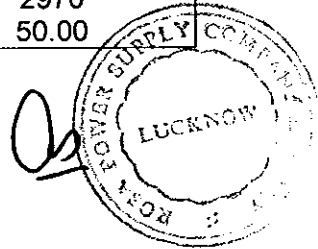
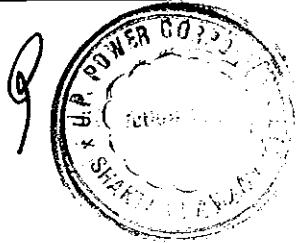
**SCHEDULE – 4**  
**FUEL SPECIFICATIONS**

**COAL**

The specification of coal will be finalised after concluding the Coal Supply Agreement with Central Coalfields Limited.

For the Station design the analysis for the range of coal considered is as follows :

| COAL PROPERTIES |         | DESIGN COAL | WORST COAL |
|-----------------|---------|-------------|------------|
| TOTAL MOISTURE  | % ar    | 13.00       | 12.00      |
| ASH             | % ar    | 40.00       | 45.00      |
| VOLATILE MATTER | % ar    | 17.50       | 15.30      |
| FIXED CARBON    | % ar    | 29.5        | 25.70      |
| SULPHUR         | % ar    | 0.28        | 0.24       |
| GCV             | Kcal/kg | 3404        | 2970       |
| HG INDEX (HGI)  |         | 50.00       | 50.00      |



**SCHEDULE – 5****TRANSMISSION AND INTERCONNECTION FACILITIES****PART A – UPPCL'S RESPONSIBILITY**

The UPPCL Transmission System which will be used to evacuate Available Energy from the Station shall include the following power system hardware.

1. 2 – Double Circuit 220 KV Rosa – Shahjahanpur line
2. 1 – Double Circuit 220 KV Rosa – Hardoi line
3. 1 – Single Circuit 220 KV Rosa – Badaun line
4. 220/132 KV, 2 x 100 MVA Hardoi Sub – Station
5. Necessary 132 KV Inter-connectors between 220 KV and 132 KV Hardoi Sub-Station

UPPCL shall build the above 7 nos., transmission lines and tie into the Station's 220 KV Switchyard Outgoing Gantry.

Start-up power will be imported from the 220 KV UPPCL System feeding the 220 KV Station Transformers. The Start-up power shall be made available to the Station on a continuous basis, whenever it is needed.

UPPCL shall be responsible for supplying and providing all materials, labour and equipment to complete the work from and after the ROSA 220 KV Switchyard Outgoing Gantry.

**PART B – ROSA'S RESPONSIBILITY**

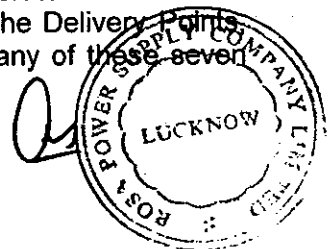
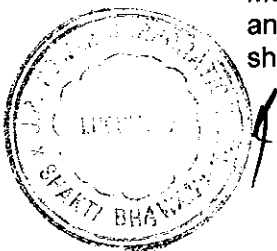
ROSA shall be responsible for supplying and providing all material, labour and equipment to complete the work of its 220 KV Station switchyard up to the terminal points at the Station Outgoing Gantry (the "Internal Connection Facilities").

The Station includes the 220 KV Switchyard that allows evacuation of the Available Energy via 7 (seven) 220 KV transmission lines identified above plus space only for terminating two more 220 KV lines in future. Included are the 220 KV circuit breakers, disconnecting switches, Station and Generator Transformers, all protection, control and metering associated with the 220 KV supply lines.

The Station shall have Stand-by power source in the form of Emergency DG Sets for safe shut-down of the Station in case of a system blackout. It should be clearly understood that the capacity of this stand – by power source will not be adequate for start – up of the Station after a trip – out or stoppage of generation and UPPCL will be responsible for providing the start – up power as and when it is required by the Station, failure in which shall be treated as inability on the part of UPPCL to evacuate power and Station will be eligible for getting Deemed Energy benefits.

**PART C – METERING POINTS AND DELIVERY POINTS**

Metering for the power generation and power evacuation at the generator terminal side and at each of the 7 (seven) nos. outgoing points, which shall be the Delivery Points, shall be provided. Import of power shall also be effected through any of these seven



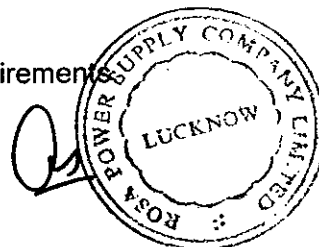
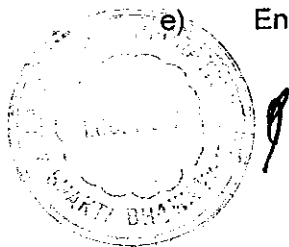
transmission lines and a set of Import and Export meters will be provided at each of these points to facilitate proper recording.

#### **PART D – INTERCONNECTION PROCEDURES**

To ensure that the Station 220 KV switchyard together with the transmission facilities will be in service at the agreed time, it shall be the responsibility of both ROSA and UPPCL to set up interconnection procedures. These procedures shall be drawn up and executed by a coordinating team with representatives from both parties.

The Coordinating Team shall be responsible for the following:-

- a) Ensure that all work required for the proper design, construction, commissioning and testing of ROSA's Station Switchyard and UPPCL's transmission facilities including all technical information, design criteria co-ordination and studies are completed according to the ROSA's Construction Schedule.
- b) Ensure appropriate co-ordination of all construction activities at the Interconnection Points :
- c) Ensure that the review of relay settings and installation and calibration of the metering system is completed on schedule;
- d) Co-ordinate the commissioning activities to ensure that all necessary tests of the protection, control and communication system are completed to mutual satisfaction.
- e) Ensure compliance with IE Rules and Inspection requirements



## SCHEDULE – 6

### PERFORMANCE TEST AND OTHER TESTS

#### I. Test Objectives

The objectives of the Performance Test and other tests are to establish and demonstrate the performance and operational characteristics of each Unit of the Station under this Agreement.

#### II. Tests

The following tests shall be carried out under the Performance Test and other tests:-

##### 1. Performance Test :

The Performance Test of each unit shall be carried out under any and all ambient conditions that may exist during the time of the Performance Test. During the Test, the Nameplate Capacity shall be demonstrated with the specified range of fuels. Normal on-line plant instrumentation will be utilized for recording of operating parameters.

The Performance Test of each unit shall be deemed to have been completed, if the unit operates continuously for seventy two consecutive hours at or above ninety five (95) percent of its Nameplate Capacity and within the generator electrical characteristics given in Schedule 3.

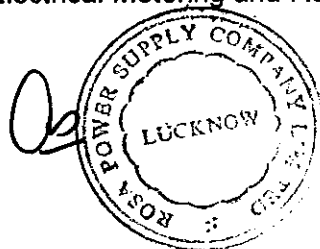
The Performance Test may be carried out as part of the Reliability Run Test described below depending on the convenience of the Construction Contractor.

UPPCL shall maintain the stability of the frequency, voltage and other electrical properties of the UPPCL System throughout the duration of the Performance Test and other Tests. In the event of any instability of voltage, frequency or other electrical properties of the UPPCL System during the Performance Test, which has an adverse effect on the ability of the Station to operate at its Nameplate Capacity, the test results shall to the extent technically feasible be adjusted to take account of such variations but otherwise the Tests shall be void and be recommenced.

ROSA shall give not less than seven (7) days written notice to UPPCL for the Performance Test to be performed at the Station. UPPCL may send its representatives to the Station for the purposes of witnessing the Performance Test.

##### 2. Other Tests: The following other Tests shall be carried out on each unit before it is finally accepted by ROSA:-

- i) Functional Verification Test (i.e. Electrical Metering and Relaying)
- ii) Characteristics Test
- iii) Reliability Run Test
- iv) Performance Guarantee Test



It is clarified that the obligation of Rosa with respect to the Construction Contract shall be limited to only undertaking these other Tests and providing a report thereof to UPPCL and shall not in any way require the witnessing of UPPCL of these Tests.

UPPCL shall accept into the UPPCL System all the electric energy generated during the Tests and shall pay to ROSA the amounts specified under this Agreement.

#### **i) Functional Verification Tests**

ROSA shall perform Functional Verification Tests of the protection, control and tariff metering system of the generating Station as well as the switchyard and transmission facilities. The objective of the Functional Verification Tests is to ensure that power equipment, protection and control system will perform as designed to protect the electrical power system in a reliable manner and not jeopardize ROSA's or UPPCL's facilities.

The design of the protection control and the tariff metering system shall include adequate test facilities so that functional tests can be properly performed.

The Functional Verification Tests on relays, meters and control equipment shall be in accordance with manufacturer's recommendations.

#### **ii) Reliability Run Test**

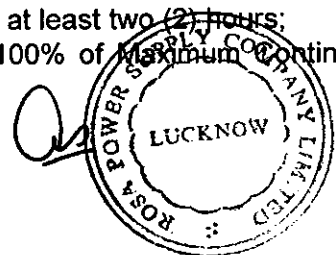
After first synchronization, stabilization of various sub-systems and carrying out various functional tests, each Unit shall be put to Reliability Run Test. It shall be carried out for a continuous period of 14 days at the prevailing ambient conditions, out of which 72 hours shall be in continuous operation on full load. During the test the Unit shall be operated under various operating modes and for the entire range of fuel inputs.

During the Reliability Run Test, but not during the 72 hours full load run, the various tests under the Characteristic Tests as below may also be performed.

#### **iii) Characteristics Test**

The following set of tests (the " Characteristics Test" ) shall be carried out in respect of each unit:-

- ◆ A representative samples of ramp rates, by ramping up or down the gross turbine load while maintaining the required temperatures and temperature differences associated with each ramp rate within the turbine while maintaining all other operational parameters within equipment limits;
- ◆ Response of a Unit to step load changes;
- ◆ Maximum capacity of each unit shall be tested with the turbine valves wide open (ie. 105% TMCR) at normal turbine operating pressure;
- ◆ Automatic voltage regulator droop test;
- ◆ Reactive capability test;
- ◆ Minimum load capability without oil support for at least two (2) hours;
- ◆ Load rejection test at 25%, 50%, 75% and 100% of Maximum Continuous Rating (MCR) load;
- ◆ House load operation;



- ◆ Tests for start up times for Cold, Warm and Hot Starts;

These tests shall be generally performed during the Reliability Run Test.

#### iv) Performance Guarantee Tests

The objective of the Performance Guarantee Tests is to verify the performance (efficiency) figures of each Unit

Boiler Performance Guarantee Test shall be carried out as per ASME PTC 4 based on gross calorific value and the Turbine Performance Guarantee Test shall be as per ASME PTC 6.

The Performance Guarantee Test shall be carried out at 100% of Maximum Continuous Rating to verify the Unit's Gross Plant Heat Rate and Auxiliary Power Consumption.

### III. Test Procedures

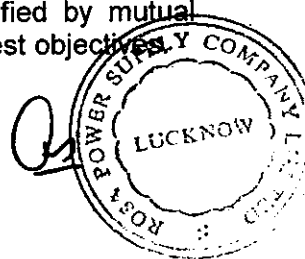
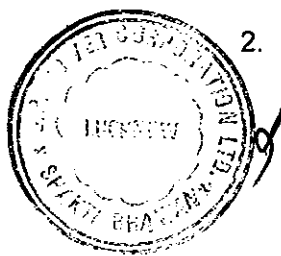
ROSA will determine and prepare the Test procedures. A test schedule for the Performance Test and other Tests will be agreed in not less than One Hundred and Twenty (120) days prior to the synchronization of each unit.

### IV. Data Recording and Measurement

1. ROSA will provide the necessary labour, material, instrumentation and controls to record, observe and evaluate the Test data and maintain the logs of all data taken.
2. Where practical, the data will be recorded in both hard copy and electronic form.
3. ROSA shall specify the variables that will be recorded, the form of recording and the frequency of recording each variable during each Test.
4. All instruments and meters will be calibrated in accordance with Accepted Industry Practice prior to the Tests.

### V. Test Reports

1. ROSA will provide to UPPCL report of the Tests results and other relevant data.
2. The format and contents of the test reports may be modified by mutual agreement between ROSA and UPPCL in order to meet the test objectives.



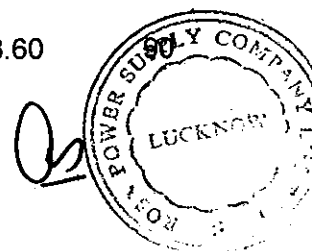
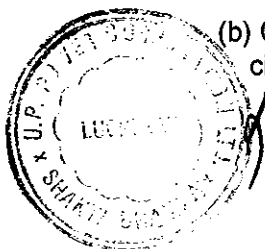
## SCHEDULE - 7

## DEPRECIATION

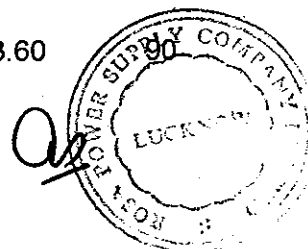
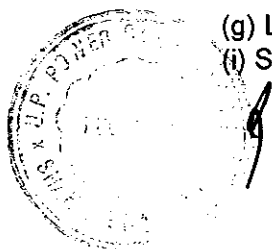
Appendix II to Central Electricity Regulatory Commission (CERC) (Terms and Conditions of Tariff) Regulations, 2004

## Depreciation Schedule

| Description of Assets   | Useful  | Rate                    |       |
|---|---|-------------------------|-------|
|   | Life(yrs)   | (Calculated w.r.t. 90%) |       |
|   | 1   | 2                       | 3=1*2 |
| A. Land owned under full title  | Infinity  | ---                     |       |
| B. Land held under lease:   |   |                         |       |
| (a) for investment in land.   | The period of lease or the period remaining unexpired on the Assignment of the lease. | ---                     |       |
| (b) for cost of clearing site   | The period of lease remaining unexpired at the date of clearing the site.             | ---                     |       |
| C. Assets:  |   |                         |       |
| Purchased new :   |   |                         |       |
| (a) Plant and machinery in generating Stations including plant foundations :- |   |                         |       |
| (i) Hydro-electric  | 35  | 2.57                    | 90    |
| (ii) Steam-electric NHRS & Waste Heat Recovery Boilers/Plants                 | 25  | 3.60                    | 90    |
| (iii) Diesel-electric & gas plant   | 15  | 6.00                    | 90    |
| (b) Cooling towers and circulating water systems                              | 25  | 3.60                    |       |

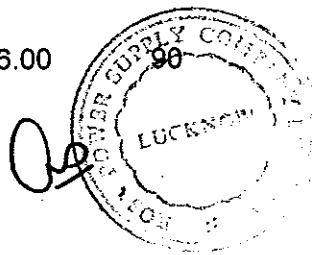
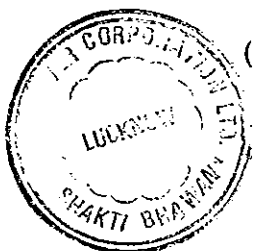


|  |    |       |    |
|--|----|-------|----|
| (c) Hydraulic works forming Part of hydro-electric system including:-  |    |       |    |
| (i) Dams, Spilways weirs, canals reinforced concrete Flumes & syphons  | 50 | 1.80  | 90 |
| (ii) Reinforced concrete pipelines and surge tanks, steel pipelines, sluice gates, steel surge (tanks) hydraulic control valves and other hydraulic works. | 35 | 2.57  | 90 |
| (d) Building & civil engineering works of a Permanent character, not mentioned above:-   |    |       |    |
| (i) Offices & showrooms  | 50 | 1.80  | 90 |
| (ii) Containing thermo-electric generating plant   | 25 | 3.60  | 90 |
| (iii) Containing hydro-electric generating plant   | 35 | 2.57  | 90 |
| (iv) Temporary erection such as wooden structures  | 5  | 18.00 | 90 |
| (v) Roads other than kutcha roads  | 50 | 1.80  | 90 |
| (vi) Others  | 50 | 1.80  | 90 |
| (e) Transformers, transformer (Kiosk) sub-station equipment & other fixed apparatus (including plant foundations)  |    |       |    |
| (i) Transformers (including foundations) having a rating of 100 kilo volt amperes and over   | 25 | 3.60  | 90 |
| (ii) Others  | 25 | 3.60  | 90 |
| (f) Switchgear, including cable connections  | 25 | 3.60  | 90 |
| (g) Lightning arrestors:   |    |       |    |
| (i) Station type   | 25 | 3.60  | 90 |





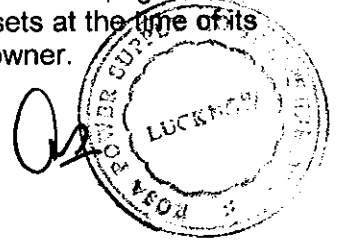
|   |    |       |    |
|---|----|-------|----|
| (ii) Pole type  | 15 | 6.00  | 90 |
| (iii) Synchronous condensor   | 35 | 2.57  | 90 |
| (h) Batteries:  | 5  | 18.00 | 90 |
| (i) Underground Cable<br>Including joint boxes<br>and disconnected boxes  | 35 | 2.57  | 90 |
| (ii) Cable duct system  | 50 | 1.80  | 90 |
| (l) Overhead lines including supports:  |    |       |    |
| (i) Lines on fabricated<br>steel operating at nominal<br>voltages higher than 66 KV   | 35 | 2.57  | 90 |
| (ii) Lines on steel<br>supports operating at<br>nominal voltages higher<br>than 13.2 Kilo volts but<br>not exceeding 66 Kilo vols | 25 | 3.60  | 90 |
| (iii) Lines on steel or<br>reinforced concrete supports   | 25 | 3.60  | 90 |
| (iv) Lines on treated wood<br>supports  | 25 | 3.60  | 90 |
| (j) Meters  | 15 | 6.00  | 90 |
| (k) Self propelled vehicles   | 5  | 18.00 | 90 |
| (l) Air conditioning plants:  |    |       |    |
| (i) Static  | 15 | 6.00  | 90 |
|   | 5  | 18.00 | 90 |
| (ii) Portable   | 15 | 6.00  | 90 |
| (m) (i) Office furniture<br>and fittings  | 15 | 6.00  | 90 |
| (ii) Office equipments:   | 15 | 6.00  | 90 |
| (iii) Internal wiring<br>including fittings and<br>apparatus  | 15 | 6.00  | 90 |
| (iv) Street light<br>fittings   | 15 | 6.00  | 90 |
| (o) Apparatus let on hire:  |    |       |    |



|   |    |       |    |
|---|----|-------|----|
| (i) Other than motors                         | 5  | 18.00 | 90 |
| (ii) Motors                                   | 15 | 6.00  | 90 |
| (p) Communication equipment:                  |    |       |    |
| (i) Radio and higher frequency carrier system | 15 | 6.00  | 90 |
| (ii) Telephone lines and telephones           | 15 | 6.00  | 90 |

(q) Assets purchased second hand and assets not otherwise provided for in the schedule

Such reasonable period as the competent Government determines in each case having regard to the nature, age and condition of the assets at the time of its acquisition by the owner.



## SCHEDULE - 8

### DISPATCH PROCEDURES

ROSA shall, whenever possible, subject to equipment and system limitations, control and operate the Station according to UPPCL's System control and dispatch requirement at or near base load. No Unit shall be despatched at less than Fifty per cent (50%) of its Established Baseload Capacity unless mutually agreed.

ROSA and UPPCL shall mutually develop written procedures not later than ninety (90) days prior to the Scheduled Synchronisation Date of the Unit(s) to

- Address availability projections for the Station (annual, monthly and weekly projections).
- Despatching procedures (which shall include monthly, weekly and daily Dispatch Schedules).
- Switching practices outage scheduling, Daily Capacity and energy reports, the method of day to day communications, list of personnel contacts for both Station and UPPCL operating centres.
- Unit operations log and performance specifications of the Station.

The dispatch procedures shall be based on the design of the Stations, the interconnection and the integration into UPPCL's electrical system. The purpose is to ensure system safety, security, stability, reliability and optimising generation to UPPCL's system. These procedures shall allow the Station to operate within its Technical Limits and at optimum efficiency points.

The Metering System will consist of Meters and Instrument transformers (ROSA and UPPCL) which shall satisfy the following :

- Current transformers of nominal accuracy class as per IEC standard
- Potential transformers of nominal accuracy class as per IEC standard

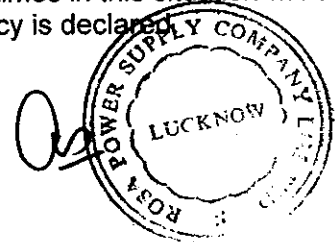
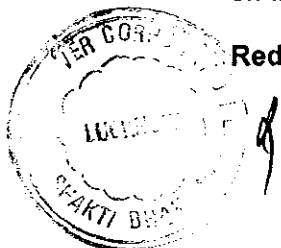
Both the ROSA Meters and the UPPCL Meters shall comply fully with the requirement of the Electricity Rules with respect to technical specification, description, accuracy and calibration.

In the event of dispute of meter inaccuracies, the dispute shall be resolved by the Experts and failing this, it will be sent for Arbitration.

#### Emergency Plan

ROSA will co-operate with UPPCL in establishing emergency plans, including recovery from a local or widespread electrical blackout. Start-up times in this situation will depend on the Generating Facility conditions when the emergency is declared.

#### Reduction and Resumption of Deliveries



Dispatch Instructions by UPPCL for any reduction or increase of ROSA's deliveries shall be completed and communicated as soon as possible, in a manner consistent with Accepted Industry Practice. At least six (6) hours of notice of Dispatch Instruction is acceptable. However, only under emergency conditions the notice of Dispatch will be shorter.

### Outage Schedule

Long term and short term Scheduled Outages must be jointly coordinated between ROSA and UPPCL in accordance with the Maintenance Programme.

### Operating Records

Each Party shall keep complete and accurate operating records and all other data required for the purposes of proper administration.

ROSA will maintain an accurate and up to date operating log at the Station in accordance with Accepted Industry Practice with records of :

- (i) Active power and Reactive Power production for each clock hour;
- (ii) Changes in operating status;
- (iii) Scheduled Outages and Forced Outages;
- (iv) Frequency and voltage in the UPPCL System and any other abnormal conditions.

## II DAILY DECLARED CAPACITY NOTICE

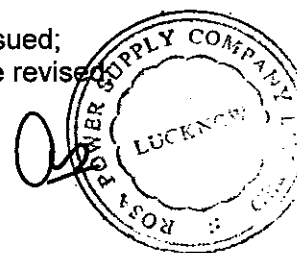
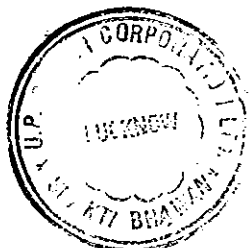
- (a) Following the Unit I Commercial Operation Date, ROSA shall deliver to UPPCL every day at 10.00 hours a notice indicating the Daily Declared Capacity available for a period of next 24 hours. The Notice of "Daily Declared Capacity" shall contain the following information :

- (vi) the date and time that the Notice is issued;
- (vii) the Scheduled Day to which it relates;
- (viii) the Daily Declared Capacity of the Station throughout the relevant Day (and where such Daily Declared Capacity changes, the time at which any change is expected to take effect);
- (ix) the Daily Declared Capacity of each Unit throughout the relevant day measured at the generator.
- (x) ROSA's expectation, if any, that the Station or a Unit may not be capable of safely operating within the Technical Limits and at optimum efficiency during the relevant Day, what modified limits should apply and for which time periods and a description of the situation.

- (b) Whenever ROSA believes that any information that it has provided to UPPCL pursuant to this Schedule no longer accurately reflects its expectations, it shall promptly deliver to the UPPCL Control Centre a written notice ('a Revised Daily Capacity Notice') revising that information.

- (c) A Revised Daily Capacity Notice shall contain the following information :

the date and time that the Revised Daily Capacity Notice is issued;  
a reference to the previously provided information that is to be revised;



a statement of the changes required to be made to the declaration being modified by such Revised Daily Capacity Notice to reflect ROSA's revised expectations regarding the Units and the Project.

- (d) A declaration in a Daily Declared Capacity Notice or Revised Daily Capacity Notice increasing the Daily Declared Capacity from zero shall be taken to mean that the Station is capable of being synchronised to the transmission system at the time that the increase is stated to be effective.
- (e) When the ROSA has stated in a Daily Declared Capacity Notice or Revised Daily Capacity Notice that it expects the Station or a Unit to be incapable of safely operating in accordance with the Technical Limits, and for which ROSA has provided modified limits, UPPCL shall not request the Station to operate beyond such limits, except in an Emergency.
- (f) ROSA shall take reasonable care in preparing Daily Declared Capacity Notices or Revised Daily Capacity Notices with a view to declaring accurately ROSA's expectations regarding the performance of the Station and each of the Units.

**Declared Capacity Penalty**

UPPCL will dispatch ROSA's latest Declared Capacity

A Declared Capacity Penalty shall apply to ROSA whenever the dispatch Capacity thus requested by UPPCL is greater than the Capacity that the Station actually achieves but is within the Daily Declared Capacity as declared by ROSA in the Daily Declared Capacity Notice or latest Revised Daily Declared Capacity Notice (except where the shortfall constitutes Deemed Energy or is caused by a Force Majeure Event or UPPCL default). Declared Capacity Penalty shall be calculated as follows :

$$\text{Declared Capacity Penalty} = \sum (\text{DC}-\text{AC}) * \text{T} * 1.5$$

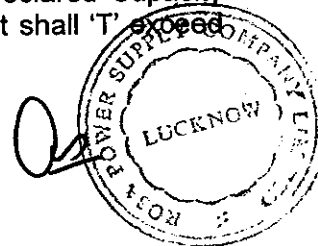
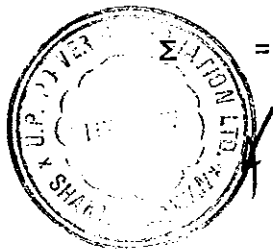
Where;

DC = Latest Declared Capacity by ROSA in MW

AC = Capacity actually achieved by the station at the time of receipt of the latest Dispatch Instructions in MW but is less than that desired as per latest Dispatch Instruction.

T = Duration in hours between the time of latest Dispatch Instruction and the time when the Station had last achieved the capacity which is equal to or higher than that desired as per latest Dispatch Instruction or if more recent, the time of delivery of the latest Daily Declared Capacity Notice or Revised Daily Capacity Notice but in no event shall 'T' exceed 24.

= Summation



**SCHEDULE – 9****METERING****Applicable Standards**

Latest versions of following Standards (or their equivalent India Standards) will be applicable.

|           |                                      |
|-----------|--------------------------------------|
| IEC-687   | for Static Energy Meters             |
| ISS-13779 | for Static Energy Meters             |
| BIS- 2705 | for Current Transformers             |
| BIS- 3156 | for Potential (Voltage) Transformers |
| CBIP      | Report No.88 for Solid State Meters  |

**Type of Meters**

Meters shall be microprocessor based Tri-Vector Meters

Provision should also be made for remote reading and telemetering of energy consumed.

**Accuracy Class**

The meters shall be of accuracy class as per IEC – 687 or its Indian equivalent standard.

**Allowable Error in Accuracy**

The allowable error in basic accuracy shall be as per latest IEC – 687 or its Indian equivalent standard as applicable for type and accuracy of meters installed. Overall error of the metering system at 10% to 125% of rated current at Unit power factor shall not exceed  $\pm 0.5\%$ .

**Meter Calibration, Testing, Sealing, Re-calibration Period etc.**

New meters are to be initially calibrated in accordance with IEC – 687 or its Indian equivalent.

The meter(s) shall be tested and calibrated at least once every year.

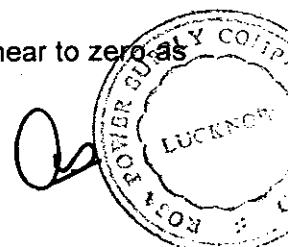
The metering circuit should also be checked by primary/secondary injection once every year or after every overhaul (whichever period is less).

Calibration, testing, sealing etc. is to be always done jointly in presence of authorised representatives of both the parties.

Each party will control issue of its own seals/sealing pliers and keep a register of all such pliers and the persons to whom these have been issued.

The CT/PT cubicles/kiosks should be also be suitably sealed.

During each calibration effort must be made to keep the error as near to zero as possible.



**Test/Calibration Equipment**

Solid state sub-standard meter suitable for checking the accuracy of class 0.2S meters should be used. These should be duly calibrated and sealed by Government authorised meter testing house/lab or by mutually agreed independent test house where such facilities are available.

Similarly suitable primary/secondary injection sets should also be available at the plant.

The test equipment be got calibrated jointly after every fixed period to be decided as per the recommendations of the testing equipment manufacturer.

**Current Transformers (CTs) & Potential Transformers (PTs) for Metering Purpose:**

The current Transformer(s) are to be as per BIS-2705 for minimum rated output of 15 VA.

The voltage Transformer(s) are to be as per BIS-3156 for minimum rated output of 100 VA.

The CT/PT secondary winding(s) supplying a main meter will be dedicated for that meter unless otherwise agreed. However, the secondary winding(s) supplying a check meter can be used for other purposes as long as there is no degradation of accuracy beyond the defined limits.

The burden on any CT/PT associated meters will not be modified without obtaining approval of other party.

Common return wire for two or more CT secondary circuits is not permitted.

Each meter shall be fed by a separate fused set of leads from the PT.

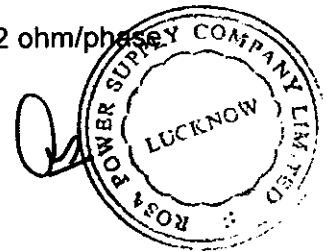
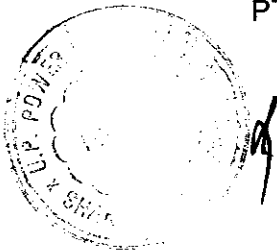
If main and check meters are to be connected to the same PT then separate fuses have to be provided for each circuit.

Each fuse in the PT circuit will be monitored and alarmed for voltage failure for loss of one or more phases of voltage supply to any meter.

Suitable standard test terminal blocks are to be provided to facilitate on site testing of the meter and metering circuit.

The CT cable size should not be less than 6 sq mm Copper.

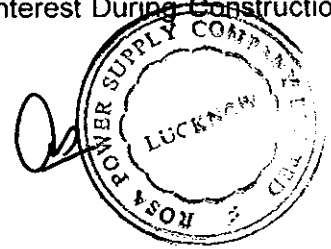
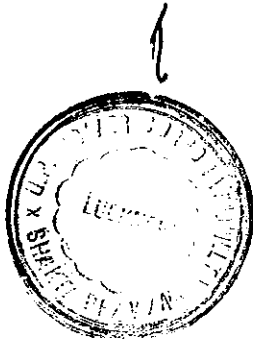
PT cable should not have resistance greater than 0.2 ohm/phase



**SCHEDULE 10**

**CAPITAL COST / DEBT / EQUITY**

This Schedule should lay out Interest Payment Schedule based on lenders agreement and as approved by UPERC. It should also list details of Interest During Construction, Interest on Domestic Debt and Interest on Foreign Debt etc.

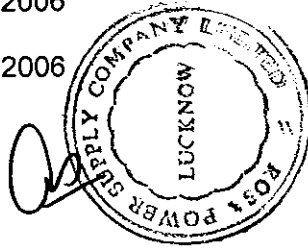
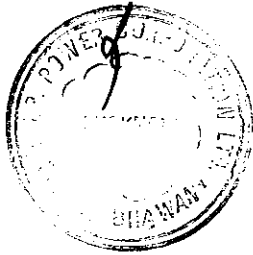




SCHEDULE – 11

**UPERC Orders**

- (a) Order dated February 2, 2006
- (b) Order dated November 1, 2006
- (c) Order dated November 8, 2006



BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION  
LUCKNOW

Petition No.306/2006

IN THE MATTER OF: Approval of Power Purchase Agreement signed with Rosa  
Power Company Ltd. for purchase of 600 MW power

AND

IN THE MATTER OF:

UP Power Corporation Ltd.  
(Through GM, PPA Directorate)  
14, Ashok Marg,  
Lucknow

:Petitioner

M/s Rosa Power Supply Company  
14-A/5, Park Road,  
Lucknow

:Respondent

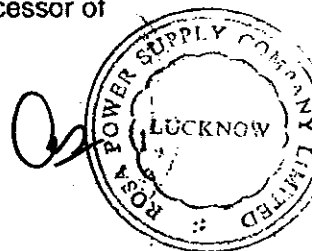
The following were present :

1. Sri. Rahul Misra, Sr. Analyst, IMACS
2. Sri. Rahul Sharma, AGM, IMACS
3. Sri. Ajay Kr. Singh, Sr. Specialist, IDFC Ltd.
4. Ms. Veena Ravi Shankar, TCE, Bangalore
5. Sri. S.S Rao, Rosa Power Company
6. Sri. Abhay Athalye, Rosa Power Company
7. Sri. R.G Rathor, RPSCL Ltd.
8. Sri. V.K Singh, RPSCL Ltd.
9. Sri. Atul Srivastava, RPSCL Ltd.
10. Sri. S.T Hasan, EE, PPA Directorate, UPPCL
11. Sri. O.P Malhotra, GM, PPA, UPPCL
12. Sri. S.K Agarwal, Director(Finance), UPPCL

ORDER

(Date of Hearing 2.2.06)

Through the said Petition, the Petitioner has sought approval of Power  
Purchase Agreement(PPA) signed by UP State Electricity Board, the predecessor of

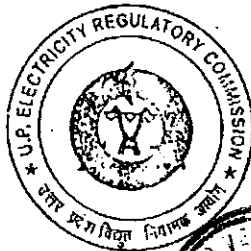


UPPCL, with Rosa Power Company Ltd. on 24.9.98. It is stated that the original PPA signed on 24.9.98 has been amended in 24.9.99 and now second supplementary agreement has been agreed to be entered into on account of the Electricity Act, 2003, UPERC and CERC Regulations on terms and conditions of tariff coming into force as such the. After the filing of the said Petition, the Petitioner has submitted; revised cost estimates of Rosa Thermal Power Station as submitted by the Respondent by letter No.59/GM/PPA Rosa dated 18.1.06, a comparative statement of amendments made in the original PPA as submitted by Respondent by letter No.95/GM/PPA Rosa dated 28.1.06 and a consolidated draft of final PPA as submitted to the Petitioner by the Respondent by letter No.117/GM/PPA/Rosa dated 1.2.06 .

The Respondent made a representation before the Commission in respect to the project, contractual arrangements, terms and conditions agreed with the Petitioner in deviation to UPERC Regulations, the revised cost of the project etc. The Respondent submitted that the revised cost of the project was Rs.2641.63 Cr. for 600 MW project against Rs.2713 Cr. approved by the CEA earlier for 567 MW capacity. It was contended by the Respondent that the cost of Rosa project was comparable with the cost of Nagarjun Sagar project cleared by CERC. The comparison of cost was discussed in detail and found reasonable. The Petitioner had also agreed to the revised cost estimate as put by the Respondent. Regarding foreign exchange component, it was stated by the Respondent that the said cost included a maximum of US \$296.6 m as debt at exchange rate of Rs.45.5 and there was no foreign equity. The Petitioner expressed no objection to the same. It was pointed out by the Respondent that it had agreed with the Petitioner to seek deviations from UPERC Regulations in respect to stock of coal, escalation on spares and receivables and decided to adopt the norms specified by CERC in that regard.

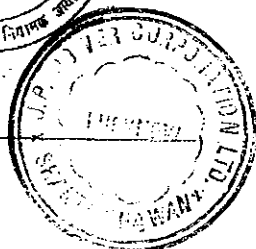
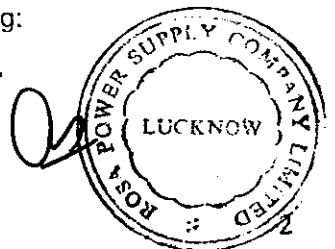
Besides above, the Respondents submitted the following:

1. the tax on incentives might be made a pass through,



hw

Prp.

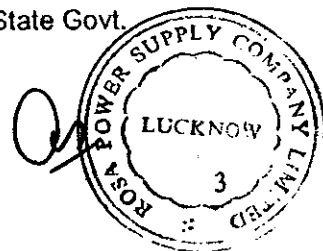


2. auxiliary consumption should include consumption of the colony as per the order of the Central Govt.,
3. impact of cost of purchase of coal, if any, beyond the availability higher than the target availability be allowed as pass through in tariff,
4. financial closure within 9 months
5. Commissioning of first unit within 37 months and 40 months for second unit from the date of financial closure.

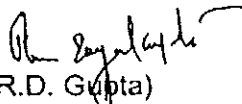
The Petitioner had not objected to any of the above proposals made by the Respondent.


The Commission, in consideration of the mutual agreements arrived between the parties to the PPA and submissions made in the hearing, decides to accord in principle approval to the PPA subject to following conditions:

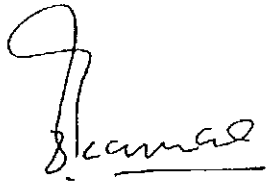
1. The terms and conditions in the PPA shall be governed by UPERC (Terms and Conditions of Generation Tariff), Regulations, 2004 subject to the exception that the stock of coal, escalation on spares and receivables shall be taken as per the CERC Regulations for the purpose of determination of interest on working capital.
2. The capital cost of the project shall be Rs.2641.63 Cr. as ceiling cost for the purpose of determination of tariff,
3. The foreign debt component shall be limited to US \$ 296.6 m.
4. There shall be no foreign equity in the project.
5. Financial closure should be made in 4 months from the date of this order, as agreed by the Respondent during the hearing.
6. The date of C.O.D of first unit shall be within 41 months and second unit within 44 months reckoned from the date of this order.
7. Since UPPCL being STU is not to engage in trading as per the provisions of the EA, 2003, as such the PPA in question shall be assigned to the concerned distribution companies as per the decision of the State Govt.

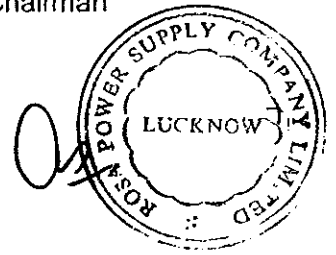
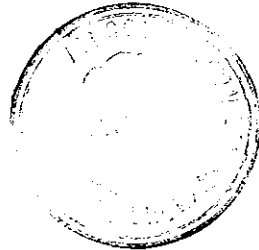
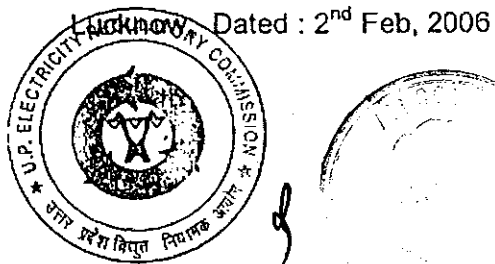


The Petitioner is directed to submit before the Commission final draft of the agreement duly agreed between the parties on an affidavit after incorporating the said decisions of the Commission for approval within one month of the date of this order.

  
(R.D. Gupta)  
Member

  
(P.N. Pathak)  
Member

  
(Vijoy Kumar)  
Chairman



BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION  
LUCKNOW

Petition No.306/2006

IN THE MATTER OF: Approval of Power Purchase Agreement signed with Rosa Power  
Company Ltd. for purchase of 600 MW power

AND

IN THE MATTER OF:

UP Power Corporation Ltd.  
(Through GM, PPA Directorate)  
14, Ashok Marg,  
Lucknow

:Petitioner

M/s Rosa Power Supply Company  
14-A/5, Park Road,  
Lucknow

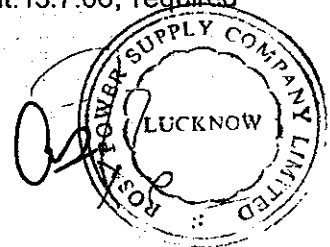
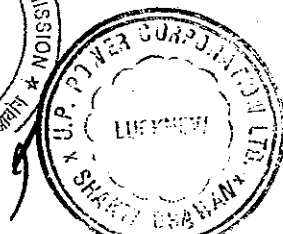
:Respondent

ORDER

The Commission in its Order dated 2.2.06 directed UP Power Corporation Ltd., (UPPCL), the Petitioner, to submit final draft of Power Purchase Agreement (PPA) after incorporating the decisions of the Commission. The petitioner submitted, vide letter no.278/GM/PPA/Rosa dt.20.3.06, the final draft of PPA on an affidavit jointly signed on behalf of UPPCL and Rosa Power Supply Company Ltd. It is stated in the said affidavit that final draft of the amended and restated PPA is as per directions of the Commission in order dt.2.2.06.

The petitioner, in an application received on 30.10.06, has stated that the Respondent has requested in their letter dt.27.10.06 that the financial closure and other activities for starting the projects could not be taken up due to impending approval of PPA. It is also stated that the Respondent has requested for approval of PPA and making the timelines for financial closure and COD effective from the date of approval of final PPA.

The parties to the petition may note that in Order dt.2.2.06, the financial closure and commissioning of units was to be achieved within 4 months and 41/44 months respectively from the date of the order as agreed by the Respondent in the hearing. These timelines had nothing to do with the approval of final PPA because the Commission had already accorded in principle approval to PPA. The Commission in its letter dt.13.7.06, required



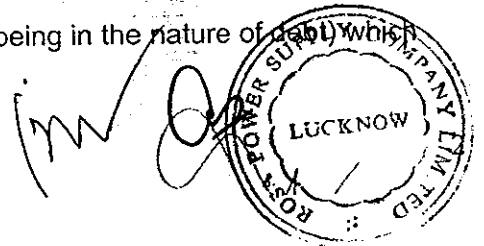
the Petitioner to inform the progress made by the Respondent in achieving financial closure and actual start of work. The Petitioner, in its letter dt.693/GM/PPA/Rosa dt.27.7.06 addressed to the Respondent and copy to Secretary, UPERC, conveyed that there had not been any positive development in respect of financial closure and signing of fuel supply agreement even after the expiry of schedule specified by UPERC. In another letter no.733/GM/PPA/D-3/Cogen1 dt.4.8.06 written in response to UPERC letter dt.13.7.06, the Petitioner informed that regular persuasion was being made with the developer for achieving the timelines specified by the Commission in Order dt.2.2.06 and the response of the Respondent in that matter was still awaited. It can not be presumed that all of a sudden on 27.10.06, the Respondent realized that impending approval of PPA was not allowing it to achieve financial closure and to start work at site because wake up calls had already been made by the Petitioner, through various letters mentioned in the said letter dt.27.7.06, which of course remained unanswered deliberately. Had that been not true, the Respondent could have approached the Petitioner much earlier with the request as has been made now.

It is evident from the mentioned facts that the Respondent had not been diligent in its endeavor to comply with the Order of the Commission and we could wish to have examined the Respondent for non-compliance. It appears from the affidavit filed by the Petitioner, on 30.10.06, that its interest would not be prejudiced if the time lines for financial closure and COD are made effective from the date of approval of final draft of PPA and therefore in view of this, we put the controversy of non-compliance by the Respondent to rest and approve the draft of final PPA subject to following: that,

- (a) the text '*provided that tax on incentives shall not be allowed as an expense and shall not be recovered*' is deleted under definition 'Taxes on Income' under Section 1.1 of Article 1 of draft PPA.
- (b) The Commission approved Rs.2641.63 Cr as capital cost of the project as ceiling cost with a foreign debt component limited to US\$296.6 M at exchange rate of Rs.45.5/US\$ and no foreign equity. It is observed, that in '*Explanation-3*' under definition 'Capital Cost' under Section 1.1 of Article 1, the capital cost of the project is indicated as Rs.12923-M plus US\$ 296.6-M without specifying, whether the foreign component is debt or not. In absence of such qualification, the Commission considers that total expenditure in the capital cost in foreign currency shall be limited to US\$ 296.6 M (not being in the nature of debt) which



*ppp*



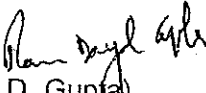
means that the foreign component of debt in the capital cost shall be nil. The said provision under said 'Explanation-3' shall accordingly be modified and to this extent order dt.2.2.06 stands modified.

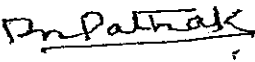
- (c) The text 'Rosa's internal requirement for electrical energy for its operation of the station' in section 6.1 of Article 6 is not in conformity with the mutual agreement, as recorded at point 2 of order dt.2.2.06, between the parties in respect to auxiliary consumption. It may be suitably replaced.

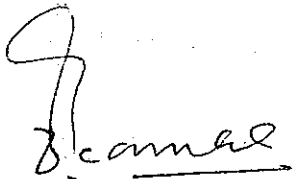
The parties to the case shall note that in case of controversy, if any, as to any provision of the Agreement, the order dt. 2.2.06 read with this order shall prevail. However in view of the submissions made by the Petitioner in application filed on 30.10.06, the Commission may consider change in timelines for financial closure and commissioning of units subject to proper justification shown in that regard.

A copy of the signed PPA shall be sent for information of the Commission.

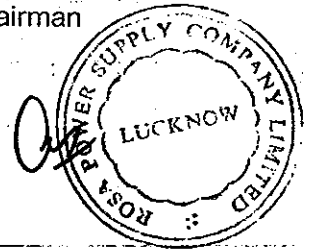
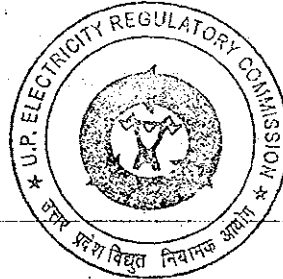
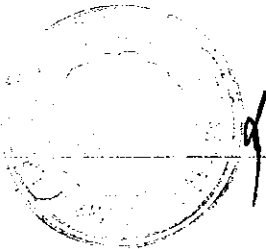
The petition is disposed of.

  
(R.D. Gupta)  
Member

  
(P.N. Pathak)  
Member

  
(Vijoy Kumar)  
Chairman

Lucknow; Dated : 1<sup>st</sup> Nov, 2006





BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION  
LUCKNOW

Petition No:409/2006  
in petition No. 306/06

IN THE MATTER OF: Review of Order dt. 2.2.06 passed in Petition no.306/06 filed by UPPCL in the matter of Approval of Power Purchase Agreement signed with Rosa Power Company Ltd. for purchase of 600 MW power

AND

IN THE MATTER OF:

M/s Rosa Power Supply Company  
(Through Ashwani Kumar, Director)  
14-A/5, Park Raod,  
Lucknow:

: Petitioner

V/s

UP Power Corporation Ltd.  
14, Ashok Marg,  
Lucknow

: Respondent

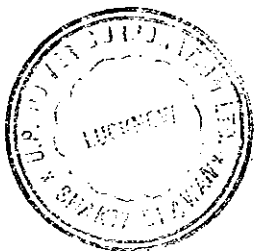
The following were present:

1. Sri. Ashwani Kumar, Director, M/s Rosa Power Supply Company
2. Sri. Ishwar Shandilya, M/s Rosa Power Supply Company
3. Sri. Vibhav Agarwal, M/s Rosa Power Supply Company
4. Sri. Sumeet Notani, RPSCL
5. Sri. S.K Agarwal, Director (Finance), UPPCL
6. Sri. S.N Dubey, Chief Engineer (PPA), UPPCL
7. Sri. S.P Pandey, EE (PPA), UPPCL

**ORDER**

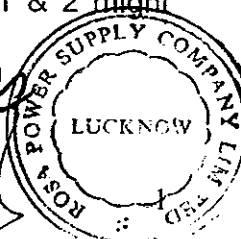
(Date of hearing 7.11.06)

(1) The Petitioner has stated in the petition that M/s Reliance Energy Generation Ltd. has acquired majority shareholding in Rosa Power Supply Company Ltd. from M/s Aditya Birla Power Company Ltd. on 1.11.06 and shall abide by the project completion cost of Rs.2641.63 Cr. as approved by the Commission. The petitioner has prayed that the date of commercial date of operation of unit no.1 & 2 might



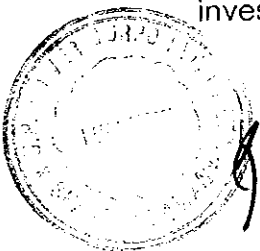
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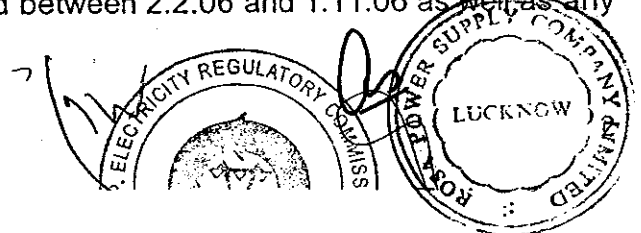


made to take effect from the date of taking over instead of 2.2.06, the date of order passed in petition no, 306/06.

- (2) The representative of the Petitioner has prayed to allow the petition and permit changes along with the address of registered office in the PPA. Sri. S.K Agarwal, Director (Finance) has submitted on behalf of the Respondent that Reliance Energy Generation Ltd. (REGL) has taken over the management of the Petitioner company by acquiring majority shares and informed that the previous management of the Petitioner Company had not made any progress in the construction of the project and loss of time could not be compensated by the new management. Sri. Agarwal has also prayed that the date of Commissioning of units might be changed to take effect from the date of taking over of the Petitioner Company by the new management. Sri. Agarwal has submitted further that the new management of the Petitioner Company has requested for change in definition of 'affiliate' as requested, vide letter dt.2.11.06 taken on record in this matter. The parties to PPA, present in the hearing, were asked to propose the measures, including commercial disincentives, to be taken by the Commission so that change of management does not hamper with the development of the project and scheduled commissioning date undermining the interest of the State and consumers. Representative of the Petitioner has submitted that REGL is a subsidiary company of Reliance Energy Ltd. who has wide experience in power business since 1972 and it is not likely that it would fall short of its commitments. Sri. Agarwal on behalf of the Respondent has submitted that the financial closure of the company is in the advance stage and all clearances available as such there is no chance of further delay. It was felt during discussion, that it was necessary to have necessary control, in such circumstances of deliberate delay, to ensure that accrued benefits from the project see the light of the day and are not marred by disinterests of the developer, particularly in Regulatory regime. The Commission proposed the parties to petition to agree that the management of the Petitioner company should not be subject to change without prior approval of the Commission till the Commissioning of the project and the Commission shall not approve the project cost to include interest accrued on investments prior to 2.2.06 for the period between 2.2.06 and 1.11.06 as well as any



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expenses between 2.2.06 to 1.11.06 that were not committed prior to 2.2.06. . The Petitioner has agreed that the change in the management, if any, till the commissioning of the project, shall be subject to approval of the Commission and prayed that change in management within the affiliate companies of M/s Reliance Energy Ltd. might be permitted. The Representative of the Respondent also agreed to the proposal. Sri. Agarwal, Director (Finance), UPPCL also prayed not to allow tax on incentive in the tariff .

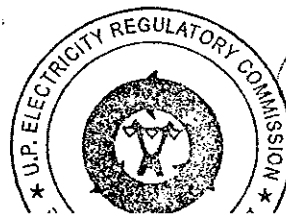
(3) The Commission required the UPPCL in its letter dt.13.7.06 to inform the progress made in the project. UPPCL subsequently informed in letter dt.27.7.06 that there was no positive development in respect to financial closure or signing of fuel supply agreements. In the correspondence dated 4.8.06, UPPCL apprised of the pursuance being with the developer. The project has already been delayed by eight months and UPPCL, being the beneficiary of the project, could have preempted this delay to a fair extent by bringing the material facts much before instead of waiting till 1.11.06. Constraints have been developed by the parties to the agreement before the Commission to choose either late execution of the project or fresh negotiation of PPA ignoring the non-compliance of order by the previous management of the Petitioner Company. We are convinced that adequate safeguards must be exercised in execution of the project so that interests of the distribution licensee and consumer are not made hostage <sup>to</sup> ~~change~~ in management change. Therefore, the management of the Petitioner Company shall not be subject to change in any manner without prior approval of the Commission and the Petitioner shall furnish a written and unconditional undertaking on an affidavit as agreed during hearing. Tax on incentives has already been approved being income from the core business as such no consideration is required at this stage. The new management has agreed to execute the project during the period specified for commissioning on the cost approved by the Commission. Therefore, in the public interest, the Commission agrees to allow the prayer of the Petitioner subject to:

- (i) the capital cost of the project not exceeding Rs.2641.63 Cr. and shall be a ceiling cost for the purpose of determination of tariff vide order dated 2.2.06 read with 1.11.06.

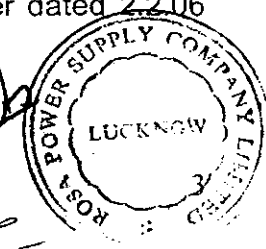


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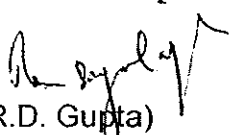
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- (ii) the date of COD for first unit not being beyond 41 months and second unit within 44 months reckoned from 1<sup>st</sup> Nov,06, the date of taking over of management by REGL.
- (iii) change in the definition of affiliate as proposed in letter dt.2.11.06, addressed to Chairman, UPPCL by the Petitioner Company.
- (iv) change in management within the affiliated companies of REGL is allowed.
- (v) change in ownership and address of the registered office.
- (vi) the interest on investment made prior to 2.2.06 shall not be considered for the purpose of the IDC in capital cost of the project for the period between 2.2.06 and 1.11.06.
- (vii) expenses made between 2.2.06 and 1.11.06 that were not committed prior to 2.2.06 shall not be taken in the project cost.

The PPA approved by order dt.1.11.06 shall be suitably modified accordingly and final PPA duly signed by parties sent for information.

(4) The petition is disposed of.

  
(R.D. Gupta)  
Member

  
(P.N. Pathak)  
Member

  
(Vijoy Kumar)  
Chairman

Lucknow; Dated: 8<sup>th</sup> Nov 2006

