



தமிழ்நாடு தமில்நாடு TAMILNADU S. ஜெயலக்ஷ்மி

S. ജോഹൻ തിരുക്കു
സീറീസ് പ്രൈസ്

X-509814

மு.நா.மெதுரைனாய்களர்
நீதி மன்றம், நிதாய்வேந்-2,
உரியம் எண்.18/97

Neyveli Lignite Corporation Ltd

A circular stamp with the text "NATIONAL LIBRARY OF THE PHILIPPINES, MANILA" around the perimeter and "11/11/1910" in the center.

**POWER PURCHASE AGREEMENT
FOR**

**FOR
GHATAMPUR THERMAL POWER STATION (GTPS)-1980 MW
BETWEEN
NEYVELI LIGNITE CORPORATION LIMITED,
UTTAR PRADESH RAJYA VIDYUT UTPADAN NIGAM LIMITED
AND
UTTAR PRADESH POWER CORPORATION LIMITED**

THIS POWER PURCHASE AGREEMENT hereinafter called the
"Agreement" entered into at.....L.U.C.K.N.O.W......on the
.....31st.....day of ..D.E.C.E.M.B.E.R.., Two Thousand Ten
.....31...../.....12...../2010) between M/s Neyveli Lignite Corporation Ltd. a
Company incorporated under the Companies Act, 1956, having its registered
Office at "Neyveli House", 135, Periyar E.V.R. High Road, Kilpauk, Chennai,
Tamilnadu-600 010, (hereinafter referred to as "NLC" which expression shall
unless repugnant to the context or meaning thereof include its representatives,
successors and assigns), Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd a
Company incorporated under the Companies Act, 1956 having its registered
Office at 'Shakti Bhawan Extension, 14 – Ashok Marg, Lucknow - 226001 Uttar

Pradesh (hereinafter called 'UPRVUNL' which expression shall unless repugnant to the context or meaning thereof include its representatives, successors and assigns), as parties of the first part; and

Uttar Pradesh Power Corporation Limited, having its Registered/Head Office at Shakti Bhawan, 14, Ashok Marg, Lucknow-226001 (hereinafter referred to as 'UPPCL' or the 'Procurer') which expression shall unless repugnant to the context or meaning thereof include its representatives, successors and Permitted Assigns as party of the **second part**. Each of the parties of the first and second above is individually referred to as a "**Party**" and collectively as the "**Parties**".

WHEREAS NLC & UPRVUNL (hereinafter called 'the Seller') have entered into a Memorandum of Understanding dated 30-11-2010 which is appended herewith and forms a part of this agreement. (Annexure-1)

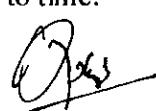
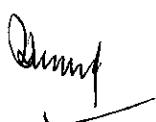
AND WHEREAS the Seller is setting up a coal fired power station named as **Ghatampur Thermal Power Station** (Capacity of 3X660 MW - subject to change after placement of orders for the main plant equipment) in Ghatampur Tehsil of Kanpur Nagar district of Uttar Pradesh State hereinafter specifically referred to as "**Ghatampur TPS**" and generally be referred to as "**Station**" to be owned and operated by a special purpose vehicle (Joint Venture Company "**JVC**" to be incorporated in near future.

And WHEREAS UPPCL or "**the Procurer**" is desirous of purchasing electricity from Ghatampur TPS and the Seller is willing to sell electricity from Ghatampur TPS to the Procurer from the date of commissioning of Unit-I of Ghatampur TPS on mutually agreed terms and conditions mentioned hereunder.

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

1.0 DEFINITIONS

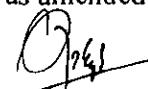
(a) The words or expression used in this Agreement but not defined hereunder shall have the same meaning assigned to them by the Electricity Act, 2003 as amended from time to time, the Rules framed there under and Regulations issued by CERC from time to time.



(b) The words or expressions mentioned below shall have the meanings respectively as assigned hereunder:

- i) Act 2003 The Electricity Act, 2003 as amended or modified from time to time, including any re-enactment thereof.
- ii) Availability As defined in the CERC (Terms and Conditions of Tariff) Regulations, 2009 as amended or replaced from time to time.
- iii) Billing Centre The office/RHQ as intimated by the seller to the Procurer from where the bills will be raised on them.
- iv) Bulk Power Customer(s) Bulk Power Customer(s) in relation to the station shall mean the person(s) including the Procurer to whom capacity is contracted from the station.
- v) Busbars/Ex Bus Busbars of the station to which outgoing feeders are connected.
- vi) CEA Central Electricity Authority
- vii) CERC Central Electricity Regulatory Commission
- viii) CTU Central Transmission Utility
- ix) Capacity Charges Capacity Charges are Fixed Charges as determined by CERC or any other competent authority and shall be paid in proportion to the Contracted Capacity from time to time.
- x) Charges for supply of Electricity Mean and include all charges including the Tariff to be paid by the Procurer/Bulk Power Customer(s) in respect of supply of electricity to them from the Station in accordance with the provisions of this Agreement.
- xi) Commercial Operation Date 'Date of Commercial Operation' or 'COD' in relation to a unit means the date declared by the Seller after demonstrating the Maximum Continuous Rating (MCR) or installed Capacity (IC) through a successful trial run after notice to the Bulk Power Customer(s) and in relation to the generating station the date of commercial operation means the date of commercial operation of the last unit or block of the Station.
- xii) Contracted Capacity Capacity contracted under this agreement by the Procurer /Bulk Power Customer(s) under Article 2.2
- xiii) Due Date 30 days from the date of presentation of bill(s)
- xiv) Effective Date means the date of signing of this Agreement
- xv) GOI Government of India
- xvi) IEGC Indian Electricity Grid Code, as notified by CERC or any other competent authority and as amended from time to time.
- xvii) Incremental Receivables The amount of the Receivables in excess of the amounts which have been charged or agreed to be charged in favour of the Procurer's Financing Parties by way of a legally binding agreement, executed prior to the 'Effective Date', i.e., the date of signing this PPA, provided such charge of the Procurer's Financing Parties shall be limited to the extent of their outstanding exposure (including commitments for exposure) as on the 'Effective Date'.
- xviii) Infirm Electricity Means electricity generated prior to commercial operation of the Unit(s) /Block(s) of the Station.

xix)	JVC	A company to be incorporated and to be owned jointly by Neyveli Lignite Corporation Ltd. and Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited with share equity of 51 : 49 respectively.
xx)	LC	Irrevocable Revolving Letter(s) of Credit.
xxi)	Main and Check meter	Meter for measurement and checking of import/export of energy on the outgoing feeders of the Station Busbars for Energy Accounting.
xxii)	Monthly Bill	Monthly Bill as raised by the Seller as per REA in line with the CERC Regulation as amended from time to time. Provided that periodicity of billing may change as per CERC regulation from time to time.
xxiii)	MOU	Means the Memorandum of Understanding entered between Neyveli Lignite Corporation Ltd and Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited Dated 30-11-2010 for setting up of 2000 MW (3x660) Thermal Power Station at Ghatampur
xxiv)	Party/Parties	Shall have the meaning ascribed thereto in the recital to this Agreement .
xxv)	Permitted Assigns	Have the meaning as per Article 12 of this agreement
xxvi)	Powergrid	Power Grid Corporation of India Ltd.
xxvii)	NRLDC	Northern Regional Load Despatch Centre
xxviii)	NRPC	Northern Regional Power Committee Established under Section 2(55) of the Electricity Act, 2003
xxix)	Regional Energy Account (REA)	Periodic Energy account issued by NRPC/ NRLDC/ UPSLDC including amendments thereof.
xxx)	Scheduled Generation	Scheduled Generation as defined in the CERC (Terms and Conditions of Tariff) Regulations, 2009 as amended or replaced from time to time.
xxxi)	SLDC	State Load Despatch Centre
xxxii)	Station	Have the meaning as given in the recital
xxxiii)	STU	State Transmission Utility
xxxiv)	Supplementary Bill	Have the meaning under the Article 6.1.3
xxxv)	Target Availability	Availability of the Station for recovery of full Capacity (Fixed) Charges on annual basis
xxxvi)	Transmission Licensee	Having the meaning as per Electricity Act 2003
xxxvii)	Tariff	Tariff shall constitute Capacity Charges, Energy Charges, Incentive and other charges viz taxes/cess etc. for supply of electricity from the Station as determined by CERC or any other Competent Authority .
xxxviii)	Third Party(ies)	Any person other than the person to whom electricity is contracted under this Agreement.
xxxix)	Unit	Each Unit of the Station
xxxx)	UI	Unscheduled Interchange as defined in the CERC (Unscheduled Interchange charges and related matters) Regulations, 2009 as amended or replaced from time to time.


2.0 GENERAL

2.1 Installed Capacity:

2.1.1 The capacity of Ghatampur TPS is proposed to be 1980 MW, subject to change after placement of orders for the main plant equipment.

2.1.2 The Station is being developed as Mega Power Project under Mega Power Policy of Govt. of India. One of the conditions of such Mega Power Policy is that the electricity be supplied only to the Bulk Power Customer(s) which agree to comply with the terms and conditions of the Mega Power Policy. In line with the Mega Power Policy, Govt. of UP undertakes to ensure compliance with the provisions of Mega Power Policy.

2.2 Allocation of Capacity

2.2.1 As per the MOU signed between NLC and UPRVUNL, minimum 75% of power from Ghatampur TPS shall be allocated to Uttar Pradesh subject to the approval of Ministry of Power.

2.2.2 Fifteen percent (15%) of the installed capacity of the Station shall be kept unallocated at the disposal of Govt. of India and shall be subject to allocation among the Bulk Power Customers from time to time as per the decision of Ministry of Power, GOI. Out of this unallocated capacity, balance if any, after such allocation by GOI shall be deemed to have been allocated to various Bulk Power Customers in proportion to their allocated shares excluding the provisions at para 2.2.3.

2.2.3 Allocation of balance power from this station shall be made subsequently as decided by the ministry of power.

2.2.4 The allocation made from the Station by GOI or any other competent authority in favour of the Procurer(s) shall be subject to signing of this Agreement, opening of LC and providing appropriate payment security mechanism as provided at Article 6.2 in this Agreement. The Procurer shall draw electricity against the above Contracted Capacity limited to the amount of LC opened and maintained by it. The Seller shall intimate UPSLDC/NRLDC from time to time regarding the quantum of capacity the Procurer is eligible to draw.

3.0 TRANSMISSION/ WHEELING OF ELECTRICITY

3.1 Sale of electricity shall be at the busbars of the Station and it shall be the obligation and responsibility of the Procurer to make the required arrangement for evacuation of electricity from such delivery points of the GTPS.

3.2 For timely and expeditious development of the required transmission system for evacuation of power from the said project to its various beneficiaries Seller shall initially make an application for connectivity and Long -Term Access to the CTU, Power Grid on behalf of the beneficiaries. The Procurer



hereby consents for the seller to make the said application on it's behalf. The Procurer also agrees to subsequently sign all necessary agreements, including Bulk Power Transmission Agreement, with Powergrid/other transmission licensees developing the identified transmission system, corresponding to their share of allocated capacity from the station.

3.3 Charges for utilization of transmission system(s) owned by the Powergrid/other Transmission Licensee for wheeling of the electricity beyond busbar of the Station, shall be paid directly by the Procurer to the Powergrid or the Transmission Licensee as the case may be. The Seller shall not be responsible for payment of such charges.

4.0 SCHEDULING, METERING AND ENERGY ACCOUNTING

4.1 Scheduling

It is understood and agreed by and between the parties that the Seller shall operate the Station as a base load station as per the manufacture's guidelines, applicable grid operating standards, directions of the CERC and relevant statutory provisions, as applicable form time to time. Methodology of generation scheduling shall be as per IEGC and the decisions taken at NRPC forums.

All charges/fees related to scheduling and despatch of electricity shall be borne by the Procurer(s). The Seller shall make declaration of the capacity at the busbars of the Station after taking into account the capability of the Station to deliver Ex-Bus which shall be considered while calculating Declared Capability (DC)

4.2 Declared Capability

Declared Capability or 'DC' means the capability of the Station to deliver Ex-Bus electricity in MW declared by the Station in relation to any period of the day or whole of the day, duly taking into account the availability of coal as per the procedure laid down in IEGC.

Notwithstanding the following, Station shall be deemed as available to the extent of DC declared by the Station for any time period:

- a) Failure on account of Bulk Power Customer(s) to transmit and wheel electricity form the Station Ex-Bus.
- b) Any other reason not attributable to the Seller restricting scheduling and despatch of capacity at the Station Ex-Bus.

4.3 Metering

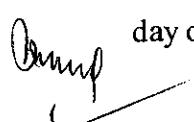
- 4.3.1 A set of main and check meters of 0.2S accuracy class, as per CEA (Installation & Operation of meters) Regulations 2006/IEGC as applicable, shall be installed by CTU/STU on all outgoing feeders of the Station. The Procurer shall make all necessary arrangements for installation of meters of required accuracy and specifications, at all its drawal points.
- 4.3.2 The Main and Check Meters shall be checked jointly at the time of installation as per CEA (Installation & Operation of Meters) Regulations 2006.
- 4.3.3 Data shall be downloaded from the meters at regular intervals as decided by NRPC/NRLDC for preparation of the REA/UI account.
- 4.3.4 Regular cross checking and analysis of meter readings and meter failures or discrepancies shall be reckoned as per CEA (Installation & Operation of Meters) Regulations 2006. If the Main Meter is found to be not working at the time of meter readings or at any other time, the seller shall inform the CTU/NRLDC of the same.
- 4.3.5 In case of failure of meters, energy/UI accounting for the period shall be as per procedure laid down by CERC or as per the mutually agreed procedure in NRPC. In case of absence of any such procedure, the following procedure shall be followed.

In case of failure of Main Meter, readings of Check Meter for the corresponding period shall be considered for energy/UI accounting. If both the Main and Check Meter(s) fail to record or if any of the PT fuses is blown out, energy shall be computed based on standby meters. In case of dispute, the decision of Member Secretary of the NRPC would be final and binding.

- 4.3.6 Periodic testing of both Main and Check Meters shall be carried out in the presence of representatives of the Seller and the Procurer as per procedure laid out in CEA (Installation & Operation of Meters) Regulations 2006. For any testing and/or replacement, notice of seven (07) days will be given.

4.4 Energy Accounting

- 4.4.1 Both the parties agree to facilitate issue of Regional Energy Accounts by 1st day of every month.



4.4.2 Regional Energy Account issued by NRPC/NRLDC/UPSLDC or any other Competent Authority shall be binding on all the parties for billing and payment purposes.

4.4.3 Any change in the methodology of Regional Energy Account shall be done only as per the decisions taken in the NRPC forums and both the Parties agree to abide by the methodology so finalized.

5.0 TARIFF

5.1 Terms and Conditions:

5.1.1 The Tariff for the electricity supplied from the Station would be as determined by CERC or any other Competent Authority from time to time.

5.1.2 Tariff for sale of electricity from the Station shall comprise of Capacity Charge, Energy Charge, Incentive and all other taxes/charges.

5.1.3 Adhoc Tariff

The Seller shall approach CERC or any other Competent Authority for determination of Provisional Tariff before Commercial Operation Date of any unit of the Station. In case this Tariff is not determined for any reason by CERC or such other competent authority prior to commencement of commercial operation of such unit of the Station, billing shall be done on adhoc basis as per the proposal of the Seller submitted to CERC for Provisional Tariff and the Parties agree that the Buyer shall duly pay 95% of such adhoc tariff pending determination of such Tariff by CERC or any other competent authority, subject to adjustment based on applicable rate as per CERC Regulations as and when such Tariff is determined by CERC or any other competent authority.

5.2 Sale of Infirm Electricity:

Infirm electricity, i.e., sale of electricity prior to commercial operation of the unit, will be treated by the Seller based on methodology as notified by CERC or any other competent authority from time to time.

5.3 Taxes, Levies, Duties, Royalty, Cess etc.:

5.3.1 Tax on income

Tax on the income derived from generation of electricity shall be treated as per regulations of CERC or any other competent authority as applicable from time to time.

Omprakash

Omprakash

Dinesh

5.3.2 Other Taxes, Levies, Duties, Royalty, Cess etc.:

Statutory taxes, levies, duties, royalty, cess or any other kind of levies imposed /charged by any Government (Central/ State) and/or any other local bodies/authorities on generation of electricity including auxiliary consumption or any other type of consumption including water, environment protection, sale of electricity and/or in respect of any of its installations associated with the Station payable by the Seller to the authorities concerned shall be governed by the Regulations/Orders of CERC/ Appropriate Govt./Local Bodies from time-to-time.

6.0 BILLING AND PAYMENT

6.1 Billing:

The Charges for Supply of Electricity under this Agreement shall be billed by the Seller as determined from time to time by Central Electricity Regulatory Commission and/or any other Competent Authority and the same shall be paid by the Procurer in accordance with the following provisions:

- 6.1.1 The Seller shall present the bills for electricity supplied to the Procurer from the Station for the previous month based on Regional Energy Account issued by NRPC/NRLDC/UPSLDC or any other competent Authority.
- 6.1.2 Billing Centre of the Seller shall carry out billing and associated functions. The Seller would submit the bills to the Officer nominated by the Procurer.
- 6.1.3 The Monthly Bill for the Station shall include the Charges for Supply of Electricity under this Agreement, income tax, other taxes, duties, cess etc including additional bill(s) for the past period(s) on account of orders of CERC/Appellate Tribunal for Electricity/Other Courts/other Competent Authority(ies). If for any reasons some of the charges which otherwise are in accordance with this Agreement, cannot be included in the main Monthly Bills, such charges shall be billed as soon as possible through supplementary Bill(s).
- 6.1.4 The Procurer shall arrange payment of such Monthly Bill(s)/ Supplementary Bill(s) raised as per orders/ regulations of CERC or such other competent authority, promptly on presentation through electronic fund transfer or other mutually acceptable instrument(s) at the designated account of the Seller.

Deputy *Opas* *Jasraj*
The date of transfer of fund to the Seller account shall be considered as the

date of payment for computation of rebate or late payment surcharge in respect of such payment. The bill(s) of the Seller shall be paid in full subject to the condition that

- i) there is no apparent arithmetical error in the bill(s)
- ii) the bill(s) is/are claimed as per the notified/agreed tariff.
- iii) they are in accordance with the Regional Energy Accounts issued by NRPC/NRLDC/UPSLDC or any other Competent Authority.

6.1.5 All payments made by the Procurer in case of over-delay (after due-date), the payment shall be appropriated by the Seller for amounts due from the Procurer in the following order of priority.

- i) towards earlier over delayed bill(s) (bills outstanding beyond surcharge period), if any ;
- ii) towards Late Payment Surcharge, payable if any, as intimated by the Seller to be settled within 30 days from the date of intimation of the Surcharge Amount; and
- iii) towards statutory dues like income tax, other tax, royalty etc., in the current bill(s)
- iv) towards other charges in current Monthly Bill.

6.1.6 In case the Procurer disputes any amount even then, it shall pay 95% of the disputed amount forthwith and file a written objection with the Seller within 30 days of presentation of the bill, giving following particulars:

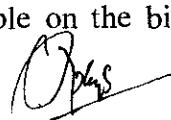
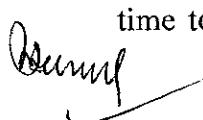
- i) Item disputed, with full details/data and reasons of dispute
- ii) Amount disputed against each item.

Provided that non-acceptance of tariffs determined /approved by CERC or any other Competent Authority shall not be a valid ground for dispute.

6.1.7 The amount of excess/shortfall with respect to the said 95% payment based on finally determined amount in line with Article-7 shall be paid/adjusted with the applicable interest from the date on which the amount in dispute was payable/refundable.

6.1.8 Rebate and Late Payment Surcharge

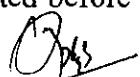
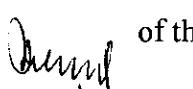
Rebate and Late Payment Surcharge shall be as per Terms and Conditions of Tariff issued by CERC or any other competent authority as applicable from time to time. No rebate shall be payable on the bills raised on account of



taxes, duties, royalty/cess etc., but subject to orders of the Competent Authorities.

6.2 Establishment of Letter of Credit (LC) and Payment Security Mechanism:

- 6.2.1 The Procurer shall establish an irrevocable revolving Letter of Credit (LC) in favour of the Seller with a public sector / scheduled commercial bank (as per list supplied by the Seller) at least one month prior to the commencement of electricity supply from the Station.
- 6.2.2 The LC shall cover 105% of one month's estimated billing in respect of electricity supplied from the Station to the Procurer. This shall be in addition to the obligation of the UPPCL to establish similar letters of credit for supply of electricity to the Procurer from all other generating Stations of the Seller, if any.
- 6.2.3 The amount of LC shall be reviewed each half –year commencing April and October in each financial year on the basis of the average of billing of previous 12 months and the LC amount shall be enhanced/reduced accordingly not later than 1st July and 1st January.
- 6.2.4 The LC shall be established for a minimum period of one year. The Procurer shall ensure that LC remains valid at all times during the entire/extended validity of this Agreement. LC shall be renewed not later than 30 days prior to expiry.
- 6.2.5 LC shall specify the manner and dates when Monthly and Supplementary Bill(s) can be presented to Bank by the Seller. The bills raised as per orders/regulations of CERC or such other competent authorities, so presented by the Seller to the Bank shall be promptly paid on their presentation through Electronic Fund Transfer or other mutually acceptable instrument(s). In case of non receipt of any part of Monthly and Supplementary Bill(s) on Due Date, LC shall be operated on the same day for unpaid portion of Monthly and Supplementary Bill(s).
- 6.2.6 All costs relating to LC including opening, maintenance and negotiation charges, shall be borne by the Procurer.
- 6.2.7 In case of drawl of the LC amount by the Seller in accordance with the terms of this Article, the LC shall be reinstated before next Due Date.



6.2.8 After the Effective Date, on a date mutually agreed between the seller and the procurer, the Procurer and the Seller shall execute separate '**Default Escrow Agreement**' (referred as "**Escrow Agreement**") for the establishment and operation of an Escrow Account in favour of the Seller, through which the revenues of the Procurer shall be routed and used as per the terms of the Escrow Agreement. The Procurer and the Seller shall contemporaneous with the execution of the Escrow Agreement enter into a separate '**Agreement to Hypothecate Cum Deed of Hypothecation**', whereby the Procurer shall agree to hypothecate, to the Seller, effective from sixty (60) days prior to the scheduled date of commercial operation of the first Unit, the Incremental Receivables to the extent as required for the Letter of Credit as per Article 6.2.2 and 6.2.3 routed through the Escrow Account in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation.

Provided that the Procurer shall ensure that the Seller has first ranking floating charge with superior charge for the banker issuing LC in favour of the Seller on the revenues routed through the Escrow Accounts on the 'Incremental Receivables' in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation.

If the LC is insufficient to pay for the due payments to the Seller or is not replenished as per the clause No. 6.2.7 then from the date such shortfall in the Letter of Credit occurs, then the Letter of Credit shall be replenished in the manner specified in the Escrow Agreement.

6.2. 9 Third Party Sales

In case of a default in payment and or establishment of LC as required under this Agreement or non-restoration of Escrow arrangement for the requisite amount for whatsoever reason as per Article 6.2.8 the Seller shall be entitled to without prejudice to its other rights, exercise the option to sell whole or any part of the capacity allocated to the Procurer to Third Party /Parties at the risk and cost of the Procurer immediately thereafter in the manner herein below.

In case payment is not made by the Due Date either directly or through LC, the Seller shall have the right to regulate with effect from the date worked out

as per prevailing order of CERC on Generic Procedure for Regulation of Power Supply and sell up to 25% of the allocated capacity to third party/parties and increase the same by 25% for each week of default thereafter.

Sale to Third Party/Parties would be subject to the following conditions:

The surplus revenue recovered over Energy Charge, Incentive, Taxes. Duties and other administrative charges attributable to such electricity sold shall be adjusted as under.

- a) The surplus upto the Capacity Charges for the corresponding period shall be used towards extinguishment of the subsisting outstanding capacity charge payment liability of the Procurer towards the Seller; and
- b) The surplus, if any, above the Capacity Charges for the corresponding period shall be retained and appropriated by the Seller.

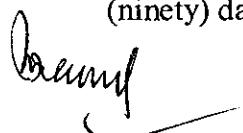
Provided that supply to the procurer will be restored within fifteen (15) Days from setting right the default.

It is clarified that the above arrangement shall not be construed as relieving the Procurer of any of its obligations to the Seller including obligation of payment of Capacity Charges to the extent not covered under above mentioned Article 6.2.8 and arrears, if any.

For the removal of any doubt it is clarified that in case of default, the Procurer shall continue to be liable to pay the Capacity Charges in proportion to its Contracted Capacity during the period of regulation/diversion of capacity or till the capacity is re-allocated to other Bulk Power Customer(s)/Third Party (ies), subject to the adjustment as per Clause No.6.2.9(a) and (b).

7.0 SETTLEMENT OF DISPUTES

- 7.1 All differences or disputes between the parties arising out of or in connection with this Agreement shall be mutually discussed and resolved within 90 (ninety) days.



7.2 Arbitration

7.2.1 In the event that the parties are unable to resolve any dispute, controversy or claim relating to or arising under this Agreement, as stated above, the same shall be dealt as per the provisions of the Electricity Act 2003.

8.0 FORCE MAJEURE

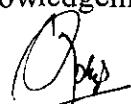
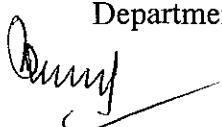
Neither party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to force majeure events such as war, rebellion, mutiny, civil commotion, riot, strike, lockout, forces of nature, accident, act of God or any other such reason beyond the control of concerned party. Any party claiming the benefit of this clause shall reasonably satisfy the other party of the existence of such an event and give written notice within a reasonable time to the other party to this effect. Generation/ drawal of power shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist.

9.0 IMPLEMENTATION OF THE AGREEMENT

All discretions to be exercised and directions, approvals, consents and notices to be given and actions to be taken under these presents unless otherwise expressly provided herein, shall be exercised and given by the signatories to this Agreement or by the authorised representative(s) that each party may nominate in this behalf and notify in writing to the other party by Registered Post. Any other nomination of authorized representative(s) shall be informed likewise in writing to/by the Procurer within one month of signing of the Agreement. Notwithstanding any nomination, the "Chief Executive Officer" of the Seller or their authorized representatives shall be authorized to act severally for and on behalf of the Seller.

10.0 NOTICE

All notices required or referred to under this Agreement shall be in writing and signed by the respective authorized signatories of the parties mentioned herein above, unless otherwise notified. Each such notice shall be deemed to have been duly given if delivered or served by registered mail/ speed post of Department of Posts with an acknowledgement due to the other parties in



terms of **IMPLEMENTATION OF THE AGREEMENT** at Article 9 above.

10.1 SUBSTITUTION

✓ After the formation of the JVC, the said JVC shall step into the shoes of seller and shall be bound by this PPA

11.0 EFFECTIVE DATE AND DURATION OF AGREEMENT

11.1 The Agreement shall come into effect for all purposes and intent from the date of signing of the Agreement. Subject to the establishment and continuation of Payment Security as envisaged under Article 6.2, this Agreement shall remain operative upto completion of twenty five (25) years from the date of commercial operation of last unit of the Station, unless it is specifically extended on mutually agreed terms.

11.2 Notwithstanding anything contained in this agreement upon occurrence of the following events as enumerated below, the Seller shall have the right to terminate this agreement with immediate effect by delivering a notice of Termination:

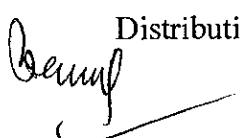
If (a) any petition for winding up of the Procurer has been admitted and ordered to be published in accordance with Company Court Rules or a resolution is passed for the winding up of the Procurer; or

b) a receiver is appointed or attachment is levied on the whole or a material part of the assets of the Procurer and the same is not removed within a period of ninety (90) days from the date of the order appointing such receiver, or the date attachment is levied, as the case may be.

11.3 In the event of Termination of the Agreement under 11.2, the liability of the Procurer to make payment for capacity charges shall cease forthwith except for the liabilities accrued up to the effective date of such termination.

12.0 SUCCESSORS AND PERMITTED ASSIGNS

In such case where the functions of the Procurer are reorganized and/or this Agreement is assigned to other organization(s)/agency(ies)/ partly or wholly, the Agreement shall be binding mutatis mutandis upon the successor Distribution/Trading organization(s)/agency(ies)/entities and shall continue to



remain valid with respect to the obligations of the successor organization(s)/agency(ies)/entities.

UPPCL shall ensure that the agreements namely "Escrow Agreement" and "Agreement to Hypothecate Cum Deed of Hypothecation" as mentioned at Article under **6.2 Establishment Of Letter Of Credit (LC) and Payment Security Mechanism** are signed by the assignee before assignment of this Agreement failing which the Seller shall have the right to terminate this Agreement. In the event of termination of this Agreement the procurer shall be liable and continue to pay the Capacity Charges each month till firm arrangement for sale of the Procurer's share with alternate customers substituting the Procurer is tied up.

IN WITNESS WHEREOF the parties have executed these presents through their Authorized Representatives on the date mentioned above,

For and on behalf of the Procurer,
**Uttar Pradesh Power Corporation
Limited**

(नन्द लाल)
निदेशक (वाणिज्य)
उपग्रो पावर कारपोरेशन लिं
शक्ति भवन, 14-अशोक मार्ग, लखनऊ

For and on behalf of the Seller,
(1) Neyveli Lignite Corporation Limited

I. S. SASIARUL RAZI
GENERAL MANAGER
NEYVELI LIGNITE CORPORATION
LTD

WITNESS

- 1.
- 2.

WITNESS

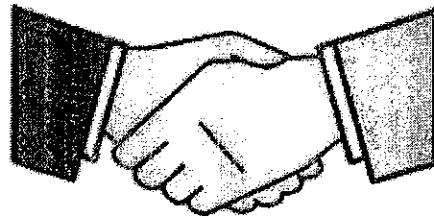
1.
N. R. RATNAMASABAPANY
CE / Commercial
2.
31/12/2010 EELC
(AHMAD HUSAIN)
**(2) Uttar Pradesh Rajya Vidyut Utpadan
Nigam Limited**

2.

WITNESS

1.
R. SHYAM L. EELC

ANNEXURE - 1



MEMORANDUM OF UNDERSTANDING
BETWEEN
NEYVELI LIGNITE CORPORATION LIMITED
AND
UTTAR PRADESH RAJYA VIDYUT UTPADAN
NIGAM LIMITED

30th November, 2010

A handwritten signature in black ink, appearing to read 'P. J. S.' or a similar name, positioned below the date.

A handwritten signature in black ink, appearing to read 'K.' or a similar name, positioned to the right of the date.

उत्तर प्रदेश UTTAR PRADESH

AM-489313

MEMORANDUM OF UNDERSTANDING

2010

This Memorandum of Understanding (hereinafter referred to as "MOU") entered into on this **thirtieth** day of **November, 2010** by and between:

A. M/s. Neyveli Lignite Corporation Limited, a Company incorporated under the Companies Act, 1956 and having its Registered office at 'Neyveli House' No.135, Periyar E.V.R. High Road, Kilpauk, Chennai – 600 010, under the administrative control of the Ministry of Coal, Govt. of India (hereinafter referred to as "NLC" which expression shall unless the context requires otherwise, include its successors) of the **First Part**.

and

B. The Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited, a Company incorporated under the Companies Act, 1956 and having its registered office at 'Shakti Bhawan' Extension , 14-Ashok Marg, Lucknow – 226 001 in the State of Uttar Pradesh, (hereinafter referred to as "UPRVUNL" which expression shall unless the context requires otherwise, include its successors) of the **Second Part**.

NLC and UPRVUNL are hereinafter individually referred to as the "**Party**" and collectively as "**Parties**"

Memorandum of Understanding

1

WHEREAS:

- a. Uttar Pradesh Government has invited NLC to set up a coal based power plant jointly with UPRVUNL. NLC has agreed in principle for the same during high level meeting held between NLC and UPPCL/UPRVUNL on 07.02.2008 at Lucknow.
- b. NLC, having vast experience in lignite mining, installation and operation of Thermal Power Plants and necessary financial capability, has agreed to form a Joint Venture Company with UPRVUNL to put up a coal based thermal power project in the State of Uttar Pradesh with suitable Power Purchase Agreement (PPA) with Uttar Pradesh Power Corporation Limited (UPPCL) / Uttar Pradesh Power Transmission Corporation Limited (UPPTCL)/Distribution Companies (UPDISCOM(s)) and / or any other bulk consumers for supply of power from the project.
- c. UPRVUNL, having longstanding experience in installation and operation of Power Plants in the State of Uttar Pradesh and also having necessary financial capability has agreed to participate with NLC in the above proposal.
- d. An understanding has been reached among the Parties to enter into an MOU to form a Joint Venture Company (hereinafter referred to as "JVC") to build, own and operate a coal based Thermal Power Project of 2000 MW capacity in the State of Uttar Pradesh (hereinafter referred to as 'Project') subject to techno – commercial feasibility to be established and tie up of adequate funding arrangements with Banks /Financial Institutions(FI (s)) / Govt. of India / Govt. of Uttar Pradesh etc. and also to pursue other related activities.
- e. For the aforesaid purpose, the Parties agree to sign these presents on mutually agreed terms and conditions mentioned hereunder:

NOW THEREFORE THIS MEMORANDUM OF UNDERSTANDING (MOU) WITNESSTH' AS FOLLOWS:

1. INTENT:

a. Parties intend to promote a JVC, subject to approvals by respective Boards / Governments and Ministry of Coal (MOC), wherever required, to build, own, operate and maintain a coal based thermal power project of 2000 MW capacity in Ghatampur Tehsil of Kanpur Nagar District or at any other suitable place in Uttar Pradesh (hereinafter referred to as "JVC"), subject to establishment of techno-commercial viability, availability of land and water ,tie-up for fuel, funding,off-take of power and necessary clearances/State Government Approvals and Power Purchase Agreement (PPA) in place.

Memorandum of Understanding

- b. Subject to establishment of techno-commercial viability of the Project and investment approval by the Parties, a Joint Venture Agreement (JVA), on mutually agreed terms shall be signed by and between the Parties hereto and thereafter the Memorandum of Association (MOA) and Articles of Association (AOA) of the JVC shall be finalized in the line with the provisions of the JVA.
- c. JVC shall be formed and incorporated under the Companies Act, 1956 as a Private Limited Company for the purpose of establishment, operation and maintenance of the Project.
- d. Power generated by the Project shall be made available by the JVC at the bus bars of the Project for off-take by Uttar Pradesh Power Corporation Limited (UPPCL)/Uttar Pradesh Power Transmission Corporation Limited (UPPTCL)/UPDISCOM(S).

Minimum 75% of power from this Project shall be allocated to Utta Pradesh, subject to the approval of the same by Ministry of Power, Govt. of India (MOP), for which UPRVUNL shall apply to MOP. Allocation of balance power from this Project shall be made subsequently as decided by the Ministry of Power (MOP).

- e. NLC shall always have the management control of JVC.
- f. The JVC shall have its professional management headed by a Chief Executive Officer (CEO). NLC shall always have the right to nominate the CEO. CEO who shall not be the Member of the Board shall always be nominated by NLC and appointed by the Board of Directors of the JVC (hereinafter referred to as 'Board'). The CEO shall be responsible for day-to-day management and operations of the JVC and compliance of Statutory and other requirements. The CEO shall function subject to the supervision and control of the Board.

The Board shall delegate to the CEO such powers and authorities as would enable him to have operational autonomy in the day-to-day management of business and affairs of the company and in like manner may withdraw or annul any such power and/ or authority as may be considered necessary.

g. Board of Directors: JVC shall be managed by its Board of Directors. The Board shall be responsible for the overall functioning of the JVC.

2. PROJECT DEVELOPMENT METHODOLOGY:

a. Parties shall jointly prepare a Project Development Schedule (PDS) for establishing the Project and Parties shall ensure to adhere to the schedule.

Memorandum of Understanding

- b. NLC shall prepare Feasibility Report and Environment Impact Assessment study report etc for obtaining sanction of GOI. JVC shall also undertake construction and commissioning of power plant within the planned time schedule. Pending formation of JVC, NLC in coordination with UPRVUNL, will initiate and carry out project development activities keeping in view the above schedule.
- c. JVC shall acquire the land for the Project and UPRVUNL will endeavour its best to ensure with the help of Government of UP, acquisition of the required land for setting up of this Project and transfer and hand over of physical possession to the JVC free from all encumbrances and charges etc.
- d. UPRVUNL shall assist JVC in getting allocation of adequate quantity of water required for the power plant during construction & operation phases from the Yamuna river from the concerned authorities of Government of Uttar Pradesh.
- e. UPRVUNL shall co-ordinate with UPPCL/UPPTCL to ensure timely availability of start-up power (for construction & lighting) & Associated Transmission System (ATS) readiness, matching with the project construction schedule for evacuation of power from the project.
- f. The JVC shall identify suitable coal blocks from nearby Singrauli coalfield or any other nearby coalfield for supply of coal to the Project and enter into a Fuel Supply Agreement (FSA) with the coal supplier for getting reliable and continuous supply of coal to the Project. FSA shall be prepared by NLC and UPRVUNL on mutually agreed terms.
- g. NLC/JVC shall obtain such statutory and non-statutory clearances, as may be required for the Project, from concerned authorities and regulatory bodies. UPRVUNL shall assist JVC in getting all statutory and non-statutory clearances required for the Project. UPRVUNL shall with the help of Govt. of U.P. ensure prompt issue all NOC/ letters of comfort to the JVC, as may be required for the Project and render necessary as well as timely support to JVC for successful implementation of the Project.
- h. The Board of Directors of JVC shall be nominated by NLC & UPRVUNL in proportion to equity share capital held by them.
- i. JVC will implement the Project as a 'Mega Power Project' so as to avail concessions extended by Government of India, also as 'Clean Development Mechanism (CDM) Project' to earn Carbon Credit.

Memorandum of Understanding

3. PROJECT DEVELOPMENT EXPENDITURE:

- a. Both the Parties will bear all costs and expenses towards feasibility & other studies obtaining approvals / clearances and other associated/ incidental charges / expenses related to the project development activities till the formation of JVC in the ratio of equity participation. Such costs and expenses shall form part of the Project cost and it shall be reimbursed to the respective Parties by JVC after its incorporation or adjusted against the equity contribution of respective parties.
- b. All expenses incurred by the Parties on their employee costs, travel and incidental expenses towards the formation of the JVC shall be borne by the Parties.
- c. It is specifically agreed between the Parties that there shall be no financial liability whatsoever under these presents, save and except as provided herein above.

4. FINANCING OF PROJECT:

- a. JVC shall adopt the "Project financing" route for setting up the Project on a non-recourse basis.
- b. In line with the standard practice as per CERC norms, the Project shall be financed at a Debt/Equity ratio of 70:30.
- c. The Parties, NLC and UPRVUNL, agree to determine the authorized paid-up capital of the JVC through a detailed planning process preferably as under:

Neyveli Lignite Corporation Limited. : 51 % and

Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited. : 49 %

- d. Parties agree and undertake to subscribe towards the Paid- up Share Capital of the JVC based on agreed proportion.

5. OPERATION & MAINTENANCE (O&M) OF PROJECT:

For the initial period of 2 to 3 years or till such time as the JVC develop their requisite expertise/expert manpower to take over O&M of the Project, NLC shall operate and maintain the Project on behalf of JVC, through an O&M contract, which shall be separately executed between NLC and JVC on mutually agreed terms.

Memorandum of Understanding

6. CONFIDENTIALITY:

- a. The Parties, to the extent of their respective rights to do so, shall exchange such technical information and data as is reasonably required of each Party to perform its responsibilities under this MOU. Each party agrees to keep in confidence and to use the same degree of care as it uses with respect to its own proprietary data to prevent the disclosure to third parties of all technical information, data and confidential business information (hereinafter referred to as "Data")
- b. Exchange, use and maintenance of confidential Data shall be mutually discussed and agreed to by the Parties.

7. SALE OF POWER

- a. Upon commissioning of the Project, the power generated by the Project shall be made available by JVC at the bus bars of the Project to UPPCL/UPPTCL/UPDISCOM(s) in Uttar Pradesh and or any other bulk consumers who will guarantee off-take of power subject to the approval of Ministry of Power, Govt. of India. However, JVC shall have right to supply surplus power not requisitioned by UPPCL/UPDISCOM (s) to others in the open market.
- b. JVC shall prepare and enter into Power Purchase Agreement (PPA) with UPPCL / UPPTCL /UPDISCOM(s) and / or any other bulk consumers for supply of power from the Project. PPA shall have appropriate payment security mechanism and other terms and conditions to ensure timely payment for the power purchased from the Project subject to approval of the appropriate Regulatory Commission. The detailed terms and conditions including pass through provisions and return on equity as per the appropriate Regulatory Commission notification and guidelines shall be set out in the PPA.
- c. The tariff for the electric power sold from the Project will be decided in accordance with the norms / parameters/guidelines / notifications issued by appropriate Regulatory Commission from time to time and any amendments/modifications thereto.
- d. UPRVUNL shall co-ordinate with UPPCL / UPPTCL to ensure outgoing transmission lines are constructed, maintained and made available from the switchyard and terminal bays and switchgears at the receiving end sub-station, matching with the Project completion schedule, to ensure that the Project/JVC does not suffer in any way. The provision of evacuation and sale of power shall be subject to the regulation of the appropriate Regulatory Commission.

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8. REPRESENTATION AND WARRANTIES:

Neither Party shall have the right **or** power to bind the other Party to any agreement without the prior written consent of the Party concerned. Unless specifically agreed in writing, no Party is authorized to make commitments, representations, warranties or agreements on behalf of the other Party and each Party agrees that it will not hold itself out as having such authority. If any Party acts in violation of the foregoing the said Party agrees to indemnify, defend and hold the other Party harmless from and against any and all claims, demands, losses, damages, liabilities, law suits and other proceedings, judgments and awards, the reasonable cost and expenses, (including, but not limited to reasonable attorneys' fee) arising directly or indirectly, in whole or in part, out of the breach of this clause by such Party, whether committed by the indemnifying Party, its employees, agents or successors.

9. LIMITATION OF LIABILITY:

Neither Party shall be liable to each other for any financial liability or any consequential loss incurred by the Party individually in respect of the Project.

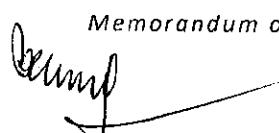
10. ASSIGNMENT:

Neither Party shall have the right to assign its rights and obligations under this MOU to the third party.

11. SETTLEMENT OF DISPUTES AND ARBITRATION:

In the event of any difference/ dispute arising between the Parties hereof under these presents, such dispute/ difference shall in the first instance, be resolved amicably by mutual consultations within 45 days of the reference of dispute by any party.

If amicable settlement is not reached between the Parties in respect of any matter arising out of and relating to this MOU then such unresolved dispute/difference shall be resolved finally by referring to arbitration to a Sole Arbitrator to be appointed by mutual consent in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The Sole Arbitrator shall conduct the arbitration and



Memorandum of Understanding

give reasoned award. The award of the Sole Arbitrator shall be final and binding. The venue of the Arbitration shall be Lucknow. The language of arbitration shall be in English. The cost of arbitration shall be shared equally.

12. GOVERNING LAWS & JURISDICTION:

This MOU shall be governed by the laws of India and the rules framed there under. The civil Courts at Lucknow shall have exclusive jurisdiction in all matters relating to or arising out of this MOU.

13. NOTICE:

Any notice to be given under this MOU shall be in writing and shall be deemed to have been duly and properly served upon the Parties hereto if delivered against acknowledgement or by registered mail with acknowledgement due, addressed to the Parties herein at the following addresses or such changed addresses as will be duly notified by the Parties from time to time.

Address

Attention: Designated officer

M/s. Neyveli Lignite Corporation Ltd.,
Corporate Office, Block-1, Neyveli - 607801,
Cuddalore District, Tamil Nadu.
Tel No.04142 - 252280 and Fax No.04142 - 252646

Attention: Designated officer

M/s Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd.
Shakti Bhawan, 14 Ashok Marg
Lucknow – 226 001
Uttar Pradesh
Phone # 0522-2287870
FAX # 0522-2287844

14. VALIDITY OF MOU

Unless otherwise decided by the Parties, this MOU will be replaced by Joint Venture Agreement on its execution. The MOU may be terminated in the event of failure of any Party to fulfill the terms and conditions of the MOU substantially

Memorandum of Understanding

vitiating the intents and purpose thereof, by giving three months notice in writing but only after one year of the signing of this MOU. Further, during this period the MOU can be terminated by mutual consent of the Parties if it is jointly agreed that due to certain insurmountable reasons it is not possible to proceed further with the Project. Any notice for termination of the MOU after expiry of the one year period may be delivered by hand or sent by first class airmail delivery / courier at the address specified above for each party and if posted shall be deemed to have been served seven days after posting. During this one year period from the date of signing of MOU, any one of the Parties shall not enter into negotiations with any other private or public entity without the written consent of the other Party relating to the construction, ownership and operation of the Project at that site.

15. EFFECTIVE DATE:

This MOU shall come into force as soon as it is signed for all purposes and intents,

16. AMENDMENT:

This MOU may be amended by mutual consent in writing.

IN WITNESS WHEREOF, the parties hereto have signed this Memorandum of Understanding at LUCKNOW on the date first mentioned above in the presence of witness mentioned hereunder.

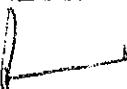
For and on behalf of Neyveli
Lignite Corporation Limited


(A. R. ANSARI)
Chairman cum Managing Director

For and on behalf of Uttar Pradesh
Rajya Vidyut Utpadan Nigam Limited

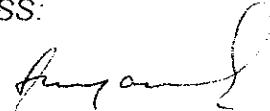

(NAVNEET SEHGAL)
Chairman & Managing Director

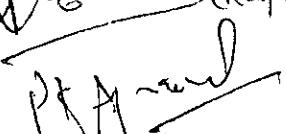
WITNESS:

1. 
(C.R. KANDASAMY)

2. P. Vedhagiri
CCM/PEBD

WITNESS:

1. 
(Raj Kamal Gupta)

2. 
(P.K. AGRAWAL)