

Tender No: Torrent Power Limited/Short/23-24/ET/27

And

Torrent Power Limited/ Short/23-24/RA/27

Bid Document

For

**Purchase of Power through E-tendering and E-reverse Auction Basis for
Torrent Power Limited's Distribution License area in Gujarat**

By

Torrent Power Limited

Date: 28th March 2023

REQUEST FOR PROPOSAL FOR SUPPLY OF POWER
Tender No *: **Torrent Power Limited/Short/23-24/ET/27**

*Please mention this Tender No. on all correspondence

Torrent Power Limited (TPL), hereinafter referred to as the 'Procurer', intends to procure power for its **distribution license areas in Gujarat** through a competitive bidding process.

The Procurer hereby invites bids for the procurement of power on e-tendering and e-reverse auction basis from approved Trading Licensees, DISCOMs, State Electricity Utilities, Generators, etc.

All the bidders have to bid on MSTC's website www.mstcecommerce.com (DEEP Portal). Bidder needs to be registered on the DEEP e-Bidding portal on MSTC website.

The details of the tender are as under:

1. Details of requirement:

a) Required Quantum, Period and Time Slot:

Requisition	Period	Time slot (Hours)	Total Quantum* (MW)	Minimum Quantum (MW) to be offered by seller
1.	17-04-2023 to 30-04-2023	00 to 24	70	25
2.	01-05-2023 to 31-05-2023	00 to 24	70	25
3.	01-06-2023 to 30-06-2023	00 to 24	70	25
4.	01-07-2023 to 31-07-2023	00 to 24	325	25
5.	01-08-2023 to 31-08-2023	00 to 24	675	25
6.	01-08-2023 to 31-08-2023	09 to 24	250	25
7.	01-09-2023 to 30-09-2023	00 to 24	825	25
8.	01-09-2023 to 30-09-2023	09 to 24	225	25
9.	01-10-2023 to 31-10-2023	00 to 24	875	25
10.	01-10-2023 to 31-10-2023	09 to 24	175	25
11.	01-11-2023 to 30-11-2023	00 to 24	425	25
12.	01-11-2023 to 30-11-2023	09 to 24	125	25
13.	01-12-2023 to 31-12-2023	00 to 24	475	25
14.	01-12-2023 to 31-12-2023	09 to 24	200	25
15.	01-01-2024 to 31-01-2024	00 to 24	425	25
16.	01-01-2024 to 31-01-2024	07 to 22	250	25
17.	01-02-2024 to 29-02-2024	00 to 24	425	25
18.	01-02-2024 to 29-02-2024	07 to 22	200	25
19.	01-03-2024 to 31-03-2024	00 to 24	425	25
20.	01-03-2024 to 31-03-2024	07 to 22	350	25

**TPL may decide to procure modified quantum depending upon its requirement and offers received*

b) Delivery Point: Shall mean the Gujarat Energy Transmission Corporation Limited (GETCO) periphery (Gujarat-STU).

c) Open Access Responsibility: Successful Bidder(s) shall be responsible for applying for Medium Term/ Short Term open access booking as decided by the Buyer and in line with the latest open access guidelines in vogue.

d) Submission of bid:

Bidders shall be required to submit separate non-financial technical Bid and Financial Bids i.e. Initial Price Offer (IPO) as per the following time-table:

Event	Date
Publication of RfP/Activation of Event	28-03-2023
Submission of RfP by bidder (online digitally signed non-financial technical Bid and IPOs) by 1700 hours	03-04-2023
Opening of non-financial technical Bids	04-04-2023
Opening of IPOs and start of e-RA at 1200 hours on same day	06-04-2023

For detailed terms and conditions, the bidder should read the Draft PPA annexed to this document.

2. Bidding Process:

- a. E-Bidding is comprised of two parts i.e. e-Tender and e-Reverse Auction. To participate in this e-bidding, Bidder(s) have to register on DEEP Portal, if not registered.
- b. All the Bidders would be able to participate in the e-Bidding events on making payment of the requisite fees of Rupees 500 per MW per requisition for the total capacity sought by the Utility for that particular requisition for which the bidder is willing to bid, to PFC Consulting Limited (PFCCL). The requisite fee plus applicable taxes shall be deposited through the portal by e-Payment Gateway provided by MSTC Ltd. After the completion of the bidding process, only successful Bidder(s) will have to pay these charges for the quantum allocated to each of such successful Bidder(s). The balance amount will be refunded by PFCCL within seven (7) working days without any interest. The fee deposited by non-Selected Bidder(s) will also be refunded by PFCCL within seven (7) working days of completion of the event without any interest.
- c. Bidder has to specify the source of power for bid.
- d. Bidder should bid only one price per requisition accompanied by the total quantum of power the Bidder intends to supply and minimum threshold quantum acceptable to the Bidder. The bidder has the option to choose the requisition of an event in which it intends to participate. Bidder is required to sign the bid by the Digital signature of the Bidder.
- e. The Bidder shall use one Digital Signature to submit bid through one login and for each login the Bidder may submit only one price bid from one source. However, against each requisition the bidder has the option to bid multiple bids from separate logins either from same or different sources.

- f. The bidder shall quote the single tariff at Delivery Point up to three (3) decimals which shall include capacity charge, energy charge, trading margin (in case of Bidder being a Trader), applicable Point of Connection (POC) charges upto Delivery Point and all taxes, duties, cess etc. imposed by Central Government/State Govt/Local bodies. Tariffs shall be designated in Indian Rupees only. The price quoted shall not change in case if any tax/ duty/ levy/ cess become applicable after the submission of bid or there is any change in transmission charges applicable to the seller after submission of bid. The tariff should be constant and there shall be no escalation during the contractual period.
- g. Each event of the auction would require independent Digital Signature of the Bidder.
- h. Bidders shall be required to submit separate non-financial technical Bid and Financial Bids i.e. Initial Price Offer (IPO) through e-Bidding portal.
- i. The Bidders can revise their IPOs before date and time of submission of RfP.
- j. After acceptance of the non-financial technical Bids, the Financial Bids shall be opened as per Timetable given in point 1 (d).

3. Bid Evaluation:

- a. After the opening of Initial Price Offers, the system will rank the Bidders according to their price bids. The Bidder with the highest price bid in IPO stage will be called the H1 Bidder. The system will then analyse all the quantities offered by the Bidders in the IPO stage. If the total quoted quantity is greater than twice the Requisitioned Quantity, the Highest Bidder (H1) will be eliminated provided that the total quoted quantity after elimination is not less than or equal to twice the Requisitioned Quantity.
- b. The Elimination process will be done for each of the requisition separately.
- c. The shortlisted Bidder after elimination will be intimated individually by system generated emails only.
- d. The Reverse auction shall start within 120 minutes of opening of Initial Price Offers and shall continue for a period of next 120 minutes. During the Reverse Auction the Bidders will have the option of reducing the tariff quoted by them in decrements of one paise or multiples thereof and to increase the quantum quoted by them by 1 MW or multiples thereof. During the Reverse Auction the prevailing Lowest Tariff would be visible to all the Bidders.

Provided that during the last 10 (ten) minutes before the scheduled close time of e-Reverse auction, if a price bid is received which is lower than the lowest prevailing price bid recorded in the system during e-Reverse auction, the close time of e-Reverse auction will be automatically extended by 10 (ten) minutes from the time of the last price bid received. This process of auto extension will continue till there is a period of

10 (ten) minutes during which no price bid is received which is lower than the prevailing lowest price bid.

- e. The Bidders will have the option to increase the quantum of power up to corresponding value of EMD submitted along with IPO, but decrease the Tariff during the e-Reverse Auction process.
- f. In the event, if two or more Bidders quote the same amount of Tariff during IPO and e-Reverse Auction stage, the time of submission of bid will be the deciding factor for their ranking.

4. Earnest Money Deposit (EMD)

- a. The bidder shall be required to submit EMD of Rs. 30,000 per MW per month (for 30 days, 24 hours and same shall be reduced on pro-rata basis) in favour of Torrent Power Limited of offered capacity in the form of Bank Guarantee/e-Bank Guarantee payable at Ahmedabad issued by any Nationalized/ Scheduled Bank or Electronically Transfer through payment gateway provided by MSTC Ltd. in the portal valid for a period of two month from date of issue of Bank Guarantee. The format of EMD is attached herewith as Annexure 1. All costs/expenses/charges associated with the bidding, including bank guarantee etc. shall be borne by the bidder. The validity of the EMD shall be extended by the bidder if required by the Procurer.

Example: For a requirement of 1 MW for 15 days for 4 hours, the EMD shall be Rs. $30,000 \times (15 \text{ days}/30 \text{ days}) \times (4 \text{ hrs}/24 \text{ hrs}) = \text{Rs. } 2500/-$

- b. The EMD may be forfeited:
 - i. If Bidder withdraws or modifies bid during Bid Validity Period.
 - ii. For non-submission of Contract Performance Guarantee by Successful Bidder.
- c. The EMD would be refunded to the unsuccessful bidders within 10 days of expiry of Bid Validity period.
- d. The EMD of the Successful Bidder would be refunded after furnishing Contract Performance Guarantee.

5. Submission of EMD:

The bidder is required to upload scanned copy of the EMD along with bid and the original copy of EMD to be sent so as to reach the below address within 2 days of last date for submission of RFP:

Mayank Gupta
Vice President (Commercial)
Torrent Power Limited
Naranpura Zonal Office, Sola Road,
Ahmedabad-380013, Gujarat.
Phone: 079-27492222-5884

6. Contract Performance Guarantee (CPG)

- a. The successful bidder shall be required to furnish CPG within 7 days from the date of selection of Successful Bidder for an amount calculated at Rs. 2 lac per MW per month (for 30 days, 24 hours) of contract period or part thereof. The CPG for the procurement of power on hourly basis shall be calculated on pro-rata basis as per the example given above for calculating EMD.
- b. The CPG shall be in the form of Bank Guarantee (BG) payable at Ahmedabad issued by any Nationalized/ Scheduled Bank and valid for the period of contract with a claim period of 30 days after the expiry of contract period.
- c. In the event, the CPG is not furnished within seven days of signing the PPA; the Earnest Money Deposit shall be forfeited.
- d. The CPG provided by the successful bidder shall be forfeited for non-performing the contractual obligations. The CPG would be released within 30 days after completion of contract period.
- e. The procurer would return the CPG in case of non-availability of transmission corridor during the contract period.

7. Bid Validity

Validity period of offer of Bidder shall be till the time of signing of Power Purchase Agreement (PPA).

8. Evaluation Criteria

The evaluation process for non-financial technical bid comprises the following:

- a) Bidder shall upload a Bid Security (EMD) in form of Bank Guarantee/e-Bank Guarantee issued by the Scheduled bank/Nationalized Bank favouring TPL.
- b) Traders are required to upload the copy of trading license along with the bid.
- c) The bidder shall submit the details of the generating plant from which it will supply the power (name of the plant and location, connectivity details, open access details, date of commissioning of each unit, fuel used, Plant Load Factor in last 3 years etc.)
- d) Brief introduction of the company which owns the generating plant along with total generating capacity.
- e) Bidder should offer Minimum Quantum as per table given in Point 1 (a).
- f) Bidder shall sign Acceptance to terms and conditions of Bid document (Annexure- 2). The bidders shall send signed hard copy of Annexure 2 along with EMD at the address mentioned above in clause 5.
- g) In case the Procurer fails to issue the LoA within a period of 15 days from the close of e-Reverse Auction, the Successful Bidder(s) shall have the option to exit without

forfeiting the EMD.

h) The Bid shall be unconditional. Any conditional bid shall be summarily rejected.

9. Right to withdraw the RFP and to reject any Bid

This RFP may be withdrawn or cancelled by TPL at any time without assigning any reasons thereof. TPL further reserves the right, at its complete discretion, to reject any or all of the Bids without assigning any reasons whatsoever and without incurring any liability on any account. The entire bidding process is subject to approval of Hon'ble Gujarat Electricity Regulatory Commission.

TPL reserves the right to accept or reject a bid if TPL considers that the implementation of the Award and / or PPA is affected by implications of any pending litigation or otherwise disputes with the bidder / supplier or the Award and / or PPA under this RFP will have any impact of implication on the pending litigation or otherwise disputes with the bidder/supplier.

10. Contact Details

The bidder may contact the below for any query/clarifications regarding this tender:

Mayank Gupta

Vice President (Commercial)

Torrent Power Limited

Naranpura Zonal Office, Sola Road,

Ahmedabad-380013, Gujarat.

Phone: 079-27492222 Ext: 5884

powerpurchase@torrentpower.com

Annexure 1

FORMAT OF THE BANK GUARANTEE FOR EMD

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. To be provided in the name of the Procurer and BG should be **payable at Ahmedabad**).

In consideration of (Name of Bidder to be inserted) having its office at submitting the Bid inter-alia for supply of power during the period to, in response to the Tender no: Torrent Power Limited/Short/23-24/ET/27 issued by Torrent Power Limited having its office Naranpura Zonal Office, Sola Road, Naranpura, Ahmedabad 380013, Gujarat (herein after Procurer) and (Insert name of the Bidder) being a bidder, required to submit EMD as per the terms of the RFP, the (Insert Guarantor Bank Name) having its registered office hereinafter referred to as "Guarantor Bank" hereby agrees unequivocally, irrevocably and unconditionally to pay to Torrent Power Limited having its office at Naranpura Zonal Office, Sola Road, Naranpura, Ahmedabad 380013, Gujarat, forthwith on demand in writing from the Torrent Power Limited or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees This guarantee shall be valid and binding on the Guarantor Bank up to and including [Insert date of validity of EMD] and shall in no event not be terminable by notice or any change in the constitution of the Bank or by any other reasons whatsoever and our liability hereunder shall not be impaired by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. _____/- (Rs. _____ only). Our Guarantee shall remain in force until _____ [Insert date of validity of EMD]. M/s Torrent Power Limited shall be entitled to invoke this Guarantee up to 90 days from the last date of the validity of this Guarantee i.e. _____, by issuance of a written demand to invoke this guarantee.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection, disputes, or disparities raised by _____ (Insert Name of the Bidder). The Guarantor Bank shall not require M/s Torrent Power Limited to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer(s) in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Ahmedabad shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly M/S Torrent Power Limited shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against_____ (Insert the Name of Bidder), to make any claim against or any demand on the _____ (Insert the Name of Bidder) or to give any notice to _____ (Insert the Name of Bidder) or to enforce any security held by M/s Torrent Power Limited or to exercise, levy or enforce any distress, diligence or other process against_____.

The Guarantor Bank hereby agrees and acknowledges that M/s Torrent Power Limited shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs _____/- (Rs _____ only) and it shall remain in force until _____ - with an additional claim period of 90 days thereafter.

This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by_____. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if M/s Torrent Power Limited serves upon us a written claim or demand.

This Bank Guarantee shall be payable by _____ [Bank Name], _____ [Ahmedabad Branch address] upon written claim by Torrent Power

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this day of at

Witness:

1.

Signature

Name and Address:

2.

Designation with Bank Stamp

Name and Address:

Attorney as per power of attorney No.

For:

..... [Insert Name of the Bank]

Banker's Stamp and Full Address:

Dated this day of 20.....

Notes:

The Stamp Paper should be in the name of the Executing Bank.

Annexure 2

To be given on the letter head of the Bidder

Acceptance of terms and Conditions of Bid Document

(To be signed by the authorized person of the bidder)

We/I have carefully gone through the Bid Document (Tender no: Torrent Power Limited/Short/23-24/ET/27) including the Draft PPA and satisfied ourselves/myself and hereby confirm that our/my offer strictly conforms to the requirements of the Bid Document and all the terms and conditions are unconditionally acceptable to us.

Signature:

Name:

Designation:

Date:

Place:

Draft Power Purchase Agreement

This Power Purchase Agreement is made and entered into at Ahmedabad on this ____ day of _____ 2023 between:

Torrent Power Limited (TPL), a company incorporated under the Companies Act 1956 (1 of 1956) having Corporate Identity Number (L31200GJ2004PLC044068) and having its Registered office "Samanvay", 600 Tapovan, Ambawadi, Ahmedabad-380015 India (hereinafter referred to, as "TPL" or "Procurer", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assignees) as party of First part;

AND

_____, a company incorporated under the Companies Act, 1956 (1 of 1956) having Corporate Identity Number (_____) and having its registered office at _____ (hereinafter referred to as "Seller", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns); as party of Second part.

The TPL and Seller are individually referred to as 'Party' and collectively referred to as 'Parties'.

Whereas:

A. Pursuant to the e-bidding process, _____ has been selected by the Procurer, as the Seller for sale and supply of power for the Contracted Capacity as under, in accordance with the terms of this Agreement.

Period	Time Slot	Quantum at Delivery Point (MW)	Source

Injection Point:

Drawl Point: TPL will provide the same at time of signing of this PPA

B. The Seller shall provide to the Procurer, Contract Performance Guarantee(s) as per format specified in Schedule 1 of this Agreement.

- C. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by the Seller to the Procurer. This Power Purchase Agreement is subject to Hon'ble GERC's approval.
- D. The RFP terms and conditions as per TPL tender document Tender no: Torrent Power Limited/Short/23-24/ET/27 (herein after referred to, as "RFP") and the bid submitted by the seller are an integral part of this PPA.

NOW THEREFORE IN VIEW OF THE FOREGOING PREMISES AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREINAFTER SET FORTH TPL AND THE SELLER HEREBY AGREE AS FOLLOWS

ARTICLE 1
DEFINITION

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued/ framed by Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

“Act” or “Electricity Act, 2003” shall mean the Electricity Act, 2003 and any rules amendments, regulations, notifications, guidelines or policies issued there under from time to time;

“Contracted Capacity” shall mean the net capacity of power (in MW) contracted between the Seller and the Procurer(s) at the Delivery Point;

Agreement or Power Purchase Agreement PPA shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;

“base rate of Late Payment Surcharge” means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify:

Provided that if the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years;

“Bid” shall mean Bid submitted by the Successful Bidder, in response to the RFP, in accordance with the terms and conditions of the RFP;

“Business Day” Shall mean with respect to Seller and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business;

“Contract Performance Guarantee” shall mean the irrevocable unconditional bank guarantee, submitted or to be submitted by the Seller to the Procurer in the form attached hereto as Schedule 1, in accordance with the terms of PPA and RFP;

“Contract Period” Shall mean the period commencing from _____ to

	_____;
"Delivery Point"	The Delivery Point for the power shall be Gujarat Energy Transmission Company Limited (GETCO) periphery;
"Earnest Money Deposit"	Shall have the meaning ascribed in RFP;
Force Majeure or Force Majeure Event	shall have the meaning ascribed thereto in Article 6.1 of this Agreement;
Forced Outage	Refers to an outage of a generating unit or transmission facility due to a fault or reasons not planned which is accepted by SLDC/RLDC.
"GETCO"	Shall mean Gujarat Energy Transmission Corporation Limited
"Minimum Quantum"	Shall mean 10 MW
"Seller"	Shall mean the Successful Bidder who submitted the Contract Performance Guarantee and executes the PPA and other documents with the Procurer and who shall be responsible for supplying power to the Procurer at the Delivery Point for the term of PPA as per the terms and conditions specified therein
"SLDC"	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003
"SLDC Charges"	shall mean the charges levied by any of the relevant SLDCs for the supply of power by the Seller to the Procurer
"State Transmission Utility" or "STU"	shall mean the Board or the Government company notified as "State Transmission Utility" or "STU" by the respective State Government under Sub-section (1) of Section 39 of the Act
"Successful Bidder"	shall mean the Bidder selected by the TPL pursuant to the RFP for supply of power as per the terms of PPA and RFP Documents
"Tariff"	shall mean the tariff as computed in accordance with Article 5.1 of this Agreement

ARTICLE 2
TERM OF AGREEMENT

2.1 Term of the Agreement

This Agreement shall be valid for a period from _____ to _____ ("Term of Agreement"), unless terminated earlier.

2.2 Survival

The expiry or termination of this Agreement shall not affect accrued rights and obligations of the Parties under this Agreement, nor shall it affect any continuing obligations for which this Agreement provides, either expressly or by necessary implication.

ARTICLE 3
CONDITIONS SUBSEQUENT TO BE SATISFIED BY SELLER/ PROCURER

3.1 Seller's Obligation

- 3.1.1 Responsible for making application under medium term/short term open access for the period and quantum as decided by the buyer and in line with open access regulation in vogue, failing which EMD/CPG shall be forfeited.
- 3.1.2 The Seller agrees and undertakes to obtain necessary permissions for scheduling of contracted power up to procurer periphery at Seller's own cost and risk and ensure the commencement of supply from the first day of the Term of the Agreement. Any consequence of delay / default / non-compliance in application shall be on the account of the Seller.
- 3.1.3 Responsible for intimating Procurer in advance for revising the schedules as prevailing open access regulation. Any change / application for change in approved open access quantum / schedule shall be only with prior written consent of Procurer.
- 3.1.4 Seller shall reimburse any charges (including any financial charge or any other charge / duty / levy etc.) incurred by the Procurer upto GETCO Periphery (i.e. from generation plant till GETCO Periphery)

3.2 Procurer's obligation

- a. The procurer shall make payment of energy bill as mentioned in Article 5.1 of this PPA.

3.3 Contract Performance Guarantee (CPG)

- a. The successful bidder shall be required to furnish CPG within 7 days from the date of selection of successful Bidder for an amount calculated at Rs. 2 lac per MW per month (30 days, 24 hours and same shall be reduced on pro-rata basis) of contract period or part thereof.

Example: For a requirement of 1 MW for 15 days for 4 hours, the CPG shall be Rs. 2,00,000 X (15 days/30 days) X (4 hrs/24 hrs) = Rs. 16,667/-

- b. The CPG shall be in the form of BG issued by any Nationalized/ Schedule Bank in the format as prescribed in Schedule 1 and valid for the period of contract with a claim period of 30 days after the expiry of contract period.

- c. In the event, the CPG is not furnished within seven days of signing the PPA; the Bid Security submitted in the form of EMD shall be forfeited.
- d. The CPG provided by the successful bidder may be forfeited for non-performing the contractual obligations. The CPG would be released within 30 days after completion of contract period.
- e. The procurer would return the CPG in case of non availability of transmission corridor during the contract period.

ARTICLE 4
AVAILABILITY, SCHEDULING AND DISPATCH

4.1 Availability

Seller shall comply with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the DSM/ ABT/UI regulation and Grid Code from time to time relating to declaration of Availability and the matters incidental thereto.

4.2 Scheduling and Dispatch

The Seller shall declare availability from the Identified Source under the PPA unless the Procurer has consented to procure supply of electricity from alternate source. The power scheduled at the delivery point by the Seller as per the implemented schedule of the concerned RLDC/SLDC, shall be treated as power delivered to the Procurer. Any variation between the Scheduled Power and the Actual Power injection shall be to the account of the Seller. Final Energy accounting shall be as per the monthly REA/ SEA issued by RLDC/ SLDC.

4.3 Revision of Open Access Corridor

The Seller seeking revision in open access shall take prior written consent of Procurer in advance before revising the schedules.

4.4 Change in Source

TPL, subject to any additional condition it may deem fit, may allow the Seller to supply power through an alternate source on request of the Seller. If the power is being supplied through alternate source, additional charges and losses if any, including charges and losses due to cancellation of existing corridor and booking of new corridor including Open Access charges, Application fees, cancellation charges, scheduling charges of Gujarat SLDC etc. shall be to the account of Seller.

It is clarified that the Seller is required to supply electricity from the identified source only as mentioned in Recital A of this PPA. In case of non-availability of the identified source, the Seller can supply power under the option of alternate source only upon concurrence of the Procurer.

In case of the supply of power from the alternate source, unless consented by the procurer for any other lower quantum, Seller shall ensure that 100% contracted capacity is available for such period during which Seller is offering power from alternate source pursuant to

the approval from Procurer. Further, Seller shall be responsible for making application under medium term/short term open access as decided by the buyer for the period for which power is being supplied from alternate source.

ARTICLE 5

BILLING & PAYMENT

5.1 Tariff:

The tariff payable by TPL for energy delivered at GETCO periphery shall be as summarized under. The Tariff shall not change in case if any tax/ duty/ levy / cess become applicable after the submission of bid or there is any change in transmission charges applicable to the seller after submission of bid.

Duration	Time Slot	Quantum at Delivery Point (MW)	Rate at Delivery Point (Rs./kwh)	Source

5.2 Billing:

5.2.1 For the energy supplies made during the month, the successful bidder(s) will be raising weekly bills. For the purpose of the weekly bills each month shall be divided into four parts, starting from 1st, 9th, 16th and 24th day of the month to 8th, 15th, 23rd and last day of the month respectively. The weekly bills shall be raised based on the provisional schedule data published by RLDC/SLDC certified by the Seller for the energy delivered at the delivery point. After receipt of the Provisional/Final REA/SEA for the previous month issued by RLDC/SLDC, the final bill shall be raised by the Seller. In the final bill the adjustment will be made towards the difference in the actual bill on the basis of REA/SEA issued by RLDC/SLDC for the previous month minus provisional bills issued for the month. The adjustment will also be made towards the rebate already claimed. This bill shall indicate the energy as per REA/SEA, tariff, the total amount due as per this Agreement, rebate for prompt payment and adjustment if any, for the previous period. In case, energy indicated in REA/SEA is more than the schedules approved by Nodal RLDC/ SLDC, then the amount payable will be as per approved schedules for the month. Either party can claim any amount within six months from the date from which it first became due. Any claim after six months by either party shall not be entertained.

5.2.2 Transmission charges and Losses: The transmission charges, transmission losses, RLDC/SLDC charges or any other charges covered in Open Access Regulations notified by CERC/ SERC and the procedure for Open Access Regulations notified by CERC/ SERC and the procedure for Open Access stipulated by Central Transmission Utility (CTU)/ State Transmission Utility (STU) (as amended from time to time) for supply of energy up to delivery point shall be borne by the Seller. Open Access charges beyond the

Delivery Point i.e. GETCO (Gujarat STU) transmission charges and losses and Gujarat SLDC scheduling charges shall be borne by Procurer. For avoidance of doubt, it is clarified that in case of seller outside Gujarat, Seller's STU charges and losses (if any), Seller's SLDC scheduling charges, POC injection and drawl charges and losses, RLDC Scheduling charges and RLDC Application fees as applicable would be borne by the Seller.

(Further, it is clarified that for the Seller outside Gujarat, transmission charges and losses from injection point to the Delivery Point shall be borne by seller. In case of any change in the applicable CERC Regulations, if TPL is liable to pay any transmission cost for sourcing of this power from injection point to the Delivery Point, the same is required to be reimbursed by the Seller)

The Procurer will in no way be liable for any other charges except for the quoted tariff at Delivery Point on the basis of the State Energy Account (SEA) issued by SLDC / Regional Energy Account (REA) issued by RLDC, as applicable.

5.2.3 Liquidated Damages (LD):

- a) Both the parties would ensure that actual scheduling does not deviate by more than 20% of the contracted power as per the approved open access on calendar monthly basis.
- b) In case deviation from Procurer side is more than 20% of contracted energy for which open access has been allocated on calendar monthly basis, Procurer shall pay compensation at Rs. 2.00 per kWh for the quantum of shortfall in excess of permitted deviation of 20% in energy off-take while continuing to pay open access charges as per the contract. The LD shall be computed considering contracted energy at Delivery Point irrespective of actual ISTS losses.
- c) In case deviation from Seller side is more than 20% of contracted energy for which open access has been allocated on calendar monthly basis, Seller shall pay compensation to Procurer at Rs. 2.00 per kWh for the quantum of shortfall in excess of permitted deviation of 20% in the energy supplied and pay for the open access charges to the extent of energy not supplied by the Seller.
- d) In case of revision/ cancellation of approved open access corridor, the party seeking revision/ cancellation of open access corridor shall bear all the open access charges as applicable from the injection point till the point of drawl applicable due to such surrender/ cancellation.

Further, if the power is not supplied by the Seller due to forced outage or constraint in generator evacuation system, the Seller shall bear the open access charges as applicable from the injection point till the point of drawl due to such revision.

- e) Payment for invoice related to Liquidated Damages, Open Access charges and any other invoices shall be made within 7 Business Days from the receipt of invoice by Fax/e-mail (excluding the day of receipt of invoice).
- f) Further, in case the Seller fails to offer the contracted power as per the Agreement to the Procurer and sells Contracted Capacity without Procurer's consent to any other party, the Procurer shall be entitled to claim damages from the Seller for an amount equal to the higher of: (a) twice the Tariff as per this PPA for the corresponding contracted power; and (b) the entire sale revenue accrued from Third Parties on account of sale of the this contracted power. These damages shall be in addition to Liquidated Damages as per clause 5.2.3 of this PPA, for failure to supply the Contracted Capacity. For avoidance of doubt, the damages as provided above shall be calculated basis the shortfall in supply of power below 100% of the Contracted Capacity.

Additionally, the Procurer may also take actions as provided in the MOP Guidelines or short term procurement of power by Distribution Licensees through Tariff based bidding process by lodging complaint to this effect to the concerned load despatch centre, to debar the Seller from participating in power exchanges and also from scheduling of this power in any short term/ medium term/ long term contracts from that generating station for a period of three months from the establishment of default which shall increase to six months for second default and one year for each successive default.

5.3 Payment & Rebate

5.3.1 Payment: The Procurer shall make all payments to the Seller within 30 days (Due Date) from the receipt of bill by e-mail (excluding the day of receipt of bill) in the procurer's Office.

The bill must be e-mailed on any working day before 1700 hrs otherwise the day of receipt of bill will be considered as the next working day. However, hard copies of the bill shall invariably be sent to the procurer through courier. In case the seventh day is not a Business Day, the next Business Day would be the due date for the payment.

5.3.2 Rebate: The Seller/ Successful bidder(s) shall allow 2% rebate on the billed amount, if the procurer makes payment of the bill within 7 Business Days from the receipt of the bill. .

5.3.3 Late Payment Surcharge:

1. Late Payment Surcharge shall be payable, on the payment outstanding after the 30th day of the date of receipt of bill, at the base rate of Late Payment Surcharge

applicable for the period for the first month of default. In case the 30th day is not a Business Day, the next Business Day would be the due date for the payment.

2. The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time:

Provided that the rate at which Late Payment Surcharge shall be payable under Article 5.3.3 (1) or Article 5.3.3 (2) shall not be higher than 15%.

5.4 Payment term/ payment security to be made available by the procurer:

The Procurer may be required to provide revolving Letter of Credit (LC) equivalent to 100% of the weekly energy corresponding to Contracted Capacity at the tariff indicated in PPA. LC may be opened prior to commencement of supply of power.

ARTICLE 6

FORCE MAJEURE AND CHANGE IN LAW

6.1 Force Majeure

A force majeure event shall mean any event or circumstance or combination of event or circumstances that adversely affects, prevents or delays any party in the performance of its obligation in the terms of this agreement, but only if and to the extent that (i) such event or circumstances are beyond the reasonable control of the affected party, and (ii) such events or circumstances could not have been prevented through employment of prudent utility practices. For avoidance of doubt, it is clarified that constraint in any input like fuel, water etc. for generation and forced outage of the generating unit shall not be considered as force majeure.

Neither party shall be in breach of its obligation pursuant to this understanding to the extent that the performance of its obligation was prevented, hindered or delayed due to a force majeure event and without in any way prejudicing the obligation of either party to make payments of the amounts accrued due prior to the occurrence of the event of force majeure, which shall be payable on the original due date.

Force Majeure events shall include, but not limited to;

- a) Any restriction imposed by RLDC/SLDC in scheduling of power due to breakdown of Transmission/Grid constraint or any other reason shall be treated as Force Majeure without any liability on either side. The contracted power will be treated as deemed reduced for the period of transmission constraint or such other reason. The non/part availability of transmission corridor should be certified by the concerned RLDC/SLDC.
- b) Any of the events or circumstances, or combination of events and circumstances such as act of God, exceptionally adverse weather conditions, lightning, flood, cyclone, earthquake, volcanic eruption, fire or landslide or acts of terrorism, war, invasion, armed conflict, blockade, revolution, riot, insurrection or civil commotion, sabotage, explosion or criminal damage causing disruption of the system.
- c) Change in law/change in regulation that would affect the ability of the parties to perform their obligation.
- d) Regulatory intervention related to this RFP & PPA and also orders from State Govt./CERC/GERC/Appellate Tribunal of Electricity/High Courts/Supreme Court related to purchase/ sale of power under this agreement.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 Severability

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

7.2 Jurisdiction

Where any dispute arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such dispute shall be adjudicated by the Appropriate Commission (i.e. Gujarat Electricity Regulatory Commission).

All other disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 within the Judicature of Gujarat.

SIGNED, SEALED AND DELIVERED For and on behalf of Torrent Power Limited Name: Designation:	SIGNED, SEALED AND DELIVERED For and on behalf of Name: Designation:
In the presence of: Witness: 1. _____ Name: 2. _____ Name:	In the presence of: Witness: 1. _____ Name: 2. _____ Name:

SCHEDULE 1

FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE

(To be issued on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. To be provided in the name of the Procurer and BG should be **payable at Ahmedabad.**)

In consideration of _____ (name of Bidder to be inserted) agreeing to undertake the obligations under the terms and conditions of RFP Tender no: Torrent Power Limited/Short/23-24/ET/27 and Power Purchase Agreement (PPA) dated _____ signed by _____ (name of bidder to be inserted) having its office at _____ & Torrent Power Limited having its office at _____. The _____ (Insert Guarantor Bank Name) having its registered office _____ hereinafter referred to as "Guarantor Bank" hereby agrees unequivocally, irrevocably and unconditionally to pay to Torrent Power Limited having its office at _____, India forthwith on demand in writing from the Torrent Power Limited or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees _____ Only as per the terms of the RFP and PPA _____ dated _____ signed by _____ & Torrent Power Limited.

This guarantee shall be valid and binding on the Guarantor Bank up to and including _____ (Insert date of validity of CPG) and shall in no event not be terminable by notice or any change in the constitution of the Bank or the term of the RFP and PPA dated _____ signed by _____ and Torrent Power Limited or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. _____/- (Rs. _____ only). Our Guarantee shall remain in force until _____. M/s Torrent Power Limited shall be entitled to invoke this Guarantee up to 30 days of the last date of the validity of this Guarantee i.e. _____, by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from M/s Torrent Power Limited, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to M/s Torrent Power Limited.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by _____. The Guarantor Bank shall not require M/s Torrent Power Limited to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer(s) in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at _____ shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger,

amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly M/s Torrent Power Limited shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against _____, to make any claim against or any demand on the _____ - or to give any notice to _____ or to enforce any security held by M/s Torrent Power Limited or to exercise, levy or enforce any distress, diligence or other process against _____.

The Guarantor Bank hereby agrees and acknowledges that M/s Torrent Power Limited shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs _____/- (Rs _____ only) and it shall remain in force until _____ - with an additional claim period of 30 days thereafter.

This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by _____. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if M/s Torrent Power Limited serves upon us a written claim or demand.

This Bank Guarantee shall be payable by _____ [Bank Name] , _____ [Ahmedabad Branch address] upon written claim by Torrent Power

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this _____ day of _____ at _____

Witness:

1. _____

Signature

Name and Address:

2. _____

Designation with Bank Stamp

Name and Address:

Attorney as per power of attorney no

For: [Insert Name of the Bank]

Banker's Stamp and Full Address:

Dated this day of 20.....

Notes: The Stamp Paper should be in the name of the Executing Bank