

**DRAFT MODEL LONG TERM OPEN ACCESS AGREEMENT**

**(Other than Wind, Solar, Small Hydro and Municipal Solid Waste Power Plants)**

THIS OPEN ACCESS AGREEMENT is entered into on this the \_\_\_\_\_ day of \_\_\_\_ 2016.

(The following parties shall sign the agreement based on entry/exit points:

Case 1: The agreement shall be signed by APTRANSCO, DISCOM and Open Access user, if both entry and exit points are connected to APTRANSCO network, i.e., at EHT voltage.

Case2: The agreement shall be signed by DISCOM and Open Access user, if both entry and exit points are connected to a single DISCOM's network (33 kV and below):

Case3: If the entry point is in one DISCOM and exit point is in another DISCOM involving distribution system of both the DISCOMs (33 kV and below), the agreement shall be signed by both the DISCOMs, APTRANSCO and Open Access user,

Case4: The agreement shall be signed by APTRANSCO and DISCOM and Open Access user, if entry point is connected to Transmission network and exit point is connected to DISCOM network or vice versa.

Note:

Transmission charges and transmission losses are not applicable in case the entry and exit points are connected to a single DISCOM network.

Transmission charges and transmission losses are applicable in the following cases;

- i) if entry and exit points are in two different DISCOMs involving distribution systems of both the DISCOMs.
- ii) if entry and exit points are connected to APTRANSCO and DISCOM or vice versa.)

**BETWEEN:**

\* **TRANSMISSION CORPORATION OF AP LIMITED**, a company organized and existing under the laws of India with its registered office at \_\_\_\_\_ (hereinafter referred to as "APTRANSCO" which expression shall unless repugnant to the subject or context, means and includes its successors and assignees) represented by the authorised officer of APTRANSCO as the party of the first part.

**AND**

\* **\_\_\_ POWER DISTRIBUTION COMPANY OF AP LIMITED**, a company organized and existing under the laws of India with its registered office at \_\_\_\_\_ (hereinafter referred to as "\_\_\_PDCL" which expression shall unless repugnant to the subject or context, means and includes its successors and assignees), represented by its authorised officer as the party of the second part:

**AND**

AND ----- a \* Consumer(s)/Generator(s)/Trading Licensee(s) having their premises located at -----, a company(s) incorporated and existing under the laws of \_\_\_\_\_ having its (their) principal office(s) at \_\_\_\_\_

(Hereinafter referred to as “Open Access User” which expression shall unless repugnant to the subject or context means and includes its successors and assignees) as party(s) of the third part:

Whereas APTRANSCO, pursuant to grant of license by the Andhra Pradesh Electricity Regulatory Commission, is engaged in the business of transmission of electricity in the State of Andhra Pradesh

Whereas \_\_\_PDCL, pursuant to grant of license by the Andhra Pradesh Electricity Regulatory Commission is engaged in the business of distribution of electricity in the State of Andhra Pradesh, in the areas specified in the license for distribution;

and

Whereas, -----an Open Access User is a Generating Company/Trading Licensee/Consumer engaged in the business of \_\_\_\_\_ and is desirous of availing the Transmission and/or Wheeling Services offered by APTRANSCO and /or \_\_\_PDCL, for a period of \_\_\_\_\_;

----- an Open Access User had filed an application dated \_\_\_\_\_ with the Nodal Agency for grant of Open Access for a contracted capacity of \_\_\_ kW/MW and the same has been accepted, in the manner provided under the relevant Regulations of the Commission.

Now, therefore, in consideration of the foregoing premises and their mutual covenants set forth herein and subject to the relevant statutory provisions, Rules and Regulations, the parties hereto agree as follows:

(\*Note: In case there are more than three parties, the agreement shall be suitably modified to include all the parties. If the open access is involved between two DISCOMs, APTRANSCO, both the DISCOMs and Open access user shall be the parties to the agreement.)

## **Article 1: DEFINITIONS**

1. In this Agreement, unless the context otherwise requires:

- (a) “Act” means the Electricity Act, 2003.
- (b) “Bank Rate” means the base rate of SBI as on 1<sup>st</sup> April and applicable for that financial year.
- (c) “Commission” means the Andhra Pradesh Electricity Regulatory Commission (APERC).
- (d) “Central Electricity Regulatory Commission” or “CERC” means the Commission constituted under Section 76(1) of the Act.
- (e) “Contracted Capacity” in the context of open access for supply to consumers means the capacity contracted in megawatts/kilowatts (MW/kW) at an entry point for transmission and/or wheeling to consumer/consumers under open access.

- (f) “Effective date” means the date on which the Parties execute this Agreement.
- (g) “Entry Point” means a point at which electricity is injected into the electricity transmission network or the electricity distribution network.
- (h) “Exit Point” means a point at which electricity is drawn from the electricity transmission network or the electricity distribution network.
- (i) “Grid Code” means, the State Electricity Grid Code notified by the Commission, under section 86 (1) (h) of Electricity Act 2003.
- (j) “Invoice” means the main Invoice and Supplemental Invoices as defined in Article 5 of this Agreement.
- (k) “Inter-State transmission system” means Inter-state transmission system as defined in the Act.
- (l) “Meter or Metering system” means meter used for accounting and billing of electricity in accordance with Central electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.
- (m) “Nodal Agency” means the Nodal Agency as defined in the Open Access Regulations issued by the Commission.
- (n) “Regulation” means the Open Access Regulation notified by the Andhra Pradesh State Electricity Regulatory Commission u/s 42 of the Electricity Act 2003.
- (o) “Scheduled Consumer” means a consumer who has a supply agreement with the distribution licensee in whose area of supply the consumer is located and also has a supply agreement with a person other than the distribution licensee under the Open Access Regulation and includes a consumer of a distribution licensee who also avails of wheeling facility for carrying the electricity from his captive generating plant to the destination of his use.
- (p) “Transmission Service” means provision, supply or conveyance of electricity by means of cables and / or overhead lines, together with any step up and step-down transformers, switch-gear and other works used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switchgear and other works and such other related services as may be provided by APTRANSCO from time to time.
- (q) “user” or “ open access user” means a person using or intending to use the transmission system and/or the distribution system of the licensee(s) in the state for receiving supply of electricity from a person other than the distribution licensee of his area of supply, and the expression includes a generating company and a licensee.
- (r) “Wheeling Service” means the operations whereby the distribution system of \_\_\_PDCL along with the associated facilities of a transmission licensee or otherwise as the case may be, are used by another person for conveyance of electricity on payment of charges determined by the Commission from time to time.

Words and expressions used and not defined in this Agreement but defined in the Act or the rules or regulations made there under, shall have the meanings as assigned to them therein, and in the absence thereof, shall have the same meaning as commonly understood in the electricity industry.

## **Article 2: PROCEDURE FOR AVAILING TRANSMISSION AND WHEELING SERVICES.**

- 2.1 Prior to receiving Transmission and Wheeling Service from APTRANSCO and/or \_\_\_PDCL, the Open Access User shall agree and undertakes to follow and comply with the procedures for availing Transmission and/or Wheeling Services provided in the Regulations and/or specified by the Nodal Agency as empowered and authorised under the Act or the Regulations there under.
- 2.2 The Open Access User further agrees and undertakes inter alia, to comply with, -
- (a) the technical requirements, infrastructure/equipment standards and operational criteria prescribed by APTRANSCO and \_\_\_PDCL, including applicable provisions of the Grid Code, CEA Regulations, and any other applicable guidelines, Directions and Orders as may be specified by the Commission from time to time and as may be necessary in order to entitle the Open Access User to avail Transmission and Wheeling Services,
  - (b) such payment security mechanism/instrument for availing Transmission and Wheeling Services as prescribed under Article 5 of this Agreement as modified from time to time,
  - (c) any requirement to furnish evidence to the effect that the Open Access User has the requisite approvals and clearances from the Nodal Agency or otherwise, that are necessary to avail Transmission and Wheeling Services, and
  - (d) Maintenance of power factor as specified in the relevant tariff order.
- 2.3 Where the Open Access User is a generator located within the State of Andhra Pradesh, such User may avail start-up power, as per the directions / orders issued by the Commission from time to time.
- 2.4 Where the Open Access user is a Generator, it shall follow the standards specified in the Grid code/CEA Regulations, in respect of Harmonic components, D.C. injection & flicker and in case of any deviation, shall pay penal charges/surcharge at the rates mentioned in the relevant tariff order issued by APERC from time to time.
- 2.5 Notwithstanding anything contained herein, in the event the APTRANSCO and /or \_\_\_\_\_PDCL is required to construct electrical line in order to extend Transmission and Wheeling Services to the Open Access User, APTRANSCO and / or \_\_\_\_\_PDCL shall recover such expenditure from the Open Access user in terms of Regulations/Orders, issued by the Commission in this behalf from time to time.
- 2.6 The Open Access user shall pay State Load Despatch Centre (SLDC) charges as per the Regulations issued by the Commission under section 32(3) of the Act.

- 2.7 In case of utilization of inter-state transmission system in addition to the intrastate transmission system and/or distribution system by the Open Access User, it shall pay the inter-state transmission charges, Regional Load Despatch Centre (RLDC) charges, as approved by CERC from time to time in addition to the intrastate transmission charges, wheeling charges and SLDC charges payable for the use of intra-state system.
- 2.8 The Open Access User shall pay the charges payable under this Agreement from the date of Commencement of open access specified in the Schedule-I, regardless of whether or not such open access is used from that date. The Open Access user need not pay such charges, in case, the open access facility is not made available due to the default of the APTRANSCO and/or \_\_\_PDCL.
- 2.9 The \_\_\_PDCL shall not disconnect the supply of power to any of the Scheduled Consumers only for the reason of any failure on their part to comply with the terms and conditions of any agreements between the Open Access User and Scheduled Consumers:

Notwithstanding the above, the Open Access User shall be responsible for payment obligations as provided in this Agreement for the Contracted Capacity.

### **Article 3: TRANSMISSION AND WHEELING SERVICES**

- 3.1 Subject to the provisions of the Regulation and on such terms and conditions herein agreed, APTRANSCO and \_\_\_PDCL agree and undertake to provide Transmission and Wheeling Services to the Open Access User, as described and arranged in Schedule-I, on payment of transmission and wheeling charges, and any other applicable charges, as specified by the Commission.
- 3.2 The criteria for allotment of capacity shall be as specified in the Regulation. In case of insufficient spare capacity/congestion, the allocations shall be done as per the Regulation.
- 3.3 The Open Access User shall not be authorised to transfer his contracted capacity to any other person or User.
- 3.4 Where Open Access User surrenders the whole or part of the contracted capacity, or reduction/cancellation of the capacity allotted to the User, such User shall pay all charges, including compensatory charges in the manner specified in the Regulation.
- 3.5 In the event, the Open Access User expects to underutilize the contracted capacity under open access, the Open Access User may surrender, a part of the capacity as per the Regulation.
- 3.6 In the event of underutilization of the contracted capacity by the Open Access User, which, if made available, could be used to meet requirements of other applicant(s), the State Transmission Utility (STU) in its capacity as the Nodal Agency, on the advice of APTRANSCO and/or on the advice of \_\_\_PDCL may consider reduction or cancellation of the capacity allocated to the Open Access User, as per Regulation.

- 3.7 To arrive at the net scheduled capacity (kW) at exit point, the loss component shall be deducted from the capacity injected in kW at the entry point. For the purpose of settlement, 1 kVA capacity at the exit point shall be treated as being equal to 1 kW and 1 kVAh energy at the exit point shall be treated as being equal to 1 kWh.
- 3.8 The Open Access User shall bear the transmission/wheeling losses in kind as determined in the transmission/wheeling tariff orders by the Commission from time to time. In case of entry and exit points are in two different DISCOMs, for the purpose of energy accounting, distribution loss of the DISCOM where energy is consumed and transmission loss shall be considered towards wheeling loss.
- 3.9 If, entry point is at one DISCOM and exit point is in another DISCOM involving distribution systems of both the DISCOMs, the Open Access users shall pay wheeling charge to the DISCOM in whose licensed area energy is consumed and transmission charge to APTRANSCO.

The APTRANSCO/DISCOM shall levy charges for transmission/wheeling towards delivered energy on per unit (kWh) basis at the interconnection point (entry point) and shall be arrived at as follows:

$$\text{Wheeling charge Rs. Per unit (kWh)} \quad \frac{X}{Y}$$

Where X = Wheeling tariff in Rs./kVA or kW/month approved in the tariff order issued by the Commission from time to time.

Y = Number of hours in the billing month

#### **Article 4: TERM OF AGREEMENT**

- 4.1 This Agreement shall be in force from the effective date up to \_\_\_\_\_subject to any modification as per Article 3.3 and 3.4 herein.
- 4.2 The parties may renew this Agreement for a further term of two years or more without the requirement of a fresh open access application, on receipt of at least three (3) months' notice from the Open Access User to the Nodal Agency, before the expiry of the Agreement.
- 4.3 It is agreed that if no such notice is issued by the Open Access User, such User shall forego his right for extension of this Agreement.
- 4.4 Subject to the provisions of the Regulation, the User shall have the following options twice a year within the State;
- (a) to change the entry points including voltage level
  - (b) to change the exit points including voltage level

# Open Access user can change the allocated capacities at exit/entry point, subject to the sum capacities shall not exceed the contracted capacity.

## Article 5: INVOICE AND PAYMENTS

- 5.1 For Transmission / Wheeling Services provided to a Open Access User under this Agreement, the \_\_\_PDCL/APTRANSCO will charge and bill the Open Access User as per the Regulation and the Open Access User shall pay \_\_\_PDCL/APTRANSCO in accordance with the rates/charges specified by the Commission, on the basis of the settlement statement determined as per the Balancing and Settlement Code in force.
- 5.2 Notwithstanding anything contained in Article 5.1 above, in the event the contracted capacity of the Open Access User has been accommodated through a congested corridor of the network, the Open Access User shall pay congestion charges as provided in the Regulations and relevant orders of the Commission.
- 5.3 \_\_\_PDCL shall provide to the Open Access User an Invoice drawn up as specified in Schedule-II and based upon;
- (a) meter reading taken pursuant to Article 7 herein and in accordance with the Regulations.
  - (b) the charges/tariff determined by the Commission from time to time, in accordance with the provisions of the Act and Regulations.
- 5.4 The periodicity of the invoice will be monthly.
- 5.5 Each monthly Invoice shall be payable by Open Access User in accordance with this Agreement on or before the due date indicated in such invoice, which will be 15 (fifteen) days from the date of presentation of Invoice to the Open Access User.
- 5.6 The Supplementary Invoice will include, but not limited to the following:
- (a) Statutory duties, taxes, cess, levies, royalty etc.
  - (b) Any claim of Government of India, State Government, local authorities, or bodies etc.
  - (c) Any other claim admissible under this agreement.
- The Supplementary Invoice shall be payable within 15 (fifteen) days from the date of presentation of the Invoice to the User.
- 5.7 Payment of Invoice and Supplementary Invoice shall be made on or before the due date either by (a) bank draft or (b) Directly credited to APTRANSCO / DISCOMs account by RTGS / NEFT (c) through irrevocable revolving Letter of Credit (LC), issued by a schedule bank as specified in Schedule-II.

## Payment Mechanism and Security:

- 5.8 The Payment Mechanism and Security specified hereunder is intended to ensure recovery of the applicable payments in case of a payment default and not as a mechanism for regular payments.

The Open Access User shall, as a payment security, deposit with the \_\_\_PDCL in advance an amount equal to two months estimated billing in cash or by means of a demand draft issued by a scheduled Bank, based on the appropriate charges, including transmission and wheeling charges and any other applicable charges, as specified under this Agreement, and as determined by the Commission from time to time and notified in the relevant Orders or otherwise, and as per the conditions stipulated therein.

- 5.9 The \_\_\_PDCL shall also be entitled to security from the Open Access User for the units calculated based on the contracted capacity for fifteen days. The consumption will be valued at the tariff rates of relevant categories. This security can be provided by the Open Access User in the form of advance deposit of required amount or by opening an irrevocable Letter of Credit (LC) having validity for the agreement period as specified in Schedule-II.

Provided that such security shall be for enabling the \_\_\_PDCL to give supply of electricity to consumers (Open access) of Generators/Trading Licensees in the event of unforeseen disruption or termination of supply by such Generators/Trading Licensees on account of bankruptcy, insolvency or for any other reason.

Provided further that in the event of unforeseen disruption or termination of supply by the Generators/Trading Licensees, the \_\_\_PDCL shall endeavour to arrange to continue supply to consumers of such Generators/Trading Licensees until such time security is exhausted or alternative arrangements for supply have been entered into, whichever is earlier.

Also provided, in the event that the energy was injected into the Transmission/Distribution network by the OA Generator, but could not be delivered to the Scheduled/OA consumer due to network breakdown and was consumed by the distribution licensee, the licensee in whose area the breakdown has occurred, shall pay to the Open Access User the equivalent energy charges at pooled cost of power purchase approved by the Commission.

Also provided, in the event that the energy could not be injected into the Transmission/Distribution network by the OA Generator, due to interconnection network breakdown at the Generator end, and the consumer has consumed the energy as per the schedule, the DISCOM shall bill that part of the energy at the prevailing tariff of corresponding consumer category, without any demand charges for that period of breakdown.



Letter of Credit (LC) shall be opened prior to the commencement of open access transaction and shall be valid for the entire duration of the transaction. Failure to provide the LC as mentioned in Articles 5.7 & 5.9 herein above shall entail forfeiture of the allotment of capacity and APTRANSCO/\_\_\_PDCL shall not be obliged to commence transmission/wheeling services till such LC is opened.

The LC shall be negotiated by the \_\_\_PDCL, on the basis of the “Schedule of the Payment” and shall be enclosed with the approval of the Open access user to operate the LC, as and when the Open access user fails to remit the payment in full by due date.

- 5.10 Any failure on the part of the Open Access User to pay all or any portion of an Invoice issued by APTRANSCO/\_\_\_PDCL shall constitute a valid ground for APTRANSCO and or \_\_\_PDCL to terminate such Transmission and/or Wheeling Service forthwith, as also to take such measures as prescribed under this Agreement or Regulations, or law applicable.

#### **Article 6: SCHEDULING AND CURTAILMENT**

- 6.1 The Open Access User agrees to comply with the procedures for availing Transmission and Wheeling Services in the matter of scheduling as specified by the Commission in the relevant orders and Regulations.
- 6.2 In case of constraints, emergency/threat to grid security and stability, the APTRANSCO and/or \_\_\_PDCL, based on such direction(s) from SLDC, may curtail power to Open Access User. The priority of curtailment shall be as specified in the Regulations.

#### **Article 7: METERING**

- 7.1 Subject to the provisions of Section 55 of the Act, the Distribution Licensee/Transmission Licensee/Generating company, as the case may be, shall provide special energy meters as per Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended from time to time. The open Access user agrees to comply with all Practice Directions, /Guidelines/Orders issued relating to metering, by the Commission from time to time.
- 7.2 The Open Access User agrees to be responsible for compliance with all statutory and regulatory requirements in relation to the accuracy, use and installation of the metering equipment.
- 7.3 The Open Access User agrees and undertakes to provide any metering information or such other information to APTRANSCO and \_\_\_PDCL as may reasonably be required by APTRANSCO and \_\_\_PDCL from time to time, in accordance with the guidelines specified by the Commission from time to time.
- 7.4 \_\_\_PDCL and/or APTRANSCO and Open access user shall take the meter readings at the entry point/exit points and the same shall be signed by the \_\_\_PDCL/ APTRANSCO as well as the Open Access User.

## Article 8: DEFAULT

### 8.1 The following shall constitute defaults by Parties and the consequences thereof:

#### Failure of the Open Access User to pay an Invoice:

- (a) In the event of the failure by the Open Access User to pay an Invoice or a part thereof or a supplementary invoice or any other demand levied, APTRANSCO/\_\_\_PDCL shall issue a notice to such Open Access User specifying that the Open Access User has defaulted in its payment obligations towards APTRANSCO/\_\_\_PDCL and the Open Access User shall be afforded an opportunity to pay the unpaid Invoice amount, with additional charges for belated payment at the rate of 5 paise /Rs 100/day or Rs 1000, whichever is higher., within fifteen days from the date of intimation. If the Open Access User does not comply with the terms of the Default Notice, APTRANSCO and/or \_\_\_PDCL shall be entitled to disconnect the supply connection to the Open Access User without further notice and APTRANSCO/\_\_\_PDCL shall have the right to terminate the Agreement after three (3) consecutive months of such disconnection by issuing one month's notice to the Open Access User.

Provided that the Open Access User shall not, on the basis of any alleged dispute or difference regarding the Invoice or any part thereof, refuse to pay and/or keep outstanding any amount payable under the Invoice.

In the event of dispute or difference regarding the Invoice or any portion thereof, the same shall be resolved in a manner provided under Article 12 herein, subject to the Open Access User first paying the entire outstanding without prejudice to the right of the Open Access User to seek adjustment in future Invoice(s), adjusted together with interest at bank rate, in the event the dispute or difference is finally resolved in favour of the Open Access User.

- (b) In the event of failure of the Open Access User to comply with any prescribed technical requirements, which adversely affect the power quality or security of the grid, performance or management of grid assets, APTRANSCO and/or \_\_\_PDCL shall be entitled to issue appropriate advice to de-energise the connection granted to the Open Access User forthwith, in accordance with the orders issued by the Commission, Regulations and the procedures outlined in the Grid Code.

### 8.2 In the event of any other type of breach other than those mentioned in Articles 8.1(a), 8.1(b) by any of the parties involved, the following terms shall apply:

- (a) In the event, APTRANSCO and/or \_\_\_PDCL commit(s) a breach of any terms of this Agreement, the Open Access User shall be entitled to specific performance of this Agreement or claim such damages as would be available under Law or both, at its option, by giving 30 days notice to APTRANSCO/\_\_\_PDCL.

(b) In the event, Open Access User commits a breach of any terms of this Agreement, the APTRANSCO and/or \_\_\_PDCL shall be entitled to specific performance of this Agreement or claim such damages as would be available under Law or both, as their option, by giving 30 days notice to Open Access User.

(c) If the default continues for a period of 30 days or more, either party will have a right to issue a preliminary notice for termination of this Agreement. If the default is not cured within 30 days thereafter, either party can terminate this Agreement and claim damages at its option.

**Article 9: ASSIGNMENT**

9.1 The Open Access User shall not assign, sell, convey or otherwise transfer this Agreement or any of its rights or obligations there under, without prior express written consent of the APTRANSCO and/or \_\_\_PDCL. In case this agreement is assigned, it shall be only for the purpose of title transfer and not for the purpose of trade. The assignee or other transferee shall assume all duties and obligations arising from and after the time of the consent to transfer by APTRANSCO and/or \_\_\_PDCL, but such assignment or transfer shall not release the assigning or transferring Open Access User from its duties and obligations unless specifically provided in the written consent and in the assignment, conveyance or transfer document. All duties and obligations arising prior to the assignment or transfer shall remain the duties and obligations of the assignor unless all the Parties specifically agree otherwise.

**Article 10: NOTICES**

10.1 All notices, billings, payments and other communications shall be given in writing signed by the person duly authorized to do so and sent by ordinary mail/registered post, or by facsimile or delivered by hand to the following addresses (or to such other address as shall have been duly notified in accordance with this Article):

If to the User:

\_\_\_\_\_  
\_\_\_\_\_

If to APTRANSCO

\_\_\_\_\_  
\_\_\_\_\_

If to \_\_\_PDCL

\_\_\_\_\_  
\_\_\_\_\_

10.2 All notices given in accordance with this Agreement shall be deemed to have been served as follows:

(a) If delivered by hand, at the time of delivery.

- (b) If posted, at the expiration of six (6) days after the envelope containing the same was delivered into the custody of the postal authorities.
- (c) If communicated by facsimile, on receipt of confirmation of successful transmission.

#### **Article 11: DISPUTE RESOLUTION**

- 11.1 Parties shall settle every Dispute between them in accordance with, first, Article 11.2 and then Article 11.3, subject to the limitation set forth in Article 12.4.
- 11.2 Notwithstanding anything contained to the contrary in this Agreement, Parties shall first attempt to settle every Dispute amicably between themselves by reference to their senior management who shall consult with each other for a period of thirty (30) Days to resolve the Dispute.  
  
Any resolution arising from such consultation process described in Article 11.2 shall be binding upon the Parties. To this end, the Parties shall separately enter in to a legally binding and enforceable agreement setting forth the principles pertaining to the resolution of the Dispute in writing.
- 11.3 Where any Dispute is not resolved as provided for in Article 11.2 within thirty (30) Days of reference for consultation, the provisions contained in this Article 11.4 shall apply.
- 11.4 If neither of the disputing parties is the Nodal Agency, then the dispute would be first referred to the Nodal Agency for resolution. Provided, if the dispute involves Nodal Agency itself, the said dispute may be referred to the Consumer Grievances Redressal Forum (CGRF) set up under Regulations, where consumption takes place, for resolution.

#### **Article 12: FORCE MAJEURE**

- 12.1 Events such as war, mutiny, civil commotion, riot, flood, cyclone, lighting, earthquake or other force and strike, lockout, fire affecting the premises, installations and activities of any of the parties herein shall constitute force majeure events for the purpose of this Agreement.
- 12.2 If any person being party to this Agreement is unable to, wholly or in part, perform on time and as required, any obligation under such open access agreement or the Regulations because of the occurrence of a force majeure event, then, subject to this Agreement, that obligation shall be treated as suspended to the extent and for so long as the affected person's ability to perform such obligations remains affected by that force majeure event.

## **Article 13: UNDERTAKINGS**

13.1 Quality of Supply: The APTRANSCO and \_\_\_PDCL shall endeavour to ensure compliance with Grid Code specified by the Commission under section 86 (1) (h) of the Act, wherever applicable. The \_\_\_PDCL shall also comply with the quality of supply standards as prescribed under the Regulations.

13.2 Energy and Demand Balancing: Open Access User shall make reasonable endeavour to ensure that actual demand at the Consumer interconnection point (exit point) do not exceed the net allocated capacity (gross capacity minus loss) in case of Open Access Consumer and sum of net allocated Capacity and Contracted Demand in case of scheduled consumer.

Provided that for carrying out balancing and settlement of energy and demand at all entry and exit points relating to open access agreements, the APTRANSCO, \_\_\_PDCL and Open Access Users shall strictly adhere to the Balancing and Settlement Code in force.

## **Article 14: MODIFICATION**

14.1 The provisions under the Act, Regulations, Rules and Amendments made there under etc shall guide this Agreement. The Parties hereby unconditionally consent to execute necessary amendments to this Agreement to bring it in conformity with any amendments to the Act, Rules and Regulations made there under.

14.2 The waiver of any breach or failure to enforce any of the terms, covenants or conditions of this Agreement shall not in any way affect, limit, modify or waive the future enforcement of such terms, covenants or conditions.

The invalidity or un-enforceability for any reason of any provision of this Agreement shall not prejudice or affect the validity or enforceability of any other provision of this Agreement.

The failure of any party to insist in one or more instances upon the strict performance of any of the provisions of this Agreement or to take advantage of any rights hereunder shall not be construed as a waiver of any such provisions or relinquishment of any such rights, but the same shall continue in full force and effect.

14.3 Unless the context otherwise requires, every arrangement, procedure or any other matter which is under any of the provisions of this Agreement required to be mutually agreed upon between the parties shall be concluded by a written Agreement between the parties not later than the date specified in the concerned clause of this Agreement.

This Agreement, including Schedules attached hereto constitute the entire Agreement between the parties with respect to the subject matter hereof, and there are no oral or written understandings, representations or commitments of any kind express or implied, not set forth herein.

The headings contained herein are included solely for the convenience of the parties and are not to be used as a basis for interpreting the various sections of this Agreement.

14.4 The parties each agree to act in good faith in implementing the terms and conditions of this Agreement and in carrying out their respective obligations hereunder.

**IN WITNESS WHEREOF**, the Parties by their duly authorized representatives have executed this Agreement on the day written above.

Open Access User

APTRANSCO

\_\_\_PDCL

**\*\*By:**

Name:

Title:

Date:

Witness:

By:

Name:

Title:

Date:

Witness:

By:

Name:

Title:

Date:

Witness:

**\*\*** In case there are more than three parties, the Agreement shall be suitably modified to include all the parties.

## SCHEDULE - I

(Please see Articles 2.8 & 3.1 of Agreement)

Long term Open Access usage shall be from \_\_\_\_\_ to \_\_\_\_\_ in the manner as follows:

### **Entry Point (Injection Utility)**

Name:

Location:

Connected Substation:

District:

Contracted Capacity (kW/MW):

Voltage Level (kV):

### **Exit Point (Drawee Utilities)**

Name:

Location:

Connected Substation:

District:

Contracted Capacity (kVA/MVA):

Voltage Level (kV):

Service connection numbers:

Note: - The date of completion of the usage mentioned above shall be subject to provisions of Articles 3.3 and 3.4 of the agreement.

## SCHEDULE - II

(Please see Articles 5.3, 5.7 & 5.9 of Agreement)

### Terms for Letter of Credit

1. The Letter of Credit (LC) is irrevocable, revolving and shall revolve automatically immediately after release of payment to the \_\_\_PDCL (Invoicing Agency) as per the payment schedule through this LC up to a limit of Rs. \_\_\_\_\_ and shall be revised as per requirement.
2. The Letter of Credit will be operated after the expiry of the due date of payment as indicated in the "Schedule of Payments" enclosed with the approval issued to the Open Access User by the APTRANSCO (Nodal Agency).
3. The Letter of Credit shall remain valid up to \_\_\_\_\_ i.e., (Up to one month after the expiry of transaction).
4. All charges relating to opening, advising, confirmation, amendment, recoupment, operation, usage, negotiation, remittance etc., or any other charges would be borne by Open Access User.
5. The amount would be paid immediately by the Bank once Letter of Credit is operated by the authorized officer of the \_\_\_PDCL (Invoicing Agency).