

**WHEELING AND BANKING AGREEMENT FORMAT FOR CAPTIVE RE PROJECTS WITH NORMAL**

**CHARGES**

This Wheeling and Banking Agreement is made at ..... on this..... day of ..... between **Karnataka Power Transmission Corporation Limited**, a Company formed and incorporated in India under the Companies Act, 1956, with its registered office located at Kaveri Bhavan, Kempegowda Road, Bangalore – 560 009, Karnataka State, hereinafter referred to as the “**Corporation**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors, and permitted assigns) and \_\_\_\_\_ **Electricity Supply Company Limited** a Company formed and incorporated in India under the Companies Act, 1956, with its registered office located at ..... (address of ESCOM), Karnataka State hereinafter referred to as the “\_\_\_\_\_ **ESCOM**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors, and permitted assigns) **and** \_\_\_\_\_ **Electricity Supply Company Limited**, a Company formed and incorporated in India under the Companies Act, 1956, with its registered office located at .....(address of .....ESCOM), herein after referred to as .... ESCOM (which expression shall, unless repugnant to the context or meaning thereof, include its successors, and permitted assigns) and M/s. ...., a Generating Company and having its Registered Office at..... hereinafter referred to as the “**Company**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors, and permitted assigns) as parties.

**WHEREAS:**

- i) The Corporation is a transmission Licensee owning and operating a transmission system and the ESCOM/s is/are a distribution Licensee/s engaged in the business of electricity distribution in the State of Karnataka and is/ are under a statutory obligation to provide non-discriminatory open access, under the provisions of the Electricity Act, 2003.
- ii) The Govt. of Karnataka by its order No. ....dated ..... has accorded its sanction to the proposal of the Company for installation of a renewable energy based wind / mini hydel/co-generation/ biomass / waste to energy/Solar Electric Power Generating Station of .....kW/MW capacity at/near ..... Village in ----- Taluk, ----- District and the Company plans to construct, own, operate and maintain/owns and operates the above said renewable energy based wind / mini hydel/co-generation/ biomass / waste to energy/Solar Electric Power Generating Station, hereinafter referred to as the Project.
- iii) Pursuant to (i) & (ii) above, the Company desires to wheel upto ----kW/MW of the power generated from the project for its captive use utilizing the transmission and/or distribution network of the Corporation and ESCOM/s respectively on payment of normal charges and for the said purpose intends to enter into an agreement with the Corporation and the ESCOM/s.
- iv) The Corporation and the ESCOM/s have as per their letters dated\_\_\_\_\_and dated..... given their consent for wheeling and banking [banking\_in the case of Wind, Mini-hydel & Solar only] of electricity generated by the Company in the project, subject to the Terms and Conditions as set out in this agreement.

**NOW THEREFORE IN VIEW OF THE FOREGOING PREMISES AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREINAFTER SET FORTH, THE CORPORATION, ESCOM/S, AND THE COMPANY, HEREBY AGREE AS FOLLOWS:**

**ARTICLE 1**

**1.1 DEFINITIONS**

For the purposes of this Agreement, unless the context otherwise requires, the following words and expressions shall have the respective meanings set forth below:

- a) "**Act**" means the Electricity Act, 2003 as amended from time to time.
- b) "**Agreement**" shall mean and include the Wheeling & Banking Agreement executed herein, including the schedules hereto, amendments, modifications and supplements made in writing by the parties from time-to- time.
- c) "**APPC rate**" means average pooled power purchase cost as defined in KERC [Procurement of Energy from Renewable Sources] Regulations, 2011.
- d) "**Applicable Tariff/Charge**" means the tariff/charges for wheeling and banking as determined by the Commission from time-to-time.
- e) "**Banking**" means the facility by which electrical energy remaining unutilized by the "Captive Consumer" out of the energy injected by the Company into the transmission and/or distribution system of Corporation/ESCOM/s, which is allowed to be utilized for wheeling to captive consumer for later use, as per the terms and conditions set forth in this agreement.

- f) **"Billing Period"** means the period from 00:00 hours of the first day of a calendar month to 24:00 hours of the last day of such month. The first Billing Period shall commence from 00:00 hours of the Commercial Operation date/date of commencement of wheeling in a calendar month and end with 24:00 hours of last day of such month.
- g) **"Commercial Operation Date"** means the date declared jointly by the Company and the Corporation/ ESCOM/s on which the project or any of its unit(s) is/are declared as available for commercial operation.
- h) **"Commission"** means the Karnataka Electricity Regulatory Commission.
- i) **"Drawal Point"** means the point as specified by the Company to which the wheeled/banked power is to be supplied, indicating the place of Captive consumer, and RR NO., if any.
- j) **"Financial Year"** means year starting from 1<sup>st</sup> day of April of a calendar year and ending on 31<sup>st</sup> day of March of the following calendar year.
- k) **"Force Majeure Events"** means the events and circumstances as described in Article 9.
- l) **"Injection Point"** means the point or points at which Electricity is injected at the project site by the Company into the Corporation/ESCOM network.
- m) **"Injected Energy"** means the kilowatt hours of Electricity actually exported and measured by the energy meters at the Injection Point in a Billing Period after deducting therefrom 115% of the energy imported from the ESCOM/s for startup or

any other purposes by the Project as measured at the injection point during such a Billing Period.

- n) **"Installed Capacity"** means the capacity of the Project at the generating terminal(s) and shall be equal to .....kW/MW.
- o) **"Metering Date"** for a Billing Period, means the midnight (24.00 hours) of the last day of a calendar month during which energy is injected.
- p) **"Metering Point"** for purposes of recording of Injected Energy at the Injection Point shall include two separate sets Special Energy Meter as specified in the KERC (Terms and Conditions for Open Access) Regulations, 2004, the main meter installed by the Company and the check meter installed by the ...ESCOM, having facilities to record both export and import of electricity to/from the grid and, for the purposes of recording the Energy drawn at the drawal Point, shall include a meter installed, having facilities to record both export and import of electricity to/from the grid
- q) **"Monthly Charge"** shall have the meaning as set forth in Article 5.
- r) **"Nodal agency"** means the agency as defined in\_KERC (Terms and Conditions for Open Access) Regulations, 2004.
- s) **"UI Charge"** means unscheduled interchange charge payable by the company to the Corporation or ESCOM/s for deviations from the schedules of generation and/or drawal furnished to SLDC.

t) **“Water Year”** means year commencing on the first day of June of a calendar year and ending on the thirty first day of May of the following calendar year.

u) **“Wind Year”** means year commencing on the first day of April of a calendar year and ending on the thirty first day of March of the following calendar year.

Any Words and expressions used but not defined in this Agreement shall have the same meaning as defined in the Act, KERC Regulations and the Grid Code.

## **1.2 INTERPRETATION**

Unless otherwise stated, all references made in this Agreement to "Articles" and "Schedules" shall refer, respectively, to Articles of and Schedules to this Agreement. The Schedules to this Agreement shall form part of this Agreement and shall be in force and effect as though they were expressly set out in the body of this Agreement.

## **ARTICLE-2**

### **INTERCONNECTION**

- 2.1 Subject to the terms of this agreement, power generated from the Project of the Company shall be evacuated through the...kV line constructed and maintained by the Company up to the..... kV .....Substation (Injection Point) of the Corporation/ESCOMs.
- 2.2 Evacuation of power generated by the project, shall be limited to the capacity of transmission/ distribution system as specified by the Corporation/ESCOM/s in the evacuation approval.
- 2.3 The generating facility of the project shall be connected with the network of the Corporation and/or ESCOM/s in accordance with the\_Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 as amended from time to time. In case the above regulations do not specify connectivity standards for a particular voltage level, the same shall be as approved by the Corporation/ESCOM/s.
- 2.4 The Company shall provide suitable relays and protective devices as specified by Corporation/ESCOMs or as per prudent utility practice at the injection point at.....Sub-station and at the HV side of the Generator which\_ shall be got calibrated / checked by the Corporation/ESCOM before the plant is synchronized. The calibration of such relays and devices shall also be got done by

the Company once in a year during the operation of the plant to ensure their proper functioning. The Company shall install, at its own cost, protection equipment like protection relays, communication system or similar equipment for the protection to the equipment of the Corporation/ESCOM/s and the Company. The Company shall obtain the approval of the Corporation/ESCOM for the specifications of such equipment and shall furnish the test reports to the Corporation/ESCOM, as may be required.

2.5 The Company shall get the generating sets and other equipment inspected by the Corporation/ESCOM/s before commencement of wheeling and banking and annually thereafter. Further, the Company shall obtain the following approvals for the project:

- a) Approval of the Electrical Inspectorate
- b) Synchronization approval from the Corporation/ESCOM.
- c) Written approval / concurrence of ESCOMs for wheeling & banking of injected energy for captive use before synchronization.

2.6 The Specifications for electrical energy delivered shall be as per Schedule-2.

2.7 The Company shall ensure that the metering and protection facility be, on notice, open for inspection by the authorized representative of the Corporation/ESCOM.



- 2.8 In the case of a new generating plant, the Company shall give written notice fifteen days in advance to the Corporation/ESCOM/s before the date of trial operation and commercial operation of the generator. The same shall also be intimated in writing to the SLDC.
- 2.9 The Corporation/ESCOMs shall not be liable for losses or damages, if any, consequent to any line outage between the point of generation and the injection point for any reason whatsoever, consequent to which power is not evacuated.
- 2.10 Where the generating plant is located in the jurisdiction of one ESCOM and the Captive consumer/s is/are located in the jurisdiction of other ESCOM/s, the SLDC shall obtain concurrence of the respective Corporation/ESCOM/s before granting permission for wheeling and/or banking of the energy injected.

### **ARTICLE 3**

#### **UNDERTAKINGS**

##### **3.1 Obligations of the Company:**

- (i) The Company shall, for setting up/ operation of the project at all times have statutory approvals, clearances and permits as set out in Schedule-1 of this agreement.
  
  - (ii) A) As provided in the Act, the Company shall undertake at its own cost to establish, operate and maintain the following in accordance with Prudent Utility Practices during the operation of this agreement :
    - a) Generating Station;
    - b) Tie-Line (s);
    - c) Sub-stations;
    - d) Dedicated transmission line connected therewith.
  
  - B) The Company shall abide by the State Grid Code, Distribution Code and other applicable Regulations, Rules, Codes and Standards.
  
  - C) The Company shall strictly comply with the CEA (Safety requirements for construction, operation and maintenance of electrical plants and lines) Regulations, 2011 and CEA (Measures relating to safety and electricity supply) Regulations, 2010, as amended from time to time.
- (iii) The Company shall be liable to pay all applicable charges to the

Corporation/ESCOMs as per Article -5 including any Open Access charges due to the Corporation/ESCOMs from Captive consumer/s to whom energy is wheeled in case such payments are not made by the due date by such consumers.

- (iv) The Company shall pay any applicable taxes, cess, duties or levies imposed by the Government or Competent Authority from time to time.
- (v) The Company shall furnish when required, any data necessary for the system studies conducted by the Corporation or the ESCOM/s.

### 3.2 **Obligations of Corporation/ESCOMs**

The Corporation/ESCOMs shall:

- (i) Subject to system constraints, wheel the Electricity generated by the Company up to the Drawal Point in accordance with the provisions of the Act, Rules and Regulations in force from time-to-time.

[Explanation: **“System constraint” means** a condition or situation under which the electrical system of the Corporation/ESCOM/s is unable to evacuate and transmit fully or partly the energy generated from the project due to unforeseen breakdown of network elements like lines, switchgears or due to frequency/voltage constraints in the system or for any other reasons beyond the control of the Corporation/ESCOMs.]

- (ii) Provide connectivity to network (by augmentation wherever necessary) and ensure that the contracted network capacity under open access is made available to the company during the period of contract, at normative levels as specified by the Commission from time to time.
  
- (iii) Abide by the State Grid Code, Distribution Code and other applicable Regulations, Rules, Codes and Standards.
  
- (iv) Abide by the CEA (Safety requirements for construction, operation and maintenance of electrical plants and lines) Regulations, 2011 and CEA (Measures relating to safety and electricity supply) Regulations, 2010, as amended from time to time.
  
- (v) Terminate the WBA in case the Company enters into an agreement to sell power to the Distribution Licensees of the State at generic tariff under PPA or at the average pooled power purchase cost [APPC] for obtaining Renewable Energy Certificates [RECs].

## **ARTICLE 4**

### **OPERATION OF THE POWER PLANT**

- 4.1 The operation of the Project shall not at any time be in contravention to the Electricity Act, 2003 and Rules, Regulations issued thereunder and any other applicable provisions of law.
- 4.2 The Corporation/ESCOM/s shall not impose any restrictions on the manner of generation except for reasons of safe operation of the grid.
- 4.3 The operation of the power plant shall be suitably co-ordinated to comply with the instructions of State/Area Load Dispatch Centre.
- 4.4 The starting current of the Generator shall not exceed 110% of the full load current of the generator and for that purpose, the generator shall provide necessary current limiting devices.
- 4.5 The Company shall provide at its cost, protective measures and devices for the safe operation of the Project with the grid as per the prevailing regulations/codes.
- 4.6 The Corporation or ESCOM/s shall not be liable to pay any compensation for any damage caused to any part of the generating station resulting from parallel operation with the grid.

## **ARTICLE 5**

### **CHARGES**

5.1 The Company shall pay all the charges to the Corporation/ESCOMs for using their network as per the applicable KERC Regulations/Orders issued from time to time. Such charges shall include transmission charges for the use of the transmission network, wheeling charges for use of the distribution network/s, additional surcharge, charges for backup supply, scheduling and system operation charges, grid support charges, reactive power charges, UI charges under intra-state ABT, transaction charges and charges for the power drawn by the Company from the grid.

The Company shall also be liable to pay, in case of default by captive consumers to pay, partly or fully, any open access charges, additional surcharge or any back up supply charge within 15 days of the Corporation or ESCOM/s raising the bills for the said charges.

5.2 The Company shall pay to the nodal agency before commencement of wheeling, security deposit equivalent to the estimated charges for two months as specified Clause 5.1 above which shall be retained with the nodal agency till the expiry of the Agreement.

5.3 The Company shall pay, in lieu of grid support charge, demand charges as

applicable to the relevant category of consumers to whom energy is wheeled, till the grid support charge is determined by the Commission.

5.4 The captive consumers/s not having any supply agreement with ESCOM/s., shall pay twice the charges as per tariff applicable to relevant category for the over drawal of power from the grid beyond that contracted under wheeling with the Company.

5.5 The Company shall be permitted to import power from the grid for startup, maintenance and other allied purposes duly intimating the ESCOM/s the period for which such supply is required. In such cases, the actual energy drawn from the grid as recorded by the import meter shall be charged at the HT temporary tariff.

5.6 **Charges for infirm power:**

The infirm energy injected during the period from trial operation date after synchronization up to the commercial operation date shall be deemed to be sold to the ESCOM in whose jurisdiction the project is located and shall be paid for by such ESCOM at the applicable average pooled power purchase cost determined by the Commission.

**5.7 Charges for banked energy remaining unutilized at the end of the month**

The ESCOM in whose jurisdiction the Project is situated shall pay at APPC rate to the Company for the banked energy remaining unutilized at the end of every month.

5.8 **PF penalty:**

The Captive consumers shall pay Power Factor penalty for any reduction in power factor, as per rates determined by the Commission from time to time.

5.9 **Energy Losses:**

Loss of Energy in wheeling shall be calculated as per the loss levels fixed for the purpose of wheeling by the Commission from time to time.



## ARTICLE- 6

### WHEELING AND BANKING OF ENERGY

#### 6.1 **WHEELING OF ENERGY:**

- 6.1.1 At least 15 days prior to commencement of wheeling, the Company shall submit in writing, a list of 'Captive Consumers' to whom it proposes to wheel power, indicating the quantum of power to be wheeled to such consumers. Subject to availability of transmission and/or distribution network the Corporation/ESCOM/s shall, within seven days thereafter, approve the list of consumers to whom power shall be wheeled. Any addition or deletion to the list of consumers or change in power allocation to the existing consumers shall be approved by Corporation/ESCOM/s, within seven days of receipt of a request from the Company subject to the availability of the system.

Provided that no supplemental agreement shall be required to be signed, for such addition or deletion of the consumers, if the ESCOMs in whose jurisdiction such consumer/s is/are located have already signed the wheeling and banking agreement.

- 6.1.2 Subject to KERC Regulations/Orders, the energy injected by the Company under wheeling shall be charged first to the consumption of Captive consumers and the residual energy at the end of the month, if any, in the case of wind/minihydel/solar energy, shall be deemed to have been purchased by the ESCOM in whose jurisdiction the project is located and paid by such ESCOM at the APPC rate determined by the Commission from time to time.

6.1.3. While billing the monthly demand charges, the power injected by the Company under wheeling shall be charged first to the consumption of Captive Consumers and the residual demand shall be deemed to have been met by the ESCOM in whose jurisdiction such consumer is located and shall be billed as per the applicable tariff.

[Example-1: If during a month, Maximum Demand [MD] recorded is 80 MW, the Contract Demand [CD] of the Consumer is 100 MW and the power supplied under wheeling by the Company is 20 MW, then 60 MW[80 MW-20 MW] is deemed to be supplied by ESCOM and shall be billed at 75% of CD[ie 75 MW] as 60 MW is less than 75% of CD]

Example-2: If during a month, Maximum Demand [MD] recorded is 100 MW, the Contract Demand [CD] of the Consumer is 100 MW and the power supplied under wheeling by the Company is 20 MW, then 80 MW [100 MW-20 MW] is deemed to be supplied by ESCOM and shall be billed at 80 MW as 80 MW is more than 75% of CD].

**Note: for the portion of power contracted under wheeling, there is no need to enhance the CD with the distribution licensee. In the above example there is no need to enhance CD from the existing 100 MW to 120 MW.**

6.1.4 The Corporation/ESCOMs shall collect from the captive consumers of the Company, the open access charges as per KERC Regulations/orders.

6.1.5 All Charges for the quantum of energy drawn by "captive consumers" [who also have supply agreement with the ESCOM], including energy and demand charges

other than for energy wheeled from the Company, shall be collected by the concerned ESCOM directly as per the tariff applicable to such consumers.

6.1.6 In the event of system constraints, Captive users shall be subjected to power cuts or load shedding as deemed necessary by the Corporation/ESCOMs.

6.1.7 The Corporation/ESCOMs reserve the right to withdraw the facility of banking and wheeling either wholly or partly in case of any breach of conditions of this agreement or under force majeure conditions. In such an event, Corporation/ESCOMs shall not be liable to pay any compensation or damages to the Company.

## **6.2 BANKING (Applicable For Wind ,Mini hydel and Solar energy only)**

**6.2.1** The energy banked by the Company shall be permitted to be carried forward from day to day within the same calendar month. No carry forward of banked energy shall be permitted from a month to the next month. Banked energy unutilized at the end of the calendar month shall be deemed to be utilized by the ESCOM in whose jurisdiction the project is located and shall be paid as per clause 5.7.

6.2.2 T.O.D meters shall be installed at both the injection point and the drawal point to facilitate time block wise monitoring and recording of energy injection and drawal.

6.2.3 The banked Energy at the end of a month shall be calculated as follows:

$$E_b = [E_g * (1 - B - C)] - E_t$$

Where,

$E_b$  = Banked energy at the end of the month

$E_g$  = Generated energy injected to the grid at the point of injection in a month as recorded by the export meter, less 115% of energy recorded by import meter.

$B$  = Banking charges in kind expressed in percentage

$C$  = Transmission and/or wheeling charges expressed in percentage.

$E_t$  = Actual energy Consumed by the captive consumer/s to the extent of capacity contracted under wheeling.

**Note:**

**Residual energy is zero if  $E_b$  is negative or zero.**

## **ARTICLE - 7**

### **BILLING PROCEDURE**

- 7.1 Joint meter readings of the Import and Export registers of the meters at the Project/injection point shall be taken by Jurisdictional Executive Engineer (Elect), O & M or any authorized representative of ESCOM and a Representative of the Company on the first day of every month.
- 7.2 Joint meter readings of Captive User/s shall be taken by the Jurisdictional Engineer of ESCOMs on the first day of every calendar month (if necessary after changing meter reading dates to the first day of every calendar month) and raise the bills only for Open Access charges in respect of 'Captive Users exclusively supplied by the Company' and for both energy supplied by ESCOM and applicable Open Access charges in respect of 'Captive users' supplied both by the Company and ESCOM. The monthly meter readings of both export and import registers of the energy meters i.e. of both main and check meters shall be taken jointly by the authorized representatives of the ESCOM and the Company on the first day of the following month. At the conclusion of each meter reading an appointed representative of ESCOM and the Company shall sign a document recording the number of kilowatt-hours and other parameters indicated by the meter.
- 7.3 All payments of bills issued by the Corporation/ESCOMs under this agreement shall be paid by the Company/ /Captive consumers\_within fifteen days from the receipt of such bills.

## ARTICLE - 8

### METERING AND COMMUNICATION

- 8.1 **Metering:** The energy injected and the energy drawn shall be metered at the receiving sub-station point and at the drawal point of the Captive users (to be specified clearly by the Company) respectively.
- 8.2 **Metering equipment:** Metering equipment shall be Special Energy Meters of accuracy class 0.2 required for the Project (both main and check meters). The main meter shall be installed and owned by the Company, whereas check meters shall be installed and owned by the ...ESCOM. The dedicated core of both Current Transformers [CT's] and Potential Transformers [PT's] of required accuracy shall be made available by the Company to....ESCOMs. The metering equipment shall be maintained in accordance with applicable electricity standards and shall be capable of recording quarter-hourly and monthly readings. The Company shall provide the metering results to the....ESCOM. The meters installed shall be capable of recording and storing quarter hourly readings of all the electrical parameters for a minimum period of 35 days with digital output.
- 8.3 **Sealing of Energy Meters:** All the main and check energy meters (export and import) and all associated instrument transformers installed shall be of 0.2 accuracy class. Each meter shall be jointly inspected and sealed by the ESCOM and shall not be interfered with by either Party except in the presence of the other Party or its authorized representatives.

8.4 **Meter Test Checking:** All the main and check meters shall be tested for accuracy every calendar quarter with reference to a portable standard meter owned by the ESCOM which shall be of an accuracy class of 0.1. The meters shall be deemed to be working satisfactorily if the errors are within specifications for meters of 0.2 accuracy class. The cost of such test checking shall be borne by the Company at the rates specified by the ESCOM from time to time. The consumption registered by the main meters shall be considered for the purpose of billing as long as the error in the main meter is within the permissible limits.

- (i) If during the quarterly tests, the main meter is found to be within the permissible limits of error and the corresponding check meter is beyond the permissible limits, then billing will be as per the readings of the main meter. The check meter shall, however, be calibrated immediately.
- (ii) If during the quarterly tests, the main meter is found to show any reading beyond permissible limits of error, but the corresponding check meter is found to be within permissible limits of error, then the billing for the month up to the date and time of such test shall be as per the check meter. There shall be a revision in the bills for the period from the previous billing date up to the current test date, based on the readings of the check meter. The main meter shall be calibrated immediately and billing for the period thereafter till the next monthly meter reading shall be as per the calibrated main meter.
- (iii) If during the quarterly tests, both the main meter and the corresponding check meter are found to show readings beyond the permissible limits of error, both the meters shall be immediately calibrated and corrections applied to the reading

registered by the main meter to arrive at the correct reading of energy supplied for billing purposes for the period from the last month's meter reading up to the current test. Billing for the period thereafter till the next monthly meter reading shall be as per the calibrated main meter.

- (iv) If during any of the monthly meter readings, the variation between the main meter and the check meter is more than that permissible for meters of 0.2 accuracy class, all the meters shall be re-tested for their accuracy immediately.

8.5 **Interconnection and Metering Facilities:** The Company shall provide at its cost dedicated core for the metering. Both the main meter and the check meter shall be installed nearest to the PT in the outdoor yard of the Corporation/ESCOM and shall be housed in a suitable weatherproof cubicle.

8.6 **Data Acquisition System [DAS] and Communication facilities:** The Company shall install and maintain at its cost, Data Acquisition System and communication network facilities at the Generating Station/Injection Point as well as drawal points, as specified in the Grid Code with due approval of technical features by the Corporation or the ESCOM.

8.7 In the case of any tampering of metering cubicle or energy meters at the Captive Consumers premises or at the Company's power generating plant being detected or observed, the Corporation/ESCOM/s shall have the right to withdraw the Wheeling & Banking facilities to the Company without any notice.



**ARTICLE - 9**

**FORCE MAJEURE**

- 9.1 In the event of Force Majeure conditions like war, mutiny, riot, earthquake, hurricane, strike, tempest, accident to machinery, affecting the wheeling and /or banking of power, the Corporation/ESCOM/s shall have no obligation to Bank and Wheel the energy as per this agreement. However, they shall make all reasonable efforts to restore normalcy within 30 (thirty) days and if the same is not possible, this agreement is to be treated as temporarily suspended for the period in which Force Majeure conditions continue .
- 9.2 During the period in which Force Majeure conditions prevail, Corporation/ESCOM/s shall not be liable to pay any compensation or damage or any claims whatsoever for any direct or indirect loss that may be suffered by the Company on account of wheeling and/or Banking of Electricity not being performed during the period.

## ARTICLE - 10

### TERM, TERMINATION AND DEFAULT

#### **10.1 Term of the Agreement:**

This Agreement shall become effective upon the execution and delivery thereof by the Parties hereto and unless terminated pursuant to other provisions of the Agreement, shall continue to be in force for such time until the completion of a period of ----months from the date of execution and may be renewed for a further period with mutual consent on the same terms and conditions.

#### **10.2 Events of Default:**

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

- a. Failure or refusal by the Company to perform any of its obligations agreed under this Agreement.
- b. Non-payment of charges as specified in this agreement within the time specified in clause 7.3.
- c. Failure of the Company to generate and wheel energy continuously for a period of six months in a water/ wind year / Financial Year as the case may be.
- d. Repeated overdrawal of power from the grid by captive user/s in any four consecutive 15-minutes time block.

10.3 **Termination:**

**Termination for Company's Default:**

- i) Upon the occurrence of any event of default as set out in sub-clause 10.2 above, the Corporation/ESCOM/s may deliver a Default Notice to the Company in writing, which shall specify in reasonable detail the event of default giving rise to the default notice and call upon the Company to remedy the same within a month from the date of notice..
  
- ii) In case the Company fails to remedy the default(s) notified in the above Notice within the time indicated in the notice, the Corporation/ESCOM/s shall be entitled to terminate this Agreement with immediate effect.
  
- iii) Upon termination of this agreement, the Corporation/ESCOM/s shall stand discharged of all its obligations undertaken under this Agreement. However, the Parties shall fulfill the payment obligations arising as per the Agreement prior to the date of termination.

**ARTICLE 11**  
**DISPUTE RESOLUTION**

- 11.1 The Parties hereby agree to attempt to resolve all disputes arising hereunder promptly, equitably and in good faith.
- 11.2 All disputes or differences between the Parties arising out of or in connection with this Agreement shall , as far as possible, be settled through mutual negotiations.
- 11.3 Each Party shall designate in writing and communicate to the other Party its own representative who shall be authorized to resolve any dispute arising under this Agreement in an equitable manner and, unless otherwise expressly provided herein, to exercise the authority of the Parties hereto to make decisions by mutual agreement.
- 11.4 If the designated representatives are unable to resolve a dispute under this Agreement within ninety (90) days after such dispute arises, or such other reasonable period as may be mutually acceptable to the parties then it shall be referred to the Commission in accordance with the provisions of the Electricity Act 2003, for resolution of the dispute under Section 86(1) (f) of the Act.

## **ARTICLE - 12**

### **MISCELLANEOUS PROVISIONS**

#### **12.1 Governing Law:**

This Agreement shall be interpreted, construed and governed by the Laws of India including the Electricity Act, 2003 and the Rules/ Regulations framed thereunder.

#### **12.2 Waiver:**

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

#### **12.3 Limitation, Remedies and Damages:**

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

12.4 **Notices:**

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

**(i) In case of the Company :**

Name:

Designation of authorized representative:

Telephone No..... .

Fax No.

E- mail:

**(ii) In case of.....Corporation:**

Name:

Designation of authorized representative:

KPTCL, Karnataka State.

Telephone:

Fax :

E-mail:

iii. **In case of ..ESCOM:**

Name:

Designation of authorized representative:

ESCOM

Karnataka State.

Telephone:

Fax :

E-mail

12.5 **Severability:**

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

12.6 **Amendments:**

This Agreement shall not be amended, changed, altered, or modified except by a written instrument duly executed by the authorized representative of both Parties and approved by the Commission. However, the Commission shall be entitled to modify/alter the conditions of this contract[agreement] at the instance of either of the parties, or *suomotu*, after giving an opportunity of hearing to all the parties.

12.7 **Assignment:**

The Company shall not assign this Agreement or any portion hereof without the prior written consent of the Corporation/ESCOM/s and approval of the Commission.

Provided further that any assignee shall expressly assume in writing the assignor's obligations arising under this Agreement prior to the assignment

12.8 **Entire Agreement, Appendices:**

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

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



12.9 **Further Acts and Assurances:**

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

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

**FOR AND ON BEHALF OF CORPORATION**

Name:

Designation of authorized representative:

KPTCL

**WITNESSES**

1.

2.

**FOR AND ON BEHALF OF ESCOM/s**

Name:

Designation of authorized representative:

ESCOM/s

**WITNESSES**

1.

2.

**FOR AND ON BEHALF OF THE COMPANY**

Name:

Designation of authorized representative:

Company:

**WITNESSES**

1.

2.

## **SCHEDULE -1**

### **PERMITS, CLEARANCES AND APPROVALS**

1. G O for Establishment of Generating Plant.
2. Evacuation approval for evacuation of power from the generating plant to the substation of Corporation/ESCOM/s.
3. Synchronization approval and Commissioning report from Corporation/ESCOM/s.
4. Wheeling and Banking approval by the nodal agency
5. Approval of the Electrical Inspectorate, Government of Karnataka for Commissioning of the project and the transmission line for evacuation of power from the project to the injection point/ substation.
6. Approvals required under any law for the time being in force.

**SCHEDULE- 2**

**SPECIFICATION OF ELECTRICAL ENERGY DELIVERY**

1. The generation voltage from the wind energy based/Mini hydel Electric Power Plant/Solar plant/Cogeneration plant/WTE plant of M/s..... is at ....kV. It comprises generators, generator transformer and unit transformer.
  
2. The generated power at.....kV will be stepped up to.....kV for the purpose of interconnection with the State grid at .....kV. Generators will also be allowed to draw start up power from the grid.
  
3. The injection point is at .....receiving station at.....kV.

\* \* \* \* \*