

APP Clause-wise Comments on the Draft Model PPA for Medium Term Procurement

CI No.	Provision as per Draft Model PPA (Medium Term)	Suggestion / Comment
<p>Article 3</p> <p>Footnote</p>	<p><i>To be fixed between 1 (one) and 5 (five) years. The definition of Contract Period and other timelines may be modified accordingly. While fixing the contract Period, the Utility may take into account the likely availability of transmission corridors in accordance with the extant regulations.</i></p>	<p>Duration of Contract Period under Medium Term should be between 1 (one) and 7 (seven) years.</p> <p>Rationale: The duration of long term contract has been provided as between 7 (seven) and 15 (fifteen) years. Hence, the period between 5 to 7 years is neither covered under Medium Term nor under Long Term and this may be rectified accordingly.</p>
<p>4.1.2</p>	<p>Condition precedent to be fulfilled by the Utility</p>	<p>Since the Utility is liable for inter-state transmission charges, it is suggested that the Utility should procure transmission access as a part of Conditions Precedent to be satisfied by the Utility.</p> <p>Further, it is suggested that establishment of Letter of Credit should be a Condition Precedent for the Utility to avoid financial stress on the Supplier and unnecessary litigation.</p>

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		<p>Rationale: Requiring the Utility to procure inter-state transmission access as a part of its Conditions Precedent would be an equitable arrangement since the responsibility for procuring access to intra-state transmission system has been stipulated under the Conditions Precedent to be satisfied by the Supplier.</p> <p>Further, establishment of Letter of Credit as Conditions Precedent to be satisfied by the Utility will help to avoid financial stress on the Supplier and unnecessary disputes later.</p>
4.1.3 (e)	<p>Supplier CP regarding execution of FSA</p> <p>As a CP, the Supplier is required to execute the FSA within a period of 90 days from the date of PPA</p>	<p>It is suggested that the timeline of 90 days for the Supplier to execute the FSA should commence upon issuance of PPA / LOA (fuel), whichever is later, in order to insulate the Supplier from any delays associated with issuance of LOA for the fuel.</p>

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4.4	<p>Deemed Termination upon delay:</p> <p><i>Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, 120 (one hundred twenty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Supplier under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Supplier, and the Agreement for Procurement of Power shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Supplier, the Performance Security of the Supplier shall be encashed and appropriated by the Utility as Damages thereof.</i></p>	<p>The Supplier should also be compensated accordingly, in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Utility.</p> <p>Rationale: The present provision is completely one sided and provides only for damages to be paid by the Supplier to the Utility in case the delay in occurrence of Appointed Date is due to reasons attributable to the Supplier. In order to make the provisions equitable, the Supplier should also be compensated in the event of delays attributable to the Utility.</p>

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5.6	<p>Transmission Losses</p> <p><i>The Utility shall be liable for inter-state transmission losses under Applicable Laws. If the Power Station is connected to intra-state transmission system, the Supplier shall be liable for intra state transmission losses under Applicable Laws. Provided that if the Power Station and Utility are situated in the same state the liability of intra state transmission losses shall be of the Utility. For the avoidance of doubt and by way of illustration, the parties agree that if the Power Station and Utility are situated in different states and the intra state transmission losses of the state of location of the Power Station in any month are equivalent to 1(one) lakh units and the Tariff payable for that month is Rs. 3 (Rupees three) per kWh, an amount of Rs. 3,00,000 (Rupees three lakh) shall be due and payable by the Supplier to the Utility and shall be adjusted in the Monthly Invoice for that month.</i></p>	<ol style="list-style-type: none"> 1. The all-India losses are notified and vary on a weekly basis. This would affect the Open Access quantum to be sought and thus clarity on this aspect needs to be built into the document, as otherwise, there could be reduced Availability of power when losses increase. 2. As per the draft Model PPA, STU losses are to be borne by the Supplier (in case Utility and Supplier are located in different states and the Supplier is connected to the STU). In case there are multiple generators from multiple States connected to their respective STUs who are participating in the bidding process, they will assume different STU losses for the purpose of bidding which will lead to issues in evaluation of bids. <p>Therefore, it is submitted that the RFP document should provide a normative fixed percentage of STU loss that should be uniformly considered by all Bidders (connected to STU) for the purposes of bid</p>

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		<p>submission / evaluation so that all bidders are evaluated on a common platform.</p> <p>However, for the purpose of Payment under the PSA the actual STU losses as notified from time to time shall be considered. This approach will provide for an objective evaluation of bids and will also help avoid disputes during the operations period.</p> <p>3. A provision may be incorporated stating that in case the Supplier (located in a different state than the Utility) bears the intra-state transmission losses, then there shall be no requirement of adjusting the same in the Monthly Invoice to the Utility.</p>
5.9	<p>Obligations relating to taxes:</p> <p><i>Provided, however, that all payments made by the Supplier with respect to service tax, value added tax, general sales tax or electricity duty, if any, levied on or in respect of the supply of electricity to the Utility under this</i></p>	<p>1. It may be expressly clarified whether the taxes mentioned are to be included or excluded in the quoted tariff.</p> <p>2. ‘Service tax’ may be changed to ‘Goods & service tax’ to reflect current tax regime.</p>

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	<p><i>Agreement shall be reimbursed by the Utility upon receipt of particulars thereof.</i></p>	
9.1.1	<p>Performance Security</p> <p><i>The Supplier shall, for the performance of its obligations hereunder, provide to the Utility no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Schedule Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)¹ in the form set forth in Schedule-B (the “Performance Security”) for a period of 6 (six) months. On the expiry of the 6 (six) months period the amount of the Performance Security shall be 75% of the original Performance Security and the same shall be in force and effect till the Contract Period.</i></p>	<p>It is requested to keep the provisions of “Deemed Performance Security” as provided in the existing Model PPA (medium term) instead of reduced Performance Security.</p> <p>Alternatively, considering the poor financial position of generating companies, reduced performance security amount may be limited to 50% of the Original Performance Security amount.</p> <p>Rationale: The existing Model Medium Term PPA provides for ‘Deemed Performance Security’, as outlined in the following extract taken from the existing Model Medium Term PPA:</p>

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		<p><i>“The Parties expressly agree that upon release of Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this clause 9.4, as if it is a Performance Security under clause 9.1 for and in respect of the entire Contract Period (the “Deemed Performance Security”). The Deemed Performance Security shall be unconditional and irrevocable, and shall constitute the first and exclusive charge on all amounts due and payable by the Utility to the Supplier, and the Utility shall be entitled to enforce the Deemed Performance Security by making a deduction from the amounts due and payable by it to the Supplier in accordance with the provisions of Clause 9.5.”</i></p> <p>Considering the fact that Payment due date against Monthly billing is the 30th day from the date of invoice, the buyer is holding the payment of minimum 2 months and is already securitized in event of default by the seller. Hence, it is</p>

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		requested to keep the provision of “ Deemed Performance Security ” instead of reduced Performance Security.
10.1	<p>Contracted Capacity</p> <p><i>“Pursuant to the provisions of this Agreement, the Supplier shall dedicate a generating capacity of *****MW to the Utility as the capacity contracted hereunder [for and in respect of Peak Hours] (the “Contracted Capacity”) and the Contracted Capacity shall at all times be operated and utilised in accordance with the provisions of this Agreement.</i></p>	<p>It is suggested that the term ‘generating capacity’ may be replaced by ‘supply capacity’.</p> <p>Rationale: ‘Generating Capacity’ is different from Contracted Capacity for the supply of power. Contracted Capacity should be net of auxiliary consumption and dedicated line/STU transmission losses. Essentially, contracted capacity and the point of calculation of Availability should be at the same point.</p>
10.2.1A	<p>Sale of un-requisitioned power</p> <p><i>In the event the Utility, does not schedule a quantum of power out of its Contracted Capacity <u>before opening of bidding window of power exchange for day ahead collective transactions</u>, the Supplier shall be entitled to sell such un requisitioned power on power exchange</i></p>	<p>In case of non-scheduling by utility after opening of bidding window for day ahead collective transaction, such sale shall also be allowed. However, right to recall of power by Discoms should also be considered and appropriately incorporated. Accordingly, the following modification may be carried out in this clause:</p>

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	<p><i>under day ahead or real time collective transaction or intra day transaction.</i></p>	<p><i>‘In the event the Utility, does not schedule a quantum of power out of its Contracted Capacity before opening of bidding window of power exchange for day ahead collective transactions, the Supplier shall be entitled to sell such un requisitioned power on power exchange under day ahead or real time collective transaction or intra day transaction.’</i></p>
10.2.1A	<p>Sale of un-requisitioned power</p> <p><i>Provided that once such unrequisioned power has been sold by Supplier, Utility shall not be entitled to recall full or part of its unrequisioned capacity.</i></p> <p><i>Provided further that if the Supplier is able to sell the unrequisioned power to any Buyer, any money received in excess of expenses for selling power on exchange including fuel charges, transmission charges, fees, etc. will be adjusted with the Fixed Charge liability of Utility.</i></p> <p><i>In case a further profit (clearing price – Fixed Charge –</i></p>	<p>It may be specified that the reference to fuel charge specified in the said clause shall be the actual fuel charge incurred by the Supplier and shall not be linked to the variable charge under the PPA. This is because the fuel charge for sale on exchange would generally be higher than the fuel charge under PPA since linkage fuel cannot be utilized for exchange sale. This clarification is thus required to avoid disputes going forward.</p> <p>Further, it is suggested that there should be no capping on the sharing and entire surplus should be shared equally in terms of the Rule 9 (2) (iv) of the Electricity</p>

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	<p><i>Variable Charge –other expenses such as transmission charges and trading margin of power exchange) will be shared between Supplier and Utility in 50:50 ratio subject to maximum of 5 paisa per kWh) to the Supplier.</i></p>	<p>(Late Payment Surcharge and Related Matters) Rules, 2022 notified by the MoP on 03.06.2022.</p>
10.3	<p>Substitute Supply</p> <p><i>In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel or Force Majeure, the Supplier may, with prior consent of the Utility, which consent the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge and Variable Charge, be deemed to be supply under and in accordance with the provisions of this Agreement.</i></p>	<ol style="list-style-type: none"> 1. The Substitute Supply provision should not be restrictive and should rather cover any situation wherein the Supplier is unable to supply from the original source, including delay in achieving COD of the power station. The Utility should be concerned with the continuity of power supply, rather than the source, even more so when the alternate supply is made at the same tariff as is applicable to the original source. 2. Any Change in Law compensation applicable to the original source should also be applicable during alternate source supply as well. 3. Further, it is submitted that vide the Scheme of Flexibility in Generation and Scheduling of Thermal/Hydro Power Stations through bundling with

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		<p>Renewable Energy and Storage Power published by the MoP on 12.04.2022, bundling of thermal power with either co-located or non co-located RE power is allowed and the said provision should be modified to take into consideration the said MoP Scheme.</p> <p>In view of the above, we thus suggest modification of the clause as under:</p> <p><i>In the event the Availability of the Power Station is reduced on account of scheduled maintenance, unscheduled maintenance, shortage of Fuel, delay in achieving COD, or Force Majeure, or <u>if permitted under any Scheme / Guideline / Rule/ Law for the time being in force or any other reason</u>, the Supplier may, with prior consent of the Utility, which consent the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, and such supply shall, for payment of Fixed Charge, and <u>Variable Charge and Change in Law compensation</u>, be deemed to be supply under and in accordance with the</i></p>

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		<p><i>provisions of this Agreement. For the avoidance of doubt, the Parties agree that in the event the Utility rejects any supply of electricity offered hereunder from an alternative source, the Supplier shall be deemed to be in compliance with this Agreement for the purpose of determination of Availability and payment of Fixed Charge.</i></p>
<p>10.4 & 10.5</p>	<p>Availability during Peak and Off-Peak hours</p> <p><i>In case of Peak Hours, the Supplier shall ensure full Availability, whereas in case of off-peak hours, Fixed Charges shall be paid at reduced Normative Availability which shall be equal to 42.5% of the Contracted Capacity</i></p>	<p>It is suggested that the said provisions be deleted so as to make the Availability and payment of Fixed Charges linked to Normative Availability.</p> <p>Rationale: As informed by MoP during the consultation meeting held on 17.06.2022, an aggregator like bid is being contemplated. In such a situation, there could be different Utilities, each having their own peak / off-peak hours and it will be very difficult for the supplier to ensure optimum utilization of its capacity. Further, this risk will get loaded on to the tariff.</p> <p>It is therefore suggested to remove these clauses and keep the document based on RTC supply of power.</p>

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11.4.1, 11.4.3	<p><i>11.4.1 Subject to the provisions of this Clause 11.4, the Base Fixed Charge, as corrected for variation in WPI Index in accordance with Clause 11.3 shall be the Fixed Charge payable for Availability in each month of the relevant Accounting Year.</i></p> <p><i>11.4.3 Pursuant to the provisions of Clause 11.4.4, the Supplier shall not, for and in respect of any day, be entitled to receive payment of Fixed Charge for Availability exceeding 85%(eighty five per cent) thereof [during Peak Hours], and in the event it supplies electricity to the Utility in excess of such 85% (eighty five per cent), such excess supply shall be eligible only for payment of Variable Charge.</i></p>	<p>Fixed Charge payment should be on Cumulative Availability on annual basis and not monthly basis.</p> <p>Rationale: A reading of Clause 11.4.1 in conjunction with Clause 11.4.3 indicates that Fixed Charge recovery has not only been limited to discreet Monthly Availability but also limited to Normative Availability of 85% computed on daily basis. As a result of such restrictions, the Supplier will not be able to recover full fixed charges even if the cumulative availability for a year is equal to or more than Normative Availability.</p> <p>This is an extremely restrictive and lopsided provision considering that elsewhere in the document (Clause 5.14, 11.1.2, 11.4.2 etc), the definition of Normative Availability refers to Cumulative Availability and obligates the Supplier to maintain Availability of at least 85% (Normative Availability) during each year of contract period.</p> <p>It is an established fact that any power station will have to undergo scheduled maintenance as prescribed by OEM and</p>

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		<p>undergo planned / forced / unplanned outages during its operation. Power station works towards recovering its full Fixed Charges based on Normative Availability. This aspect is critical and essential considering that such sums on constant basis would be required to meet its debt service obligation, O&M expenses, interest on working capital and return on equity invested. These provisions as it is, are not fair and palatable for a supplier who would enter into a long term arrangement to under recover the cost even after maintaining and operating the power station prudently.</p> <p>Therefore, it is requested to provide necessary clarification or amend provisions related to payment of Fixed Charges, such that the PPA unambiguously provides for recovery of Fixed Charge based on Cumulative Availability over a year instead of limiting the recovery based on discreet monthly Availability. The concept of not considering Cumulative Availability over a year is unfair to the supplier since it has incurred huge investments to supply power. Moreover, such a concept has not been followed in any Tariff Regulations</p>

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		<p>under Section 62 so far and it is unfair and unjust to introduce such a differential approach between Section 62 and Section 63 plants in terms of Fixed Charge recovery.</p>
11.4.4	<p>Impact of Transmission Deficiency on Availability</p> <p><i>In the event that any shortfall in supply of electricity to the Utility occurs on account of deficiency in intra state transmission system in accordance with the provision of Clause 5.5, Availability shall be deemed to be reduced in accordance with the provisions of Clause 11.5.2 and the Non-Availability arising as a consequence thereof shall, for the purposes of payment of Fixed Charge, be deemed to be Availability to the extent of 50% (fifty per cent) of the Non-Availability hereunder.</i></p> <p>.....</p> <p>.....</p>	<p>The Model PPA may explicitly specify that in case of any deficiency in the ISTS network, 100% deemed availability shall be granted to the Supplier i.e., 100% Fixed Charge shall be payable in such events.</p> <p>This clarity is essential under the Long Term document to ensure bankability of the Project.</p>

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	<p><i>Provided also that if the Power Station and Utility are situated in the same state, the Availability shall not be reduced.</i></p>	
11.5.3	<p>Reduction in Availability due to shortage of fuel</p> <p><i>In the event that any shortfall in supply of electricity to the Utility occurs on account of shortage of Fuel, the Availability shall be deemed to be reduced to the extent of reduction in generation of electricity, and such reduction shall be deemed as Non-Availability on account of shortage of Fuel. For the avoidance of doubt and by way of illustration, the Parties agree that if the deficiency in generation is equal to 20% (twenty per cent) of the Contracted Capacity, the Availability shall be deemed to be 80% (eighty per cent) and the Non-Availability hereunder shall be notified by the [Supplier if Supplier is NOT a Trading Licensee, or Developer through the Supplier if Supplier is a Trading Licensee] to the Utility forthwith.</i></p>	<p>The PPA must expressly provide that in case of an allocated linkage, if there is any shortfall in supply of coal, the Supplier shall not be responsible for the same and during such shortfall, Availability of the Supplier shall not be reduced i.e., 100% Fixed Charges shall be due and payable to the Supplier.</p> <p>Rationale: Under an allocated coal linkage-based bid, the Fuel is made available by the Utility. Thus, for any shortfall in the same, the Supplier should not be penalized.</p>

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11.6.1	<p>Incentive</p> <p>Provision for incentive has been deleted.</p>	<p>Provision of Incentive in case of Availability in any month exceeding the Normative Availability may be reinstated.</p> <p>Rationale: The previous model bidding documents have contained provisions stipulating that in case Availability in any month exceeds the Normative Availability, then the Supplier shall, in lieu of a Fixed Charge, be entitled to an Incentive which shall be calculated and paid at the rate of 50% of the Fixed Charge for Availability in excess of Normative Availability.</p> <p>This provision has been inexplicably removed in the current draft without any seemingly valid reason. Since incentive would be payable only if the Utility dispatches power above the Normal Availability levels, it is suggested to retain the incentive provision.</p>
11.10	<p>Disputed Amounts</p>	<p>It is suggested that the Electricity (Late Payment Surcharge and related matters) Rules, 2022 notified by MoP on 03.06.2022 provide for payment of all outstanding dues not</p>

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	<p><i>...The Utility may, if necessary, meet a representative of the Supplier for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply....</i></p>	<p>stayed by a competent court or Tribunal or dispute resolution agency as designated in the Power Purchase Agreement. Therefore, the said model PPA may be modified to bring it in accordance with the said LPS Rules, 2022.</p>
Article 11	<p>Provision for reconciliation</p> <p>There is no provision for reconciliation of payments in the PPA.</p>	<p>The below mentioned provision regarding reconciliation of payments should be included in the PPA:</p> <p><i>The Parties agree that all payments made against Monthly Bills /Supplementary Bills shall be subject to quarterly reconciliation at the end of each quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account REA/SEA (as applicable), Tariff Adjustment Payments, Tariff Rebate Payments (Discount), Tariff Surcharge Payments (Delayed Payment), or any other reasonable circumstance provided under this Agreement.</i></p>
11.11	<p>Discount for early payment</p>	<p>With regard to discount for payment within 5 days, it is suggested to retain the provision under the previous</p>

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	<p><i>The Parties expressly agree that in the event the Utility pays the Tariff within 5 (five) days of the date of submission of the invoice thereof, it shall be entitled to deduct 1.5% (one point five per cent) of the amount comprising the Tariff by way of discount for early payment.</i></p> <p>.....</p> <p>.....</p> <p><i>Provided further that where payments are made on any day after 5 days and within a period of 30 days of submission of invoice by the Supplier the Utility shall be entitled to deduct 1% (one per cent) of the amount comprising the Tariff by way of discount for early payment.</i></p>	<p>Standard Bidding Document, i.e., 1% discount for payment within 5 days.</p> <p>For payments made on any day after 5 days and within a period of 30 days of submission of invoice, the discount of 1% should be proportionally reduced till the 30th day in order to encourage early payments by the Utility.</p> <p>Rationale: It is a known fact that the biggest reason for the stress in the sector is due to delayed payments by the Utilities. Providing a longer period to claim discount will not help ease the situation. Instead, retaining the provisions under the existing SBD will actually incentivize the utilities to make prompt payment.</p>
Article 12	<p>Determination of Fuel Charge with coal source being Allocated Linkage coal</p>	<p>1. Given the provisions contained under Para B (v) of SHAKTI Policy, there could be bids wherein the linkage source is pre-specified and bidders will bid basis the</p>

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		<p>same. In such a situation, clarity is required for bidding parameter and payment of Energy Charge.</p> <p>2. Under an allocated coal linkage bid, the allocation is made from a basket of mines with varying quantum's, GCV, base price, transportation distances etc. In such a scenario, it is suggested that the fuel charge provisions be modified to make all components (price of coal, transportation and GCV) on a Weighted Average basis, with the weights being the mine wise quantum. Such a provision will cover any change in composition/supply quantum of the mine basket.</p> <p>It is further suggested that since the coal source in case of allocated linkage will be the same for all bidders, the Utility should be required to pre-specify the ex-mine cost of coal and GCV to be considered by all bidders in the bid. This will permit a more objective bid process.</p>

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Article 12	<p>Determination of Fuel Charge – computation of GCV</p>	<p>The draft SBD does not provide for any methodology for computation of GCV of coal for the purpose of fuel charge payment.</p> <p>In order to avoid disputes and serve the intent of fuel cost pass through, it is suggested that all GCV measurements should be on ARB (As Received Basis) with further 85 kcal adjustment for stacking losses and this should be explicitly specified in the PPA. Further, the GCV measurement should be undertaken by a Govt. notified third party agency at the power station site rather than relying on the GCV provided by CIL since the same is on ADB basis instead of As Received Basis.</p> <p>A draft of the suggested clauses regarding GCV is provided herewith at Annexure-A herein.</p>
Article 12	<p>Determination of Fuel Charge with coal source being Linkage coal – Transportation cost</p> <p><i>The total cost of transportation of domestic Fuel shall be the lower of, (a) [110% (one hundred and ten per cent)]</i></p>	<p>Given the prevailing shortage of railway rakes, the PPA must provide that road transport cost shall be a pass-through, provided that the road freight / road</p>

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	<p><i>of the freight payable to the Indian Railways for transportation by rail, and (b) the actual cost of transportation.</i></p>	<p>transporter has been discovered / appointed through a competitive bidding process.</p>
<p>Article 12</p>	<p>Shortage of coal under Allocated Linkage coal – provision for Additional Fuel Supply Arrangement</p> <p>Not provided in Draft</p>	<ol style="list-style-type: none"> 1. There should be a provision for Additional Fuel Supply Arrangement (AFSA) in case of shortfall in linkage / allocated coal linkage. The AFSA cost should be complete pass-through for the supplier and in case the Utility refused coal procurement under AFSA, 100% Availability should be allowed to the Supplier. 2. Further, a provision for blending of imported coal with domestic coal needs to be provided, especially in light of the present directives of MoP as per which linkage coal is to be compulsorily blended with imported coal. <p>Rationale: Under an allocated coal linkage-based bid, the Fuel is made available by the Utility. Thus, for any shortfall in the same, the Supplier should not be penalized.</p>

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		<p>The DBFOO SBD notified in 2019 contains provisions for Additional Fuel Supply Arrangement (AFSA), and the same could be adopted principally. However, it may be noted that the AFSA process envisaged in the 2019 SBD is a bit time consuming in the sense that it provides that the alternate coal proposal of the Supplier first needs to be approved by the Utility and thereafter the Commission. In the meantime, due to shortage of fuel, the availability of Generator is impacted. Thus, during cases of fuel shortfall, especially when the fuel is allocated linkage, 100% deemed availability should be provided to the generator.</p>
12.3.1	<p>Computation of Variable Charge for Coal imported from international market:</p> <p><i>The Supplier represents and warrants that it shall import Fuel under its own arrangements. The Parties agree that the cost of Fuel payable by the Utility to the Supplier under the provisions of Clause 12.2 shall be linked to the</i></p>	<p>It is suggested to keep FoB coal cost pass-through as per original DBFOO guidelines/model PPA dated 05.03.2019</p> <p>Rationale: The original guidelines compute the FOB price using the indices as on the date of loading, whereas in the proposed amendment quoted price (FOB) will be escalated with monthly CERC index which will have time lag of 2 months.</p>

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	<p><i>coal price index and freight index for imported coal published by CERC on monthly basis.</i></p>	<p>The proposed amendment would not result in recovery of actual cost as escalation index will be determined with time lag of 2 months and thus the proposed amendment will not benefit the generator or discoms as recovery under proposed methodology will move away from the principle of actual pass-through because of the time lag involved in the monthly indices.</p> <p>The existing methodology as per the DBFOO guidelines/model PPA dated 05.03.2019 is perfect, precise, and reflects actual cost. Hence there is no need for amendment.</p>
12.3.2	<p>The cost of transportation of imported Fuel</p> <p><i>The total cost of transportation of imported Fuel, shall be the lower of , (a) the indicative cost of transportation as specified in the Bid, in US cents, and (b) [20% (twenty percent)] of the price of Fuel, as specified in the Bid in US cents, to which 110% (one hundred and ten percent) of the freight payable to the Indian Railways shall be</i></p>	<p>The stipulation of 20% of price of fuel may be removed since it is not guaranteed that ocean freight will always be lower than 20% of fuel cost and rather depends on the international crude price independent of cost of coal. Bid particulars as on the date of bid with documentary evidence may be accepted and subsequent revisions should be made a pass through.</p>

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	<p><i>added for inland transportation, if any, and the total freight charges so determined as on the Bid Date shall be revised from time to time to reflect the variation occurring in the Freight Index:</i></p>	
12.3.2	<p>The cost of transportation of imported Fuel</p> <p><i>Provided that the Supplier shall normally undertake shipment of Fuel, comprising no less than 90% (ninety per cent) of its annual import, under long term contracts which have a duration of one year or more, and the cost of transportation hereunder shall be computed and paid at the rate specified in such contracts.</i></p> <p><i>Provided further that the freight charges payable under such long term contracts shall not exceed the lower of, (i) the freight charge determined as on the Bid Date and adjusted to reflect the variation in Freight from time to time, and (ii) the average freight payable under similar contracts entered into during a period of 180 (one hundred and eighty) days preceding the date of that</i></p>	<p>The freight charges determined as on the Bid Date shall be revised based on escalation rates notified by CERC on monthly basis for transportation of imported coal.</p> <p>Since cost of transportation has been linked to CERC escalation rates, it is suggested to delete below mentioned para(s).</p> <p><i>Provided that the Supplier shall normally undertake shipment of Fuel, comprising no less than 90% (ninety per cent) of its annual import, under long term contracts which have a duration of one year or more, and the cost of transportation hereunder shall be computed and paid at the rate specified in such contracts.</i></p> <p><i>Provided further that the freight charges payable under such long term contracts shall not exceed the lower of, (i) the</i></p>

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	<p><i>contract, and where information relating to such contracts is not available, then 90% (ninety per cent) of the amount computed under sub-clause (i) hereinabove.</i></p>	<p><i>freight charge determined as on the Bid Date and adjusted to reflect the variation in Freight from time to time, and (ii) the average freight payable under similar contracts entered into during a period of 180 (one hundred and eighty) days preceding the date of that contract, and where information relating to such contracts is not available, then 90% (ninety per cent) of the amount computed under sub clause (i) hereinabove.</i></p>
13.2	<p>Letter of Credit amount</p> <p>The Letter of Credit shall be for an amount equal to 20% of the annual capacity charge.</p>	<p>It is submitted that the Letter of Credit amount should cover 20% of the annual tariff i.e., both Fixed Charge and Variable Charge, and not just Fixed Charge as is presently provided.</p> <p>Rationale: Out of the total tariff, the majority component is the Fuel Charge. Further, with the requirements in place for blending domestic linkage coal with imported coal, the variable charge component of the total tariff would be quite high.</p>

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		<p>In such a scenario, adequate coverage under the LC should be provided. Thus, it is suggested that the LC amount be linked to both the Fixed Charge as well as Variable Charge as well as Supplementary Bills.</p> <p>Further, it is suggested that operationalizing the payment security mechanism & its consequences along with Regulation of access to defaulting entities shall be included in reference to Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified by MoP vide 03.06.2022.</p>
13.2.3	<p>Encashment of Letter of Credit</p> <p><i>In the event of Utility's failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Supplier may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Default Escrow Bank shall, without any reference to the Utility, pay the amount</i></p>	<p>The encashment of LC should also be permitted for cases wherein the Supplementary Invoice, say for claim of Change in Law, also remains unpaid. Moreover, the encashment of LC should also be permitted for failure to pay 85% of the disputed amount.</p> <p>If Utility fails to pay the 100% of the undisputed amount and 85% of the disputed amount or part thereof within and including the Due Date, then the Supplier may draw upon</p>

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	<p><i>due upon the Supplier presenting the following documents, namely:</i></p> <p><i>(a) a copy of the Monthly Invoice which has remained unpaid; and</i></p> <p><i>(b) a certificate from the Supplier to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due and payable has remained unpaid.</i></p>	<p>the Letter of Credit for an amount equal to such 100% of the undisputed amount and 85% of the disputed amount or part thereof plus Delayed Payment Surcharge, if applicable by presenting to the scheduled bank issuing the Letter of Credit.</p>
17.6	<p>Allocation of Force Majeure Costs</p> <p><i>Upon occurrence of a Force Majeure Event after the Appointed Date, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.</i></p>	<p>Costs arising out of Political Events such as nationalization, expropriation, unauthorized refusal of permit etc., should be allocated to the scope of the Utility.</p> <p>Rationale: Political events such as nationalization, expropriation, unauthorized refusal of permit etc., are beyond the control of the Supplier and are caused by a government body. In such a case, the earlier SBD rightly provided protection to the Supplier by allocating costs from such events in the scope of Utility.</p>

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		<p>By modifying the said clause and putting the risk of Political Event on the Supplier, the risk framework is left un-balanced.</p>
17.7	<p>Unforeseen Events</p> <p>The provision of Unforeseen Events has been deleted</p>	<p>Existing provision for unforeseen events should be retained.</p> <p>Rationale: The provision regarding Unforeseen Events was included in the SBD following years of litigations, disputes, and sought to incorporate lessons from past learnings. The provision provided both the Supplier as well as the Utility an avenue to seek relief from any such event which could otherwise not be covered under other provisions of the PSA, particularly Force Majeure. Importantly, the Clause pertaining to unforeseen events was one such mechanism which is incorporated to address the issues in od bidding document.</p> <p>Deleting the said provision completely is undoing all the lessons learnt from past which indicated necessity to have such provision in the contract. Retaining the provision will</p>

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		<p>lead to avoidance of litigation since the provision provides for a well-established mutually reconciliatory mechanism to address such events.</p> <p>Thus, it is suggested to retain the said provision.</p>
19.1.1, 19.2.1	<p>Cure period</p> <p>The Draft Model PPA provides for a cure period of 90 days for Supplier Default and a cure period of 120 days for Utility Default.</p>	<p>Cure period should be the same (120 days) for both Supplier and Utility in the event of default.</p>
19.1.1 (j)	<p>Termination for Supplier Default</p> <p><i>the [Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee] fails to achieve a monthly Availability of 70% (seventy per cent) for a period of 4 (four) consecutive months or for a cumulative period of 4 (four) months within any continuous period of 12 (twelve) months, save and except</i></p>	<p>1. The requirement of monthly Availability of 70% for a period of 4 months is excessively stringent. For instance, if case of Annual Overhaul in the first month, the cumulative availability for a period of 4 months would be 63.75%, even if the generator achieves normative availability of 85% in the next 3 months. It is therefore suggested that monthly availability requirement for a period of 4 months may be reduced to 65%.</p>

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	<p><i>to the extent of Non-Availability caused by(i) a Force Majeure Event, (ii) an act or omission of the Utility, not occurring due to any default of the [Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee]or (iii) shortage of Fuel occurring for reasons not attributable to the [Supplier if Supplier is NOT a Trading Licensee, or Developer if Supplier is a Trading Licensee];</i></p>	<p>In case of failure of certain equipment, the lead time of repair and maintenance may be higher and the same should not be used as an excuse by the Utility to terminate the contract. Considering that substantial investment would be made by the Supplier in the power plant, any termination in such cases will seriously jeopardize the developer's economic position.</p>
19.3.2	<p>Termination Payment on account of Supplier & Utility default</p> <p><i>19.3.1the Supplier shall pay to the Utility, by way of Termination Payment, an amount equal to the Fixed Charge that would have been due and payable for Normative Availability for a period of 6 (six) months as if the Contracted Capacity was Available for such 6 (six) months] from the date of Termination.</i></p> <p><i>19.3.2the Utility shall pay to the Supplier, by way of Termination Payment, an amount equal to the Fixed</i></p>	<p>It is suggested that the Termination Payment should be equal for both Supplier and the Utility.</p>

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	<p><i>Charge that would have been due and payable for Normative Availability for a period of 3 (three) months as if the Contracted Capacity was Available for such 3 (three) months] from the date of Termination.</i></p>	
Article 21	<p>Change in Law</p> <p>The impact of Change in Law provision shall be governed with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021. However, threshold for claiming Change in Law shall be 0.1% of the Capacity Charge.</p>	<p>It is suggested to remove the threshold of 0.1% of the Capacity Charge. The Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 also does not provide any such threshold.</p> <p>We further suggest that the definition of Change in Law also includes the provisions as contained in the definition prescribed in the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021, especially - “a change in any domestic tax, including duty, levy, cess, charge or surcharge by the Central Government, State Government or Union territory administration leading to corresponding changes in the Cost”</p> <p>Further, in line with established judgements of the Supreme Court and APTEL with regard to the</p>

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		<p>‘principle of restitution’ under change in law, it may be expressly specified in the Model PPA that in case of delay in making Change in Law payments, Carrying Cost shall be applicable.</p>
<p>25.3</p> <p>25.4</p>	<p>Interest</p> <p><i>Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis on quarterly rests.</i></p> <p>Delayed Payment</p> <p><i>The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the</i></p>	<p>1. Delayed Payment may be compounded at monthly rest in line with banks’ practice.</p> <p>Further, it may be noted that MoP has notified the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 on 03.06.2022, which provides a detailed payment security mechanism along with consequences of default in payment leading to regulation of access to defaulting entities. In order to ensure that this payment security mechanism is operationalized effectively, it would be prudent to incorporate the provisions of the Electricity (Late Payment Surcharge and Related Matters) Rules in the Model PPA itself.</p>

CI No.	Provision as per Draft Model PPA (Medium Term)	Suggestion / Comment
	<p><i>defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.</i></p>	
26.1	<p>Definitions</p> <p><i>“Bank Rate” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;</i></p>	<p>The rate of interest for computation of Late Payment Surcharge should be kept the same as provided in the Electricity (Late Payment Surcharge and Related Matters) Rules.</p> <p>The LPS Rules have linked the rate of interest to the marginal cost of funds based on lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five per cent, and the same rate should be considered in the Model PPA.</p>
26.1	<p>Definitions</p>	<p>In case of requirement of imported coal blending, the Change in Law provision must cover events occurring in the coal source country.</p>

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	‘Change in Law’	<p>Rationale: Given the overall domestic coal supply situation, MoP has stipulated compulsory blending of imported coal with linkage coal.</p> <p>In view of the above, and to cater to similar situations going forward, it is essential that the Change in Law provision be made applicable for Change in Law events occurring in the country from which the imported coal is being sourced. An enabling provision to this effect should be included in the PPA.</p>
Annex –I (Schedule-A)	<p>Station Heat Rate</p> <p>The Station Heat Rate of the Power station shall be [2,300 (two thousand three hundred and fifty)] kCal per kWh at 100% (hundred per cent) maximum continuous rating (MCR) or such lower Station Heat Rate as may be specified in the Capacity Certificate.</p>	<p>It is suggested that there should not be any specified Heat Rate. At the time of the bid itself, the bidder may be asked to quote the variable charges at a particular Heat Rate as per CERC norms or Design Heat Rate of the generating station and there can be provisions for Heat Rate degradation in line with IEGC Regulations for under-scheduling by the Utility.</p>

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	Footnote: This figure may be substituted by 2,350 where a Power Station shall have achieved COD prior to December 31, 2016	<p>Further, SHR should be considered as Plant SHR only, and should be independent of transmission losses and aux consumption.</p> <p>Rationale: The specified figure of Heat Rate goes against sub-critical projects and does not provide for a level-playing field among the generators as there would be under-recovery against actual energy charges.</p>
Annex –I (Schedule-A)	<p>Ramp Rates</p> <p><i>All Units of the Power Station shall be capable of increasing or decreasing their output (generation level) by not less than 3% (three per cent) per minute. Such capability shall at all times be demonstrated during the Unit load of 50% (fifty per cent) or more.</i></p>	Ramp up rate of 3% per minute is technically not feasible for Thermal Power Stations and hence ramp up rate may be changed to 5% per block (15 minutes).
Schedule E	<p>Letter of Credit</p> <p>2. The Letter of Credit shall come into force with effect from....., 20.... and shall be valid and effective upto the 31st (thirty first) day of March, 20.... (indicate the year)</p>	The Letter of Credit should remain valid until at least 3 months after the end of the Contract Period in order to securitize Supplier against the payments due after the completion of contract.

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	<p>falling after the year in which the Letter of Credit is issued (the “Expiry Date”), and shall be automatically and compulsorily renewed every year by the Bank, 2 (two) months prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Contract Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the purposes hereof.</p>	
Schedule F	<p>Change in Law Rules</p> <p>Annexure- 1</p> <p><i>The Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 as notified on October 22, 2021 is annexed hereto as Annexure 1 to this Schedule-F</i></p>	<p>Any future amendment to the Change in Law Rules should be allowed/effected under the PPA. Hence it is suggested that Schedule F may be modified as follows:</p> <p><i>The Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 as notified on October 22, 2021 is annexed hereto as Annexure 1 to this Schedule-F</i></p> <p>* <i>The Change in Law Rules in so far as this PPA is concerned, shall be applicable as amended from time to time. remain constant during the Term of the PPA</i></p>

CI No.	Provision as per Draft Model PPA (Medium Term)	Suggestion / Comment
	<p><i>* The Change in Law Rules in so far as this PPA is concerned, shall remain constant during the Term of the PPA notwithstanding any amendments made to the Change in Law Rules.</i></p>	<p>notwithstanding any amendments made to the Change in Law Rules.</p>
Schedule G	<p>Transition to Market Based Economic Despach</p> <p><i>“3.This balance payment of Variable Charge determined as per the MBED Regulations shall also be subject to the <u>payment security mechanism in Article 23 of this Agreement.</u>”</i></p>	<p>Payment Security Mechanism is covered under Article 13 of this Agreement. The typo may be corrected.</p>
General	<p>Payment appropriate waterfall</p>	<p>A payment appropriation waterfall should be included in the Model PPA in order to avoid ambiguities and disputes. The payment appropriation should be as follows:</p> <ul style="list-style-type: none"> (i) towards Late Payment Surcharge, if any; (ii) towards previous unpaid Monthly Bill / Supplementary Bill, if any; and

CI No.	Provision as per Draft Model PPA (Medium Term)	Suggestion / Comment
		(iii) towards the then current Monthly Bill / Supplementary Bill.
General	<p>Degradation of Heat Rate, Aux Compensation and Secondary Fuel Consumption, due to Part Load Operation and Multiple Start/Stop of Units.</p> <p>Not provided</p>	<p>The PPA should provide for compensation to the Supplier for Degradation of Heat Rate, Aux Compensation and Secondary Fuel Consumption, due to Part Load Operation and Multiple Start/Stop of Units as per the methodology provided by CERC vide order dated 05.05.2017 or any applicable law/rule/guideline for the time being in force.</p>

Note: MoP has only made available the draft PPA for consultation. The RFQ and RFP documents have not been made available. Thus, there is no clarity on the 'Bidding Parameter' that would be used for bid evaluation. Our above comments are based on the understand that in case of linkage / allocated linkage coal, the coal cost would be a pass-through. In case the proposed RFP document is not aligned to our said understanding, we would request the MoP to kindly provide us an opportunity to put forth our comments / suggestions on the same as well.

Annexure-A: Suggested Provision for GCV Measurement for Payment Purpose

1. The weighted average of the GCV (ARB) of Fuel received during any month at the Power Station less 85 Kcal/Kg on account of variation during storage at generating station shall be reckoned as the average GCV (the “Average GCV”) for the purposes of this Article [] and shall, subject to the provisions of Clause [], apply for computing the applicable element of the Landed Fuel Cost and the Fuel Charge payable for the use of such Fuel. For the avoidance of doubt, the Average GCV hereunder shall be computed separately for Allocated Coal, any Fuel procured under AFSA and any other Fuel, as the case may be, for the purposes of determining the Fuel Charge.
2. Subject to the provisions of 5, the Average GCV of Fuel shall be determined on as-received basis in accordance with the certification provided by the Government notified Third Party Sampling Agency (the “TPSA”) at Power Station duly adjusted to take into account handling and storage losses at plant (the “GCV (ARB)”). The charges payable to such Third Party Sampling Agency shall be pass through for Supplier. The Parties further agree that the Average GCV determined in accordance with such certification shall form the basis of computation of Fuel Charge, save and except as provided in 5.
3. The Average GCV to be computed in accordance with Clause 2 shall be based on collecting random samples of Fuel in accordance with the applicable codes of the Bureau of Indian Standards (BIS) immediately following its arrival and storage at the Power Station and all the samples so collected during the preceding 24 (twenty four) hours shall be tested by the TPSA at Supplier end at 1100 hours each day to determine the GCV (ARB) thereof, and the results of such testing, shall be conveyed forthwith to the Utility and Supplier for its information and record with such particulars as the Utility may require.
4. For determining the actual GCV (ARB) of Fuel, the Utility Utility’s Engineer, as the case may be, shall be entitled to inspect the relevant records of the Supplier, and may, at its own cost, conduct or cause to be conducted, sampling and testing of stored Fuel in accordance with Good Industry Practice.

5. If the sampling and testing pursuant to Clause 4 demonstrates that the actual GCV (as received at the Power Station) determined for any month is more than the GCV reported by the Supplier to the Utility or the Average GCV computed in accordance with the provisions of Clause 2, as the case may be, then the Average GCV for that month shall be deemed to be the lower of the actual GCV determined by such sampling and testing and the Average GCV computed pursuant to the provisions of Clause 2, and in the event of any Dispute relating to sampling, the Dispute Resolution Procedure shall apply.
6. Notwithstanding anything to the contrary in this Article [], the Parties expressly agree that the GCV (ARB) shall be determined and/or computed and same shall be used for the purpose of payment of Fuel Charge.

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