

**IMPLEMENTATION AND TRANSMISSION  
SERVICE AGREEMENT**

**Between**

**Bihar State Power (Holding) Co. Ltd.**

**and**

**Bihar Grid Company Limited**

*For*

**Intra-State Transmission Projects in the State of Bihar**

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## SCHEDULES

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AND WHEREAS:

For construction of various projects, of Intra-State Transmission System in Bihar hereinafter referred to as Transmission Line Projects (TLP) which shall be implemented as stated hereunder:

- a) BGCL shall built, own, operate and maintain (BOOM) transmission elements in such timeframe that may be approved from time to time by its Board/BERC.
- b) BGCL has agreed to make available the entire transmission capacity of Project to BSP(H)CL on a commercial basis subject to the conditions of this Agreement for transmitting electric power in the State of Bihar as per regulations of BERC.

BSP(H)CL can use TLPs for their own requirement or make available to other IPPs/users in Bihar for using these TLPs for transmitting of power on commercial basis,

- c) BSP(H)CL agrees to take the entire transmission capacity of BGCL and pay BGCL the Transmission Charges as determined by BERC as per BERC (Terms and Conditions for determination of Tariff) Regulation, 2007 notified in Bihar Gazette on 27<sup>th</sup> April 2007 as amended time to time.
- d) The Power Evacuation System associated with New and Renewable energy sources that the need to be taken up by the proposed company, on deposit work basis as may be decided by BSP(H)CL
- d) BGCL shall apply for and obtain all Consents from the applicable Governmental Authorities required for setting up of the project and for selling its entire transmission capacity to BSP(H)CL. The terms and conditions stipulated in such Consents shall also be applicable to this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, COVENANTS AND

CONDITIONS SETFORTH HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

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INDIA NON JUDICIAL



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THIS AGREEMENT is entered into on .....[day] .....of [month] Two Thousand Twelve at Patna (Bihar)

Between

BiharState Power (Holding) Co. Ltd.(BSP(H)CL), a Government of Bihar undertaking established under Bihar State Electricity Reforms Transfer Scheme, 2012 and incorporated under Company Act, 1956 (hereinafter referred to as the "BSP(H)CL", which expression, unless repugnant to the context or meaning thereof shall include its successors and permitted assigns), having its registered office at VidyutBhawan, Jawaharlal Nehru Marg, Patna-800 021

And

Bihar Grid Company Limited, a joint venture company of Power Grid Corporation of India Limited and BSP(H)CL, incorporated in India under the Company Act 1956, having its registered office at Patna, (hereinafter referred to as BGCL which expression, unless repugnant to the context or meaning thereof shall deem to include its successors and permitted assigns) and collectively, the "Parties".

IMPLEMENTATION AND TRANSMISSION  
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Between

Bihar State Power (Holding) Co. Ltd.

and

Bihar Grid Company Limited

*For*

Intra-State Transmission Projects in the State of Bihar

7/11

## SECTION 1

### 1.0 EFFECTIVENESS AND TERM

#### 1.1 Effective Date

This Agreement shall come into force when it is executed and signed by the Parties.

#### 1.2 Term and Termination

1.2.1 Subject to Clause 1.2.2, 1.3 and 7 of this Agreement, it shall continue to be in force till such time and date as mutually agreed between the parties.

1.2.2 This Agreement shall terminate in following circumstances:

- i) If the Conditions Precedent referred to in Section 2 are neither satisfied nor waived and either Party serves a notice to terminate in accordance with Clause 2.3;
- ii) If default is committed by either of the party in terms of clause 7 of this agreement and a notice of termination to that effect is served on the other party
- iii) If a Termination Notice is served in accordance with Clause 9 of this agreement:
  - a) by BSP(H)CL following a BGCL Event of Default; or
  - b) by BGCL following a BSP(H)CL Event of Default; and
- (iv) If BSP(H)CL or BGCL serves a notice to terminate in accordance with this Agreement.

#### 1.3 Survival

The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Force Majeure, Events of Default and Termination, Governing Law & Dispute Resolution, etc.





shall have no financial or other liability towards each other for the termination of this Agreement due to non-fulfillment of the Conditions Precedent.

## 2.4 Reports

BGCL shall notify the other Party{BSP(H)CL} in writing at least once a month on the progress made in satisfying the Conditions Precedent referred in Clause 2.1, and shall promptly inform in writing if any Condition Precedent for which it has responsibility has been satisfied.

## SECTION-3

### 3.0 DEVELOPMENT OF PROJECTS

#### 3.1 BGCLObligations in Development of Projects

Subject to the terms and conditions of this Agreement, BGCL at its own cost shall be responsible for the development of all the projects including specifically the following:

- i) for procuring and maintaining in full force and effect the Consents<sup>60</sup> required by it pursuant to this Agreement and in accordance with applicable Law;
- ii) for the development, procurement, construction, commissioning, implementation, financing, owning, operation and maintenance of each Element for the scope of work set out in this Agreement and in accordance with the requirement as per Schedule 3 for the development and construction of works as per Schedule 3 with Prudent Utility Practices on time as agreed mutually between the parties;
- iii) for entering into Project Coordination Procedure which governs the interaction between the Parties in connection with the development and construction of the Projects;
- iv) for owning project asset throughout the term of this Agreement free and clear of any encumbrance except those permitted under this Agreement;
- v) to co-ordinate and liaise with concerned agencies and provide on a timely basis relevant information with regard to the specifications of the project, that may be required for interconnecting with the Interconnection Facilities of STU/CTU;



- vi) to make available the entire transmission capacity of project to BSP(H)CL for the transmission of energy at BSP(H)CL's discretion, subject to the requirements of this Agreement. It is agreed and understood that in addition to the use of transmission capacity, BGCL may install OPGW in transmission lines, if required, and upto six pairs of OPGW can be used to cater to the communication and protection needs for the operation of that transmission line. Balance pairs can be used for any other purpose by BSP(H)CL subject to terms and conditions to be mutually agreed by the Parties;
- vii) for appointing Contractors as per the provisions of this Agreement;
- viii) to comply with its obligations under this Agreement;  
  
to provide to POWERGRID and BSP(H)CL, on a monthly basis, progress reports with regard to projects, its execution (in accordance with Agreed Form) to enable them to monitor and co-ordinate the development of Projects
- ix) to obtain necessary approvals for Projects from applicable Governmental Authorities to facilitate commencement of implementation of Projects pursuant to this Agreement and in accordance with all applicable Laws; and
- x) to ensure timely finalization of the Financing Agreements by giving due consideration to the requirements of the prospective lenders.

### 3.2 BSP(H)CL Obligations during the Implementation of Projects

Subject to the terms and conditions of this Agreement, BSP(H)CL, undertakes to assist the BGCL in the following manner:

- i) to assist BGCL in obtaining necessary consents for the execution of projects pursuant to this agreement and in accordance with applicable law
- ii) to arrange, on or prior to the Required Commercial Operation Date, for the required connections of each Element with the Interconnection Facilities up to BSPTCL network. Notwithstanding the foregoing, BGCL shall be required to coordinate and liaise with the concerned agencies; and
- iii) for complying with its obligations under this Agreement;
- iv) to provide all reasonable assistance to BGCL within the scope of BSP(H)CL in connection with the finalization of the Financing

Element:

The calculation of Availability for the elements and for the Intra State Transmission System Scheme, as the case may be, shall be as per the applicable BERC (Terms and Conditions for determination of Tariff) Regulation, 2007 notified in Bihar Gazettee on 27<sup>th</sup> April 2007 as may be amended from time to time and any subsequent enactment thereof.

4.5.2 The Normative(Target) Availability of the Intra State Transmission System of BGCL shall be as per the norms mentioned in the BERC (Terms and Conditions for determination of Tariff) Regulation, 2007 notified in Bihar Gazettee on 27<sup>th</sup> April 2007 as amended from time to time and any subsequent enactment thereof.

4.5.3 The element of Project under outage due to following reasons not attributable to BGCL shall be deemed to be available.

- (ii) Manual tripping of line due to over voltage as per the directions of Control Center.
- (iii) Any other reason beyond the control of BGCL.

4.5.4 Outage time of transmission element of Project for the following contingencies shall be excluded from the total outage time of the element under period of consideration.

- i) Outage of Line due to Force Majeure Events as per clause 6.8. A reasonable restoration time for the element shall be allowed System restored through ERS (Emergency Restoration System) if any shall be considered as available;
- ii) Outage caused by grid incident/disturbance not attributable to BGCL, e.g. faults in substation or bays owned by other agency causing outage of BGCL's elements, tripping of lines, ICTs etc. due to grid disturbance; and
- iii) Outage of any element of Project due to reasons other than because of BGCL Project

#### 4.6 Transmission Charges

4.6.1 The computation of transmission charges for the system/element commissioned by BGCL shall be in accordance with the norms/methodology issued/notified by BERC (Terms and Conditions for determination of Tariff) Regulation, 2007 notified in Bihar Gazettee on 27<sup>th</sup> April 2007 as amended from time to time and any subsequent enactment thereof.

Agreements, provided that BSP(H)CL shall not be liable for any failure of the Financial Close to occur.

### 3.3 Time for Commencement and Completion

- (i) BGCL shall take all necessary steps to commence work from the Effective Date .
- (ii) The Commercial Operation Date of the project shall occur on or Date of Commissioning ,
- (iii) Time shall be essence of this Agreement. However, the parties may meet at regular intervals as they may decide to discuss the progress and implementation of the project and accordingly may mutually agree on the adjustment of RCOD.

## SECTION 4

### Payment & Billing of Transmission Services

#### 4.0 Effectiveness of the Agreement

4.1 For the existing Parties, this Agreement shall be effective from the date of signing.

4.2 From the Effective Date, each Party undertakes to each other Party to comply with and to perform its obligations in accordance with and subject to this Agreement.

4.3 This agreement shall deemed to have come into force w.e.f. the date(s) as mentioned above and shall, without prejudice to the provisions related to Termination of this Agreement, remain operative till the same is renewed/replaced/modified.

#### 4.4 Operation and Maintenance of the Intra State Transmission System

4.4.1 The BGCL shall be responsible for ensuring that the Intra- State Transmission System is operated and maintained in accordance with the regulations made by the Bihar Electricity Regulatory Commission (BERC) and CEA from time to time and the provisions of the Electricity Act, 2003 as also the applicable Bihar Grid Code, 2010 as amended from time to time.

#### 4.5 Availability of the Intra State Transmission System Scheme

4.5.1 Calculation of Availability of the Intra State Transmission System Scheme/

4.11.1 BGCL shall open a Current Account in any of the Scheduled bank having branch at Patna (the "Designated Account") for the purpose of payments to be made by BSP(H)CL. The details of such account shall be informed by BGCL to BSP(H)CL.

4.11.2. Due date for payment of the transmission charges against all invoices shall be as per the BERC Rules & Regulations.

4.11.3 BSP(H)CL shall make payment either through RTGS to the account of BGCL or through Letter of Credit for which following shall apply :-

- i) For payment of invoice through direct payment or RTGS or Letter of Credit or otherwise within five (5\*) business days after receipt of Monthly TSC Invoice, a rebate of two (2\* ) % shall be allowed on the portion of payment.
- ii) For payment made within a period of 30\* days of receipt of Monthly TSC Invoice, a rebate of one (1\*) % shall be allowed.
- iii) Any amount that may remain unpaid by the expiry of 30 days of Due Date {i.e. 60 (sixty)\* days from date of receipt of monthly bill by BSP(H)CL} shall attract surcharge @ 1.25%\* (one and a quarter percent) per month. Such surcharge shall be calculated on simple interest rate basis and shall accrue from the date beyond 60 days from the date of receipt of monthly bills by BSP(H)CL until the amount due is actually received by the BGCL.  
(\* Starred items are subject to Regulations, if any)

4.11.4 BSP(H)CL shall, on the day of payment, notify BGCL of the payment made to the Designated Account.

#### 4.12 Payment Security

4.12 Establishment of Letter of Credit  
BSP(H)CL shall provide an irrevocable confirmed revolving Letter of Credit issued in favour of BGCL by a scheduled bank at its own cost, at least one month prior to the Required Commercial Operation Date of the transmission scheme approved by the Board of BGCL and shall include followings :-

- i) In respect of a Monthly TC Invoice, in case BGCL fails to receive from BSP(H)CL within 60 (sixty) days from date of receipt of Monthly TC invoice, an amount equal to the amount due and payable under the Monthly TC Invoice, BGCL shall be entitled to operate such Letter of Credit for recovery of dues by presenting to

4.7.2 The provision of Open Access in the Intra State Transmission System of the BGCL will be as per BERC (Terms and Conditions for Open Access) Regulation, 2006 as amended from time to time.

#### **4.8 Transmission Losses**

4.8.1 The total transmission losses of the Intra- State Transmission System shall be as determined by BERC time to time and any subsequent enactment thereof.

#### **4.9 Metering**

4.9.1 The installation, operation, maintenance and testing of the Special Energy Meters (SEMs) shall be in accordance with the CEA (Installation and Operations of Meters) Regulations notified on 17.03.2007 / Bihar Electricity Grid Code 2010 notified by BERC on 27<sup>th</sup> July 2010 and any subsequent amendments made thereto.

4.9.2 The responsibility for downloading and onward transmission of the metered data of the (SEMs) from the pre-identified locations shall be as per the Bihar Electricity Grid Code 2010 and any subsequent amendments made thereto.

#### **4.10 PAYMENT AND BILLING OF TRANSMISSION CHARGES**

##### **4.10.1 Transmission Charges**

4.10.2 BSP(H)CL shall pay Transmission Charge ("TC") to BGCL, on monthly basis, from the Commercial Operation Date until this Agreement is terminated, subject to the provisions of this Section. Such monthly payment shall be termed as "Monthly TC Payment".

4.10.3 The Monthly TC amount payable by BSP(H)CL to BGCL shall be calculated in accordance with the provisions of BERC (Terms and Conditions for determination of Tariff) Regulation, 2007, Chapter-4 "Intra State Transmission" or as amended time to time.

4.10.4 Commencing with the month following the month in which the Commercial Operation Date is declared, BGCL shall submit to BSP(H)CL its "Monthly TC Invoice" Such invoices shall be e-mailed to BSP(H)CL followed by physical delivery of the Invoices. Submission of invoice through e-mail by BGCL shall be taken as the date of delivery of Invoice.

4.10.5 Each "Monthly TC Invoice" shall include supporting documents that may be necessary or required by BSP(H)CL.

##### **4.11 Payment of Invoices**

the relevant issuing bank a copy of the Monthly TC Invoice that has been delivered by BGCL to BSP(H)CL.

- ii) The amount of Letter of Credit (LC) shall be one month's Monthly TC payment by BSPHCL and will be equal to 105 % (percent) of the average monthly billing for the preceding 12 months.
- iii) The amount of LC shall be reviewed by BGCL once in six months in April and October based on the said average in each financial year and the amount of LC shall be enhanced / reduced as necessary.
- iv) The Letter of Credit shall be fully revolving so that it will be renewed to its full value upon each call being made by BGCL on the Letter of Credit; and
- v) The Letter of Credit shall remain initially valid for a term of not less than twelve (12) months from the date of its issue and shall be renewed for, or replaced with another Letter of Credit acceptable to BGCL for, a similar term, at least thirty (30) days prior to the date on which the current Letter of Credit is expressed to expire.

4.12.2 The mere provision of the Letter of Credit under the provision of this section shall not relieve BSP(H)CL of any of its payment obligations under this Agreement. BSP(H)CL shall only be relieved of such obligation to the extent that the issuing bank actually pays under the said Letter of Credit in accordance with this Agreement.

4.12.3 BSP(H)CL agrees that as a credit enhancement it shall arrange for first right over DISCOM's Revenue through an appropriate Escrow arrangement for payment of TC, this shall be operated upon and to the extent the short fall in dues not receivable through other payment security mechanism like Letter of Credit as provided herein above.

4.13 Reconciliation of payment made by BSP(H)CL vis-à-vis invoices raised by BGCL shall be carried out on quarterly basis between BGCL and BSP(H)CL.

4.14 BSP(H)CL shall provide necessary TDS certificate in respect of deduction of tax carried out against payment if any.

4.15 Any dispute in regard to any of the invoices/supplementary invoices/charges shall be amicably resolved between BGCL and BSP(H)CL for which formal meetings at the level of Heads of BGCL and BSP(H)CL shall be held in the situation of any of such eventualities. Any dispute that may remain unresolved through above process shall



be dealt in line with the provision for dispute resolution contained in this Agreement.

- 4.16 Aforesaid provisions related to determination of Transmission Charges and its payment shall be as per BERC (Terms and Conditions for determination of Tariff) Regulation, 2007 as amended from time to time except the provisions, like Letter of Credit and Escrow arrangement, etc., that may be agreed specifically between the BGCL and BSP(H)CL under this agreement.

## Section-5

### 5.0 Force Majeure

The following terms shall have the meanings given hereunder.

- 5.1 An 'Affected Party' means any of the BSP(H)CL or the BGCL whose performance has been adversely affected by an event of Force Majeure.

- 5.2 A 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices. The majeure event shall be as defined in Chapter 16 of the Share Holding Agreement executed between BSP(H)CL and Power Grid Corporation of India Limited ( for short PGCIL) on 29<sup>th</sup> December 2012.

### 5.3 Duty to perform and duty to mitigate

- 5.3.1 To the extent not prevented by a Force Majeure Event, the Affected Party shall continue to perform its obligations as provided in this Agreement. The Affected Party shall use its efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

### 5.4 Available Relief for a Force Majeure Event

- 5.4.1 Subject to this Clause 5, the Affected Party shall not be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

- 5.4.2 Each BSP(H)CL or BGCL shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under this Agreement as per provision of Chapter 16 of the Share Holding Agreement.