

**DRAFT BATTERY ENERGY STORAGE SALE AGREEMENT FOR  
SALE OF \_\_\_\_\_MW/ \_\_\_\_\_MWh of BESS CAPACITY  
ON LONG TERM BASIS**

**Between**

**Telangana Power Generation Corporation Limited**

**And**

**\_\_\_\_\_[Enter name of the Buying Entity/Utility]**

This Battery Energy Storage Sale Agreement is made on the.....day of..... of  
20----at.....

**Between**

Telangana Power Generation Corporation Limited, a company incorporated under the Companies Act 1956, having its registered office at Telangana Power Generation Corporation Limited, 6-3-643, Vidyuth Soudha, Khairatabad, Hyderabad, Telangana 500082 (hereinafter referred to as “**TGGENCO**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assignees) as a Party of the first part.

**And**

.....[Enter name of the Buying Entity/ Utility], a company incorporated under the Companies Act 2013, having its registered office at.....(here in after referred to as “**Buying Entity/Buying Utility**” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the second part.

TGGENCO and Buying Entity are individually referred to as ‘Party’ and collectively referred to as ‘Parties’

**WHEREAS:**

- A. Void.
- B. The Ministry of Power, Government of India has issued the "*Guidelines for Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services*" vide Resolution dated 10<sup>th</sup> March 2022, including subsequent amendments and clarifications thereof, if any, issued until [Enter the last date of bid submission of the RfS].
- C. TGGENCO has been designated as a Nodal Agency for developing and facilitating the establishment of the Grid connected Battery Energy Storage Capacity in India in terms of the Policy / Guidelines issued by the Government of India ;
- D. TGGENCO had initiated a Tariff Based Competitive Bid Process for development of 375 MW/ 1500 MWh of Battery Energy Storage Project (Project) on the terms and conditions contained in the Request for Selection Documents(hereinafter referred to as '**RfS**') issued by TGGENCO vide RfS no.-----dt.-----and subsequent amndt. ,if any: out of the cumulative awarded project capacity of 375MW/1500MWH under aforementioned RfS, entire 100% of project capacity shall be procured by TGGENCO ..
- E. TGGENCO has signed/will sign Battery Energy Storage Purchase Agreements (BESPAs) with the Battery Energy Storage Developers(BESSDs) selected under the RfS mentioned herein above (hereinafter referred to as "BESSDs") for procurement of \_\_\_\_\_MW/ \_\_\_\_\_MWh of BESS Capacity from the Project(s) selected under the provisions of Request for Selection No. \_\_\_\_\_dated \_\_\_\_\_ and subsequent amendment, if any)based on the above mentioned Guidelines, if it is less than \_\_\_\_\_MW/ \_\_\_\_\_MWh, on a long-term basis, as indicated at Schedule-B of BESSA;
- F. Buying Utility has agreed to purchase BESS Capacity from the TGGENCO under the above RfS and accordingly, TGGENCO has agreed to sign Battery Energy Storage Purchase Agreements(BESPAs) with BESSD for procurement of MW/ \_\_\_\_\_MWh BESS Capacity on a long-term basis, as indicated at Schedule-B of PSA. Copy of the BESPA(s) shall be submitted to Buying Utility within thirty (30) days of the signing of the BESPA(s) and such BESPA(s) shall become integral part of this Agreement (TGGENCO-Buying Utility BESSA).

- G. Pursuant to the aforesaid objective, the Parties are desirous of entering into a **Battery Energy Storage Sale Agreement ("BESSA")** i.e. a definitive agreement, regarding purchase of BESS Capacity from the Project(s). Pending execution of the necessary agreements and other relevant documents in relation to the transaction contemplated herein, the Parties wish to execute this BESSA setting out the respective obligations of the Parties and the steps necessary to complete the transactions contemplated herein.

The Parties have accordingly agreed to enter into this BESSA to record their understanding and agreement with regard to the purchase of BESS Capacity to be generated from the Project and in respect to the matters incidental or ancillary thereto, upon the terms and conditions set out herein below.

**NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND MUTUAL AGREEMENTS, COVENANTS AND CONDITIONS SET FORTH HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

- I This Agreement shall come into effect from signing of this Agreement by both the parties and such date shall be the Effective Date for the purpose of this Agreement.
- II Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either Party against the other under this Agreement shall be that, within 120 days after the Effective Date of the BESPA, TGGENCO and/or the Buying Entity shall obtain adoption of tariff from Telangana Electricity Regulatory Commission and/or CERC (as applicable), on the terms and conditions contained in this Agreement read with the terms and conditions contained in the BESPA entered into between TGGENCO and the BESSD. The Parties agree that in the event the order of adoption of tariff as mentioned above is not issued by the TGERC and/or CERC (as applicable) within the time specified above, this shall entail a corresponding extension in Scheduled Financial Closure and the Scheduled Commissioning Date of the Projects for equal number of days for which the CERC/TGERC order has been delayed beyond the above deadline.
- III The duration of this Agreement shall be coextensive and coterminous with the duration of the BESPA to be entered into between the TGGENCO and the BESSD for all intent and purposes.

- IV Subject to the terms and conditions contained herein, TGGENCO hereby agrees to sell and make available the BESS Capacity procured by TGGENCO from the MW/ \_\_\_\_\_ MWh Project to be set up by the BESSD at \_\_\_\_\_ in [Enter the location of the Projects] on the terms and conditions contained in the BESPA to be entered into between TGGENCO and the BESSD, as per the initialed BESPA (Schedule "A") on a back to back basis, to Buying Entity.
- V Buying Entity hereby acknowledges and accepts that TGGENCO is an Intermediary to facilitate the promotion of BESS Capacity and to purchase and re-sell the BESS Capacity to the Buying Entities including distribution licensees to enable them to fulfill the requirement of BESS Capacity and, therefore, the sale of BESS Capacity by TGGENCO to Buying Entity under this Agreement shall be entirely on a back to back basis to the purchase of BESS Capacity by TGGENCO from the BESSDs under the TGGENCO - BESSD BESPA, with the intent that there shall be no residual liability on the TGGENCO towards the BESSD which will not be fulfilled by the Buying Entity.
- VI In accordance with the above and except as otherwise specifically provided in this agreement, the rights and obligations of Buying Entity under this agreement shall be available and enforceable entirely and effectively on a back to back basis to the rights and obligations of the TGGENCO in the TGGENCO-BESSD BESPA and in the event TGGENCO is not in a position to enforce its rights against the BESSD or is subject to any obligation to be performed towards BESSD, Buying Entity shall be liable to perform such obligation or shall be entitled to such rights only on a mutatis mutandis basis, without any additional or independent exposure whatsoever to TGGENCO.
- VII Except as otherwise specifically provided in this agreement, Buying Entity acknowledges and accepts that the terms and conditions of the TGGENCO- BESSD BESPA shall mutatis mutandis apply to this Agreement between the parties. Buying Entity agrees to correspondingly fulfill, on back to back basis, all the obligations assumed by TGGENCO towards BESSD. Buying Entity further agrees, acknowledges and accepts that as an Intermediary, TGGENCO is not assuming any obligation to Buying Entity over and above the obligation which the BESSD shall duly perform under the TGGENCO – BESSD BESPA.



- VIII TGGENCO has agreed with the BESSD in regard to the payment of money becoming due to BESSD under the TGGENCO -BESSD BESPA and TGGENCO shall be liable to discharge the payment obligation in terms of the provisions of the TGGENCO - BESSD BESPA. Accordingly, Buying Entity agrees to effectively securitize the payment of money becoming due from Buying Entity to TGGENCO and Buying Entity shall make such payment to TGGENCO in a timely as detailed in this Agreement, to enable TGGENCO to make onward payment to the BESSD under TGGENCO-BESSD BESPA.
- IX The parties agree that in respect of the obligations other than the payment obligation specifically mentioned herein above, in the event Buying Entity has any claim against TGGENCO in regard to the performance of any obligation of TGGENCO under this Agreement or enforcement of any right of Buying Entity against TGGENCO under this Agreement, the same shall be subject to the ability of TGGENCO to enforce the corresponding obligations assumed by BESSD to TGGENCO under the TGGENCO-BESSD BESPA. TGGENCO shall not be required to perform and implement the obligations of TGGENCO or agree to the enforcement of the rights of Buying Entity under this Agreement till such time the corresponding obligations under TGGENCO-BESSD BESPA is duly implemented by the BESSD and in case of monetary obligations the amount is received by TGGENCO from the BESSD. In the event of any such claim arising at the instance of Buying Entity, the parties shall discuss on the course of action to be initiated by TGGENCO against the BESSD for enforcement of the corresponding obligation and all proceedings to be initiated by TGGENCO against the BESSD for such enforcement shall be pursued by TGGENCO in consultation with Buying Entity.
- X The parties hereby agree that the BESSD shall be liable to pay compensation under the TGGENCO-BESSD BESPA for any shortfall in performance requirement of BESS Capacity provided under Article 4.3.2 of the BESPA from the contracted capacity. The amount of such compensation shall be as determined as per the manner and methodology specified in the BESPA and such amount shall be passed on to the Buying Entity is offset for all potential costs associated with shortfall in performance requirement under the BESPA. This amount so collected from the BESSD shall be passed on to the Buying Entity. In case the Buying Entity does not avail the remittance of such compensation within sixty (60) days of the end of corresponding Contract Year, the Buying Entity shall have a right to recover the same from the amount payable by Buying Entity against Monthly Invoices. The

Parties agree that as an intermediary, TGGENCO shall have no legal obligation to pay any amount towards this compensation, except when the amount of such compensation has been recovered from the BESSD by TGGENCO without any conditions and encumbrances and the amount is available for appropriation by TGGENCO.

- XI The parties agree that the various terms contained in the TGGENCO-BESSD BESPA such as Scope of Project, Terms of the Agreement, Performance Guarantee, Conditions Subsequent, Obligations of the respective Parties, Construction of the Power Generation Capacity, Synchronization, Commissioning and Commercial Operation, Operation and Maintenance, Purchase and Sale of BESS Capacity, Metering and Dispatch of BESS Capacity, Charging and Discharging of BESS Power, Billing, Accounting and payments, Liabilities, Force Majeure, Events of Default, Termination, Transfer, Change in Law, Indemnity, Insurance, Assignment and Changes, Financing and Bankability, Representations and Warranties, Governing Law, Notices, etc. and all other Miscellaneous Terms provided in the TGGENCO- BESSD BESPA shall mutatis mutandis apply to this agreement between TGGENCO and Buying Entity.
- XII The Buying Entity shall be responsible for directly coordinating and dealing with the BESSD, Regional Load Dispatch Centers, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Charging & Discharging of Energy from the BESS Capacity and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the BESSD and Buying Entity are the Grid connected entities and TGGENCO as intermediary procurers/trading licensee is not a Grid connected entity in respect of the BESS Capacity contracted under this Agreement;
- XIII The parties further agree that the payment security fund maintained by TGGENCO and any amount collected in this Fund, other than Performance based default amount, shall be dealt as per relevant MoP/MNRE guidelines. In the absence of any guidelines in this regard, the fund shall be transferred to TGDISCOMs/TGTRANSCO for further utilization.
- XIV The BESSD shall be required to follow the applicable procedure for grant of connectivity as issued by TGERC/CERC/CEA as amended from time to time. The BESSDs will be required to apply for connectivity at the identified locations within 30 days of Effective Date of BESPAs and shall furnish copies of the application as well as granted connectivity, to TGGENCO at the earliest.

- XV The Buying Entity shall be responsible for obtaining Grid Access as per the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, within 30 days of signing of BESSA, at its own risk and cost. It is further clarified that the Entities (BESSD and Buying Entity) as indicated in the Detailed Procedure issued subsequently under the above Regulation, will be responsible for their respective obligation as notified in the Detailed Procedure irrespective of the provisions of the RfS, BESPA and BESSA.
- XVI If any point of time when sufficient power is available for discharge, if the demand from buying entity is less than the discharge power available, TGGENCO is entitled to sell the additional power through exchange to any consumer if possible. Income occurred through sale of power exchange will be credited to ESCROW account. Payment mechanism in different scenarios will be intimated later.

***Article 1. APPLICABLE TARIFF***

- 1.1 The Tariff applicable for the sale of BESS Capacity by TGGENCO to the Buying Entity under this Agreement shall be the Tariff as applicable for payment by TGGENCO to BESSD under the terms of the BESPA between TGGENCO and the BESSD (Individual BESSDs tariff as per schedule B) fixed for entire term of agreement at delivery point and in addition there to a trading margin of **INR 0.07 per kWh** of Energy Supplied and any taxes and duties including GST (if applicable), shall be payable by the Buying Entity to TGGENCO over and above of the Applicable Tariff under BESPA, which TGGENCO shall be entitled to appropriate as its income.
- 1.2 As per provisions of the BESPA, the BESSDs are permitted for full as well as part commissioning of the Project even prior to the SCD. In case of early part / full commissioning of the Project(s) prior to SCD, Buying Entity may purchase the BESS Capacity at Applicable tariff as per the BESPA, plus TGGENCO's Trading Margin of **INR 0.07 per kWh** of Energy Supplied.
- 1.3 Incentive for Higher Round Trip Efficiency of 85%: BESSD will be liable to receive an amount calculated @ **INR 0.5/kWh** for incremental supply on account of Round-trip Efficiency in excess of 85%.
- 1.4 Not used

## **Article 2. BILLING AND PAYMENT**

### **2.1 General**

The parties acknowledge and accept that the Electricity (Late Payment Surcharge and related matters) Rules, 2022 [here in after referred to as 'Rules'] notified by the Central Government in exercise of the power conferred by Sub-section (1) of Section 176 of the Electricity Act, 2003 shall apply and govern the terms and conditions of this Agreement (BESSA) in regard to matters contained in the said Rules including but not limited to the Late Payment Surcharge, adjustment towards the Late Payment Surcharge, Payment Security mechanism-its operations and consequences, actions of Defaulting Entities, supply obligation of BESSD, power not requisitioned by the Buying Entity, the order of payment and adjustment towards late payment surcharge and indemnification. The above shall apply both in regard to the present agreement as well as on mutatis mutandi and back to back basis to the BESPA. The Rules referred to hereinabove being statutory shall, to the extent applicable, supersede any provisions in this Agreement (BESSA) and BESPA which are inconsistent or contrary to the provisions of the Rules.

Subject to above, from the commencement of availability of BESS Capacity by TGGENCO, the Buying Entity shall pay to TGGENCO the monthly Tariff Payments, on or before the Due Date i.e. within 45 days from date of submission of invoice, in accordance with Tariff as specified in Article 1. All Tariff Payments by the Buying Entity shall be in Indian Rupees.

TGGENCO shall issue to the Buying Entity a signed Monthly Bill on the first business day of the month prepared based on provisional BESS Capacity of the preceding month (except for first month which shall be computed based on Contracted capacity of project as appropriated under this Agreement) and shall also include the following:

- i) Adjustments bill against the Provisional Bills based on availability of BESS Capacity in the preceding months
- ii) Amount payable on account of shortfall in performance requirement as per BESPA
- iii) Late Payment Surcharge if any
- iv) Taxes, duties Levies etc. as applicable

## **2.2 Payment of Monthly Bills**

2.2.1 The Buying Entity shall pay the amount payable under the Monthly Bill on or before the Due Date i.e. within 45 days of presentation of bill within official hours, to such account of TGGENCO, as shall have been previously notified to the Buying Entity in accordance with Article 2.2.2 below.

2.2.2 TGGENCO shall open a bank account at Hyderabad ("TGGENCO's Designated Account") for all Tariff Payments to be made by the Buying Entity to TGGENCO, and notify the Buying Entity of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Buying Entity shall also designate a bank account at Hyderabad. The Buying Entity shall inform TGGENCO the details of such account ninety (90) Days before the dispatch of the first Monthly Bill. TGGENCO and the Buying Entity shall instruct their respective bankers to make all payments under this Agreement to the Buying Entity' Designated Account or TGGENCO's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

## **2.3 Late Payment Surcharge**

In the event of payment of a Monthly Bill by the Buying Entity beyond the Due Date, a Late Payment Surcharge (LPS) shall be payable by the Buying Entity to TGGENCO on the outstanding payment, at the base rate of Late Payment Surcharge applicable for the period for the first month of default. "Base rate of Late Payment Surcharge" means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify.

The Late Payment Surcharge shall be claimed by TGGENCO through the Supplementary Bill. Late Payment Surcharge shall be payable on the outstanding payment beyond 30 days after the Due Date at the base rate of Late Payment Surcharge applicable for the period for the first month of default. The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5percent (50 bps) for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at anytime:

(a) **Regulation of access to defaulting entities** -In case of non-payment of dues by the Buying Entity even after two and half months from presentation of bill by TGGENCO, or in case of default in the payment of installments fixed under rule 5 of the Rules referred in Article 2.1, the power supply to the defaulting entity shall be regulated as follows: -

(1) Short-term access, for sale and purchase of electricity including in the power exchange shall be regulated entirely: Provided that the same shall be also applicable on already approved short-term access: Provided further that the National Load Despatch Centre may, under exceptional circumstances for grid security, temporarily review the regulation of short-term access under this rule, and record the reasons for doing so, in writing.

(2) If, even one month after the regulation of the short-term access or if the dues have remained unpaid for three and a half months, apart from the regulation of the short-term access in its entirety, the long and medium- term access shall be regulated by ten per cent (10%).

(3) Reduction or withdrawal of long-term access and medium-term open access shall be in such manner that the quantum of reduction in drawl schedule increases progressively by ten per cent (10%) for each month of default.

(4) On payment of outstanding dues, the regulation of access under this rule shall end and it shall be restored at the earliest, but not later than two days.

(5) State Load Despatch Centre shall issue detailed procedure to implement the regulation of access according to these rules.

(6) In case of such reduction of drawl schedule, the liability for payment of capacity charges for its original share in TGGENCO as also the inter-state transmission charges shall remain with the regulated entity.

(b) All payments by the Buying Entity to TGGENCO for BESS Capacity procured from it shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.

***Order of payment and adjustment towards Late Payment Surcharge*** - All the bills payable by the Buying Entity to SECI for the energy storage capacity procured from it, shall be time tagged with respect to the date and time of submission of the bill and the payment made by the Buying Entity.

shall be adjusted first against the oldest bill and then to the second oldest bill and so on, so as to ensure that payment against a bill is not adjusted unless and until all bills older than it have been paid for.

- (c) If the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years.

## **2.4 Rebate**

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the TGGENCO to Buying Entity in the following manner

- a) A Rebate of 1.5% shall be payable to the Buying Entity for the payments made within a period of five (5) days of presentation of bills through email.
- b) Any payments made beyond a period of 5 days from the date of presentation of bill through email up to and including 30 days, shall be allowed a rebate of 1%.
- c) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc. and Late Payment Surcharge.

## **2.5 Payment Security Mechanism**

### **(A) Letter of Credit(LC):**

- 2.5.1 The Buying Entity shall provide to TGGENCO, in respect of payment of its Monthly Bills, a single, unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Buying Entity, which may be drawn upon by TGGENCO in accordance with this Article. The Buying Entity shall provide TGGENCO draft of the Letter of Credit proposed to be provided to TGGENCO two (2) months before the Scheduled Commissioning Date.
- 2.5.2 Not later than one (1) Month before the Start of availability of the BESS Capacity, the Buying Utility shall through a scheduled bank at-----, open a Letter of Credit in favour of TGGENCO, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be reviewed after every 12 month for an amount equal to:

- i) for the first Contract Year, equal to 110% of the monthly Tariff Payments;

- ii) for each subsequent Contract Year, equal to 110% of the average of the monthly Tariff Payments of the previous Contract Year.

2.5.3 TGGENCO shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawl in a Month provided that there are no outstanding dues.

2.5.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 2.5.2 due to any reason whatsoever, the Buying Entity shall restore such shortfall within seven (7) days.

2.5.5 The Buying Entity shall cause the scheduled bank issuing the Letter of Credit to intimate TGGENCO, in writing regarding establishing of such irrevocable Letter of Credit and any of the changes therein.

2.5.6 The Buying Entity shall ensure that the Letter of Credit shall be renewed not later than its expiry.

2.5.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by the Buying Entity.

2.5.8 If the Buying Entity fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 2.5.3 and 2.9, TGGENCO may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Buying Entity, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill which has remained unpaid by the Buying Entity;
- ii) a certificate from TGGENCO to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

## **2.6 State Government Guarantee**

The Buying Utility shall extend the State Government Guarantee, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation if any [for the purpose of this clause,



the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges]. The Intermediary Procurer shall ensure that upon invoking this guarantee, it shall at once, pass on the same to the BESSD, to the extent the payments to the BESSD in terms of the BESPA are due.

Provided that, in cases where the Buying Entity is neither covered by Tri-Partite Agreement (TPA) nor is it able to provide the State Government Guarantee, in such cases, Buying Entity will provide Letter of Credit with respect to monthly billing, as per following:

- a) For the 1<sup>st</sup> Contract Year, equal to 2.10 times the amount corresponding to the committed BESSA Capacity as per the BESSA.
- b) For the subsequent years, equal to 2.10 times the average monthly bills of previous year.

It is hereby clarified that the State Government guarantee shall be invoked only after TGGENCO has been unable to recover its dues under the BESSA by means of the Letter of Credit and the Payment Security Fund, if any.

## **2.7 Payment Security Fund**

In addition to provisions contained in Article 2.6 above, the Buying Entity may provide Payment Security Fund, which shall be suitable to support payment of at least 3(three) months' billing, of all the Projects tied up with such fund. The parties agree that proceeds of encashment of PBGs upon default of the BESSD under the respective BESPA shall be passed on to the Buying Utility subsequent to opening of the above Payment Security Fund.

It is hereby clarified that the State Government guarantee shall be invoked only after the TGGENCO has been unable to recover its dues under the BESSA by means of the Letter of Credit and the Payment Security Fund as provided by buying entity.

## **2.8 Third Party Sales by TGGENCO**

- 2.8.1 Notwithstanding anything to the contrary contained in this Agreement, TGGENCO shall be entitled to but not obligated to regulate availability of the BESS Capacity to the Buying Utility in case of Default in making payment by the 15<sup>th</sup> day after the Due Date of the Buying Utility. TGGENCO shall issue the Notice for Regulation of BESS Capacity on the date above and shall give a notice of 15 days to start the

regulation on the 16<sup>th</sup> day thereafter.

2.8.2 Regulation of BESS Capacity would be on pro rata basis i.e., in the ratio of amount due and unpaid to total amount due against the relevant Monthly Bill.

2.8.3 In order to avoid any doubts, it is illustrated that:

2.8.4 In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, TGGENCO would have a right to regulate and sell Buying Utility's allocation of the BESS Capacity to third parties to the extent of 40% (i.e.  $10/25 \times 100$ ). TGGENCO/BESSD shall have the right to divert the BESS Capacity or part thereof and sell it to any third party namely;

- i) Any consumer, subject to applicable Law; or
- ii) Any licensee under the Act;

Provided that such sale of BESS Capacity to third party shall not absolve Buying Entity from its obligation to pay in full to TGGENCO for the obligation for the BESS Capacity as per Schedule-A & B of this Agreement and any other outstanding payment liability of Buying Entity as per this Agreement.

Further, in such case, Buying Entity shall have the unconditional obligation to provide and facilitate all necessary clearances and support for the evacuation and scheduling of BESS Capacity to the third party to whom the BESS Capacity is diverted and further to bear any and all incremental charges and losses including but not limited to application fee, connectivity, open access, ISTS charges & Losses, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, RLDC. These obligations are assumed by the Buying Entity as being necessarily arising out of the failure to off-take BESS Capacity and duly discharge the payment obligation arising there from.

The rights of TGGENCO under this clause is without prejudice to other rights provided under the Agreement.

2.8.5 The amount realized from the diversion and sale of BESS capacity to third party over and above the Applicable Tariff, any charges including open access charges

and other costs shall be adjusted first against the pending liability of the Buying Utility. Deficit if any shall be made good by the Buying Utility.

2.8.6 Sales to any third party shall cease and regular availability of BESS Capacity to the Buying Utility shall commence and be restored within thirty(30) days from the date of clearing all outstanding dues payable to TGGENCO for the BESS Capacity under this Agreement.

## **2.9 Disputed Bill**

2.9.1 If the Buying Entity does not dispute a Monthly Bill raised by the other Party within fifteen (15) days of receiving such Bill shall be taken as conclusive and binding.

2.9.2 If Buying Entity disputes the amount payable under a Monthly Bill it shall pay undisputed amount of the invoice amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

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

2.9.3 If the TGGENCO agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 2.9.2, the TGGENCO shall make appropriate adjustment in the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the Buying Utility and up to and including the date on which such payment has been received as refund.

2.9.4 If the TGGENCO does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 2.9.2 it shall, within fifteen(15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:

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

2.9.5 Upon receipt of the Bill Disagreement Notice by the Buying entity under Article 2.9.4, authorized representative(s) or a director of the board of directors/ member of board of the Buying Entity and TGGENCO shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

2.9.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 2.9.5, the matter shall be referred to Dispute resolution in accordance with governing Laws and Dispute resolution in BESPA.

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

#### **2.10 Quarterly and Annual Reconciliation**

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

2.10.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Buying Utility and TGGENCO shall jointly sign such reconciliation statement. After signing of a reconciliation statement, the TGGENCO shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Except for the Tariff adjustment made during the period from commencement of supply to commissioning of the cumulative awarded capacity/accepted cumulative capacity by TGGENCO, Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had

been made to the invoicing Party or the date on which any payment was originally due, as maybe applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16 of BESP.A.

## **2.11**

2.11.1 Void.

2.11.2 Void.

2.11.3 The provisions of Article 4.4.1 of the BESP.A shall be applicable mutatis mutand is to this Agreement. BESSD, in any Contract Year except for the Contract Year ending on 31<sup>st</sup> March immediately after COD of the Project, shall not be obliged to supply / make available any BESS capacity beyond / over and above Contracted Capacity. After the declaration of UCOD / COD, Charging power for charging of the BESS Capacity shall be scheduled and supplied by the Buying Entity. In no case, Buying Entity shall demand / schedule any energy in excess of 85% of the energy scheduled considering minimum round trip efficiency of the BESS being 85%. Schedule of charging and Discharging will be as per extant regulations / provisions. Further, during a Day, Buying Entity shall not ask for / schedule any BESS capacity / Energy in excess of 2 cycles of charge and discharge of 2 hours each. For an example, in a cycle charge to the rated capacity for 2 hours is permitted which could be a single stretch of 2 hours or multiple stretch having total cumulative time period of 2 hours. Similarly, for discharge, there could be a single stretch of 2 hours or multiple stretch having total cumulative time period of 2 hours subject to condition that total scheduled discharge of energy from BESS as demanded by the Buying Entity shall be limited to 85% of the energy supplied by the Buying Entity.

BESSD shall be liable to pay compensation under the TGGENCO-BESSD to BESP.A for any shortfall in performance requirement of BESS Capacity provided under Article 4.4.2 of the BESP.A from the contracted capacity. The amount of such compensation shall be as determined as per the manner and methodology specified in the BESP.A and such amount shall be passed on to the Buying Entity to offset for all potential costs associated with shortfall in performance requirement under the BESP.A.

The lower limit i.e. min. annual availability of the BESS being 95% i.e., however be relaxable to the extent of grid non-availability for evacuation which is beyond the

control of the SPD(as certified by the SLDC/RLDC).Further, no compensation shall be applicable in case of non-meeting of performance requirement as stipulated in BESPA in events of Force Majeure identified under BESPA with TGGENCO, affecting scheduling of BESS capacity.

2.11.4 Void.

2.11.5 Void.

## **2.12 Payment of Supplementary Bill**

2.12.1 TGGENCO may raise a "Supplementary Bill" for payment on account of:

- i) Change in Law as provided in Article 12 of BESPA, or
- ii) Payment under Article 2.13 and other charges, if any.

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

2.12.2 Buying Entity shall remit all amounts due under a Supplementary Bill raised by the TGGENCO to the TGGENCO's Designated Account by the Due Date.

2.12.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 2.3.

## **2.13 Offtake constraints due to Transmission Infrastructure/ Grid Unavailability & Backdown**

2.12.4 Not used.

2.12.5 Compensation due to reduced off take by the Buying Entity: BESSD shall not be eligible for any compensation in case of Capacity Contract. However, for such cases also, the BESSD shall be liable to receive Applicable Tariff as per the provisions of BESPA and Buying Entity shall make such payment as per provisions of this Agreement.

2.12.6 Void

**Article 3: EVENTS OF DEFAULT AND TERMINATION**

**3.1 Buying Entity Event of Default**

3.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a Buying Entity Event of Default:

- (i) Any amount subject to Article remains outstanding beyond a period of ninety (90) days after the Due Date and TGGENCO is unable to recover the amount outstanding from the Buying Entity through the Letter of Credit, Payment Security Fund and; or
- (ii) The Buying Entity fails to schedule BESS capacity from the Delivery Points for a continuous period of one year.
- (iii) if (a) the Buying Entity becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Buying Entity, or (c) the Buying Entity goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,  
Provided that a dissolution or liquidation of the Buying Entity will not be a Buying Entity Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the Buying Entity and expressly assumes all obligations of the Buying Entity under this Agreement and is in a position to perform them; or
- (iv) the Buying Entity repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from TGGENCO in this regard; or
- (v) except where due to any Buying Entity's failure to comply with its material obligations, the Buying Entity is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the Buying Entity within thirty (30) days of receipt of first notice in this regard given by TGGENCO.

- (vi) Occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Buying Entity.

### ***3.2 Procedure for cases of Buying Entity Event of Default***

- 3.2.1 Upon the occurrence and continuation of any Buying Entity Event of Default under Article 3.1, TGGENCO shall have the right to deliver to the Buying Entity a notice, stating its intention to terminate this Agreement (TGGENCO Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 3.2.2 Following the issue of TGGENCO Preliminary Default Notice, the Consultation Period of sixty(60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 3.2.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 3.2.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the TGGENCO may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Buying Entity.
- 3.2.5 Subject to the occurrence and continuation of default by as contained under Article 3.1 and before expiry of time period of 30 days as per Clause 3.2.4,
- 3.2.6 Subject to the prior consent of the TGGENCO, the Buying Entity shall not vate its part of the BESSA to any third party, including its Affiliates within the period of 210 days beyond the period as per 3.2.4. In this case, the Procurer shall pay amount equivalent to 3(three) months of energy billing based on the declared availability, or balance BESPA, period, whichever is less, for its contracted capacity, with the Project assets being retained by the BESSD, and exit from the BESPA/BESSA.



3.2.7 In the event the aforesaid novation is not acceptable to TGGENCO, or if no offer of novation is made by the defaulting Buying Entity, then TGGENCO on expiry of 30 days as provided in article 3.2.4 may terminate the BESSA and at its discretion require the defaulting Buying Entity to either.

- (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 110% (one hundred and ten per cent) of the adjusted equity to BESSD less Insurance Cover, if any as per BESPA, or
- (ii) pay to the BESSD, damages, amount equivalent to the last 6 (six) months average billing, or balance BESPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the BESSD.

### ***3.3 Termination due to Force Majeure***

If the Force Majeure Event or its effects continue to be present beyond a period of 180 days; either Party shall have the right to cause termination of the Agreement. In case neither party terminates the Agreement under this clause, the Agreement shall stand terminated on the expiry of twelve(12) months of the continuation of the Force Majeure event without any further liability to either Party from the date of such termination unless the parties mutually agree to extend the Agreement for the further period.

### ***3.4 Termination of back to back agreements***

In case of termination of TGGENCO-BESSD, agreement, this Agreement shall automatically terminate to the extent of particular TGGENCO-BESSD capacity, , provided that in case of such termination as identified in this Article any pending monetary liabilities of either Party shall survive on the termination of this Agreement. In the event of termination of BESPA/BESSA, any damages or charges payable to the STU/CTU, for the connectivity of the Project, shall be borne by the entity due to whose failure, the termination was triggered.

#### **ARTICLE 4: MISCELLANEOUS PROVISIONS**

##### **4.1 Amendment**

- 4.1.1 This Agreement may only be amended or supplemented by a written agreement between the Parties, with the approval of the Appropriate Commission, if necessary. Subject to the provisions of the RfS Document and keep this Agreement as principle Agreement, both Parties may execute further Agreement on similar terms and conditions.

##### **4.2 Third Party Beneficiaries**

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

##### **4.3 Waiver**

- 4.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorized representative of such Party:
- 4.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or there linquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

##### **4.4 Confidentiality**

- 4.4.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated here by to third parties, except:
- a) to their professional advisors;
  - b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
  - c) disclosures required under Law without the prior written consent of the other Party.

#### 4.5 Severability

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

4.6

4.7

#### 4.8 Notices

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

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

Address :

Attention :

Email :

Fax. No. :

Telephone No.:

4.8.3 If to TGGENCO, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address below:

Name:	Chief Engineer
Designation:	
Address:	
Email:	
Telephone No	

**4.9 Compliance with Law**

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

- 4.10** The duly executed BESPA between TGGENCO and BESSD shall be attached to this Agreement and shall be read along with Agreement as a composite back to back process for BESS Capacity under the provisions of the Electricity Act, 2003 and the Regulations notified there under.

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

For and on behalf of  
[TGGENCO]

For and on behalf of  
[.....]

Signature with seal

1. Witness

2. Witness

SCHEDULE A  
1. BESPA.

**SCHEDULE B:**

**Details of Successful Projects:**

S.N	Name of Firm	Capacity (MW/MWh)	Charges (INR/MW/Month)	Location (s)

