

**Other Sectors except Small Hydro**

**TRUST AND RETENTION ACCOUNT AGREEMENT**

**AMONGST**

**IREDA**

**as**

**LENDER**

**AND**

**M/S \_\_\_\_\_ LTD**

**as**

**BORROWER**

**AND**

\_\_\_\_\_

**as**

**TRUST BANK**

## **TRUST AND RETENTION ACCOUNT AGREEMENT**

THIS AGREEMENT is made on this \_\_\_\_\_, day of \_\_\_\_\_, 20..... amongst:

**M/s Indian Renewable Energy Development Agency Ltd. (IREDA)** a Public Company within the meaning of the Companies Act, 1956 and having its Registered Office at Core 4-A, East Court, 1st Floor, India Habitat Centre, Lodhi Road, New Delhi – 110 003, hereinafter referred to as "Lender" which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and assigns of the FIRST PART ;

AND

M/s \_\_\_\_\_ a Company within the meaning of the Companies Act, 1956 and having its Registered Office at \_\_\_\_\_ hereinafter called the "Borrower" which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors of the SECOND PART,

AND

**M/s.** \_\_\_\_\_, a public Company incorporated under the Companies Act, 1956 and a Banking Company within the meaning of the Banking Regulation Act, 1949, and having its Registered Office at \_\_\_\_\_ hereinafter referred to as the "Trust Bank", which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and assigns of the THIRD PART.

## WHEREAS

- a. By an Agreement dated \_\_\_\_\_ day of \_\_\_\_\_ 20..... entered into between the Lender and the Borrower, as amended from time to time (hereinafter referred to as the "Loan Agreement"), the Lender has agreed to lend and advance to the Borrower and the Borrower has agreed to borrow from the Lender the sum of Rs. \_\_\_\_\_ lakhs (hereinafter referred to as the "loan") on the terms and conditions contained in the Loan Agreement.
- b. The Borrower is required to repay the loan together with interest and other monies in respect thereof in accordance with the Loan Agreement. The aggregate amounts payable by the Borrower to the Lender on each due dates is as per the Schedule -2.
- c. One of the terms of the Loan Agreement is that in order to secure the due discharge of its obligations under the Loan Agreement, the Borrower shall :
  - (a) open an account in the name of " \_\_\_\_\_ a/c IREDA Limited" (hereinafter referred to as the "Designated Account") charged exclusively in favour of the Lender, with the Trust Bank, into which the disbursements made by the Lender to the Borrower pursuant to and as the Loan Agreement shall be deposited and after the disbursal the Receivables shall be deposited;
  - (b) create in favour of the Lender an exclusive charge on the Receivables and all monies lying in the Designated Account.
- d. The Borrower has represented that the Receivables are and will at all times be the absolute property of the Borrower and subject to the rights created in the Lender hereunder, are free from any charge, trust, pledge, lien or encumbrance.
- e. Capitalised terms used herein shall have the same meaning as provided in the loan agreements unless specified otherwise.

## ARTICLE – I

### DEFINITIONS

1. In this TRUST AND RETENTION ACCOUNT AGREEMENT, unless the context or meaning thereof otherwise required, the following words/expressions shall have meaning assigned to them, respectively hereafter.

**“Authorised Investment”** means cash or deposit to the extent possible or necessary in terms of these presents, to be maintained with the Trust Bank;

**“Authorised Payments”** means:

- i. the fees and charges payable by the Borrower to the Trust Bank;
- ii. past dues, costs, charges, expenses (including charges payable for not submitting the Monitoring Reports as mentioned herein) together with additional interest and liquidated damages due and payable by the Borrower to the Lender.
- iii. All the disbursements made under the terms of the Loan Agreement and appropriated towards the project.
- iv. The amounts due and payable by the Borrower to the Lender on the immediately succeeding due date.

**“Business Day”** shall mean any day on which banks are generally open for business in New Delhi or in relation to any notice or communication to be made under this Agreement, a day on which Banks are open for business in the place of receipt of such notice or communication.

**“Designated Account”** shall mean the current account to be opened by the Borrower with the Trust Bank, Delhi or such other place as may be decided between the Lender and the Borrower in terms of this Agreement.

**“Debt Service Reserve Money”** shall mean the minimum amount equivalent to meet two debt service instalments, which would have to be maintained by the Borrower in the Designated Account.

**“Event of Default”** mean the following:

- (i) an event of default as defined in the Loan Agreement;
- (ii) failure of Borrower or Off- taker /SEB's to deposit the Receivables into the Designated Account;
- (iii) Any other breach of the terms of this Agreement;

**“Power Purchase Agreement”** means the agreement entered into /to be entered into between Borrower and Offtaker/SEB’s with regard to the purchase of power by Offtaker/SEB from Borrower on the terms and conditions incorporated/to be incorporated in the Power Purchase Agreement.

**“Power”** means electrical energy generated at the power plants situated \_\_\_\_\_ and supplied to Offtaker/SEB’s in pursuance of the Power Purchase Agreement.

**“Purchasers”** shall mean & include persons/bodies/corporates/authorities/institutions/firms/societies or government body to whom the Borrower would be selling the goods produced by him or produced from a third source & supplied to.

**“Receivables”** means (a) the amounts due and payable by Offtaker/SEB’s to the Borrower on the due dates under the terms of the Power Purchase Agreement entered/to be entered into between Offtaker/SEB’s and the Borrower or the sums becoming due and receivable by the Borrower through supply of Power to the grid/other customers and would also include all other incomes viz. Sales Tax exemption benefits or any other income from the project set-up for producing power (b) in the event of the Borrower itself captively using the power generated either wholly or in part, the amounts equivalent to the market value of the power consumed captively becoming due and payable to the borrower by the purchasers to whom the goods produced/supplied by the borrower are sold and the borrower undertakes to obtain necessary consents and authorisations, including consent from its working capital bankers as may be necessary in this regard.

**“Notice of Default”** means a notice from the Lender to the Trust Bank regarding the happening of any event of default under the Loan Agreement or this Agreement.

**“Offtaker/SEB’s”** shall mean and include the State Electricity Boards (SEB’s), body corporate, industrials, government/or any other persons being the customers of the Borrower, both present and future, who are liable to pay monies to the Borrower on account of or in connection with (I) transmission of electricity by the Borrower to such persons and /or (ii) consumption of electricity by such persons supplied by or caused to be supplied by the Borrower, in terms of the Power Purchase Agreement or pursuant to any other deed or documents executed in connection with the above and/or (III) the Borrower itself in case the power is captively consumed by the Borrower.

2. In this TRUST AND RETENTION ACCOUNT AGREEMENT, unless the context or meaning thereof otherwise requires:
  - (A) capitalised terms which are not defined in this Agreement shall have the same meaning as the Loan Agreement;
  - (B) the singular includes the plural and vice versa;
  - (C) headings and the use of bold typeface shall be ignored in its construction;
  - (D) a reference to a Clause, or Schedule is, unless indicated to the contrary, a reference to a clause or schedule to this Agreement;

- (E) references to this Agreement shall be construed as references also to any separate or independent stipulation or agreement contained in it;
- (F) the words "other" "or otherwise" and "whatsoever" shall not be construed ejusdem generis or to be construed as any limitation upon the generality of any preceding words or matters specifically referred to;
- (G) references to the word "includes" or "including" are to be construed without limitation;
- (H) references to a person shall include such person's successors and permitted assignees or transferees;
- (I) all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- (J) The words "herein", "hereto" and "hereunder" refer to this Agreement as a whole and not to the particular Clause in which such word may be used;
- (K) Words importing a particular gender include all genders;
- (L) "person" includes any individual, partnership, firm, trust, body, corporate, government, government body, authority, agency, unincorporated body of persons or association;
- (M) any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- (N) references to "Party" means a party to this Agreement and references to "Parties" shall be construed accordingly; and
- (O) references to any law shall include references to such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted.

## ARTICLE-II

### ESTABLISHMENT OF THE ACCOUNT

- 2.01 The Borrower hereby settles on the Designated Account with the Trust Bank the sum of Rs. 10000/-. (Rupees Ten Thousand only). The Borrower also hereby declares that all right, title and interest in the Designated Account and the Authorised Investments made from the Designated Account shall be vested in the Trust Bank and held in trust for the Lender in accordance with the terms of this Agreement and as their respective interests are provided for herein. The Trust Bank hereby accepts the above amount of Rs. 10000/- (Rupees Ten Thousand only) in the trust hereby declared and provided upon the terms and conditions set forth in this Agreement. Amounts deposited in the Designated Account from time to time shall be held in trust, received and applied as provided in this Agreement. No person other than the Lender shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.
- 2.02 The Trust Bank shall, save as otherwise provided herein, maintain the Designated Account in accordance with the terms of this Agreement and its usual practices and applicable regulations and, if permitted by applicable regulations, pay the maximum rate of interest payable to its customers on the balances including balances in the Debt Service Reserve Account from time to time as agreed between the Lender, the Borrower and the Trust Bank from time to time.
- 2.03 The Trust Bank and the Lender shall agree (after consultation with the Borrower) the Designated mandates, terms and conditions and operating procedures for the Designated Account but in the event of any inconsistency between this Agreement and such mandates, terms and conditions or procedures, this Agreement shall prevail.
- 2.04 The Lender shall be permitted to instruct the Trust Bank to make transfers to and from the designated Account at any time.
- 2.05 Notwithstanding any of the other provisions of this Agreement, the Lender may in the event of default instruct the Trust Bank to withdraw amounts from the Designated Account.

## ARTICLE – III

### OPERATION OF THE ACCOUNT

3.1 All the disbursements as per the Loan Agreement shall be made through the Designated Account and the contributions made by the promoter would also be made through the Designated Account.

3.2

- a) The Lender shall have an exclusive right over the receivables, the Designated Account together with all other monies lying in the Designated Account.
- b) The Designated Account shall be held by the Trust Bank to order of the Lender and shall be operated in terms of this Agreement.
- c) The Borrower shall issue instructions to Offtaker/SEB's /purchasers of goods sold by the Borrower, by a bill (as per the format provided in Schedule – I), that shall be irrevocable and binding on Offtaker/SEB's/purchasers unless it receives further written instructions to the contrary from the Borrower along with a no objection certificate from the Lender, requiring Offtaker/SEB's to remit/deposit the Receivables as and when they are payable to the Borrower as follows:

The Receivables shall be deposited into the Designated Account and Borrower shall also ensure that all Receivables becoming due and supply of power to grid (after obtaining necessary approvals and clearances) shall be deposited in the Designated Account and for this purpose, Borrower shall issue necessary irrevocable instructions to the satisfaction of the Lender.

- d) The Borrower shall obtain a written confirmation from Offtaker/SEB's/purchasers other authorities in a form and manner satisfactory to the Lender to the effect as set forth in Clause 3.2 (c) above.
- e) The Borrower shall take all steps necessary and essential to ensure the deposit/remittance by Offtaker/SEB's/purchasers of the Receivables into the Designated Account as and when Receivables become due and payable by the Offtaker/SEB's under the Power Purchase Agreement as per (c) above.
- f) The Trust Bank agree that it shall, immediately after payments are made by Offtaker/SEB's to the Designated Account, send to the Lender, a confirmation in respect of such payments stating the aggregate amount lying in the Designated Account as on that date. The Trust Bank agree and confirm that all such sums received by it from Offtaker/SEB's shall be credited to the Designated Account.

- g) The Receivables deposited /credited into the Designated Account shall be appropriated for following purposes in the following order of priority:
- (i) Charges payable to the Trust Bank
  - (ii) Charges and any other moneys/dues payable by the Borrower to the Lender;
  - (iii) Principal amounts payable by the Borrower under the Loan Agreement;
  - (iv) Topping up of the Debt Service Reserve Money
  - (v) Surplus, if any (other than Debt Service Reserve Money) will be allowed to overflow to the Borrower.

The available balances in the Designated Accounts shall be invested as per the Lender guidelines for such amounts.

All subsequent remittances in the designated account shall be first utilised towards topping up the Debt Service Reserve Account and the balance available would then be appropriated in the order of priority listed in clauses (i) to (v) above.

On receipt of the confirmation from the Trust Bank in accordance with the provisions of Clause (g) above, the Lender shall intimate to the trust Bank regarding the total amount to be transferred on the Due Date from the Designated Account in the Account of the Lender pursuant to and in accordance with Clause (g) sub-clause (i) to (v) above.

- h) However in the event of the amount collected by deposit of Receivables in the Designated Account falls short of the amount required in order to meet repayment obligations by the Borrower on immediately following Due Date in terms of the Loan Agreement, then the Trust Bank shall on the Due Date withdraw, such amount as may be required to meet the shortfall, from the Money lying as the Debt Service Reserve Money lying in the Designated Account and all the subsequent Receivables deposited in the Designated Account shall first be used by the Trust Bank for topping up the Debt Service Reserve Money to the extent withdrawn.
- i) Any money lying in the Designated Account may be invested, from time to time, by the Borrower, in fixed deposits with the Trust Bank provided the date of maturity of such fixed deposit is not more than the succeeding Due Date and proceeds of such fixed deposits shall be credited to the Designated Account.

- j) The Designated Account shall be held by the Trust Bank to the order of the Lender in terms of this Agreement. The Trust Bank confirms that they have received all approvals and authorisations and consents from the concerned authorities in relation to the operation and maintenance of the Designated Account. The Trust Bank agree that they shall send to the Lender on a monthly basis, commencing from the date of signing of the Agreement, written confirmation in respect of all deposits/remittances/payments made into the Designated Account/by the Borrower or Offtaker/SEB's during the immediately preceding month and stating the aggregate amount lying in the Designated Account as of the date of such written confirmation. The Trust Bank agree and confirm that all such sums received by it from the Offtaker/SEB's and/or Borrower shall be credited to the Designated Account.
- k) The Trust Bank confirms that upon the receipt of a notice from the Lender intimating it of an occurrence of an Event of Default, the Trust Bank shall cease to transfer/allow withdrawals of any amounts from the Designated Account and shall operate the Designated Account as per the instructions received from the Lender only.
- l) The Borrower shall continue to maintain and shall not close the Designated Account so long as any amount is due to the Lender under the Loan Agreement and till such time that the Lender advise the Borrowers and the Trust Bank in writing that all amounts have been duly received by the Lender and that no other amounts is due and payable by the Borrower to the Lender under the Loan Agreement.
- m) Borrower shall not open any other account or establish any other mode for purpose of collection of the Receivables, without the prior written consent of the Lender.
- n) Borrower shall not create any charge, lien or any encumbrance whatsoever on the Receivables or the Designated Account, without the prior consent of the Lender.
- o) The Trust Bank shall not contest or claim any right or set-off or lien on any balance lying to the credit of the Designated Account for the payment against any indebtedness or liability or claim whatsoever of the Borrower to the Trust Bank , other than that specified in the Agreement.
- p) Either Trust Bank or the Lender may by giving 90 days notice in writing, terminate this Agreement and upon such notice this Agreement shall stand cancelled. The Borrower cannot terminate this Agreement.

- q) The Trust Bank agrees that any breach by the Borrower or offtaker/SEB's/ Purchasers of the terms of this Agreement an/or any document, deed or agreement entered into or executed by the Borrower or offtaker/SEB's/Purchasers, as the case may be, pertaining to the transaction contemplated in this Agreement shall qualify as an Event of Default under the Loan Agreement and the Lender shall be entitled to take any consequential action as they may deem necessary under the Loan Agreement. In the event of the Borrower committing any breach of the terms and conditions of this Agreement, then in addition to any remedies which the Lender may be entitled to pursue against Borrower in terms of the Loan Agreements the Lender shall be entitled to claim, including, but without limitation, specific performance by the Borrower, of its obligation hereunder in an appropriate court of law and to also claim in relation thereto, such damages as that may be entitled to in law. The decision of the Lender whether breach of the terms and conditions of this Agreement has been committed by the Borrower or offtaker/SEB/ Purchasers shall be final and binding on the Borrower.
  
- r) The provisions contained herein shall be read in conjunction with the provisions of the Loan Agreement as amended from time to time and to extent of any inconsistency or repugnancy, the Loan Agreement shall prevail to all intents and purposes.

## ARTICLE – IV

### AUTHORISED INVESTMENT

- 4.01 The Trust Bank shall invest in Authorised Investments, as provided herein, the amounts constituting Authorised Payments standing to the credit of the Designated Account. The Trust Bank shall not be bound to make investments under the Indian Trusts Act, 1882.
- 4.02 All Authorised Investments shall be made and/or realised by the Trust Bank in accordance with the Lender's instructions and shall have a maturity date falling on or before the due dates for making Authorised Payments.
- 4.03 All instruments, documents of title or other documentary evidence of ownership with respect to Authorised Investments made out of the Designated Account will be held in the custody of the Trust Bank and in the trust of the Lender.
- 4.04 Upon the realisation of any investment made under this Agreement, the proceeds of realisation shall immediately to be credited to the Designated Account by the Trust Bank or immediately invested in another Authorised Investment in accordance with the Lender's instructions.
- 4.05 In the event that the Lenders becomes aware that any Authorised Investment has ceased to be an Authorised Investment, the Lender shall immediately instruct the Trust Bank on a best effort basis to realise such Authorised Investment on its maturity date or earlier if possible.
- 4.06 Any reference in this Agreement to the balance standing to the credit of the Designated Account shall be deemed to include a reference to the principal amount of the Authorised Investments in which all, or part of, such balance is for the time being invested.
- 4.07 Any interest or other income paid in respect of Authorised Investments shall be paid to the Designated Account.
- 4.08 On receipt of a Notice of Default from the Lender, the Trust Bank shall realise the Authorised Investments, whether such investments have matured or not on a best efforts basis, and apply the proceeds as directed by the Lender.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

#### 5.1 Borrower represents and warrants to the lender that:

- (a) The Borrower is the sole legal and beneficial owner of the Receivables and no lien, encumbrance or charge whatsoever exist or will exist upon the Receivables and also on all other monies lying in the Designated Account at any time (and no right or option to acquire the same exists in favour of any other person), and the security interest created in favour of the Lender on the Receivables and all other monies lying in the Designated Account constitutes a exclusive first security interest in favour of the Lender.
- (b) The Borrower undertakes to the Lender that it will not, during the continuance of this Agreement, sell, transfer, assign or create any third party right, title or interest in the Receivables and on all other monies lying in the Designated Account.
- (c) The Borrower represents to the lender that it has obtained all the requisite governmental and statutory approvals required for the establishment of a Designated Account for the deposit of the Receivables in terms of this Agreement.
- (d) The Borrower has the full right power and authority to enter into this Agreement and to create a security interest on the Receivables. There are no set-offs or counterclaims to the Receivables. The Borrower will strictly and promptly perform each of the terms, conditions, covenants and agreements if any contained in or related to the Receivables which are to be performed by Borrower. The execution and delivery of this Agreement will not violate any agreement governing the Borrower or to which the Borrower is a party, and its certificate of incorporation and Memorandum and Articles of Association do not prohibit any term or condition of this Agreement.

#### 5.2 Trust Bank charges

Towards providing the escrow services to the Borrower & the lender, the Trust Bank shall be provided 0.5 percent of the loan amount as one time documentation charges at the time of opening of the account.

## ARTICLE VI

### EVENTS OF DEFAULT & CONSEQUENCES OF DEFAULT

#### 6.1 SPECIFIED EVENTS

The Specified Events shall include, but not be limited to:

The actual Receivables in any quarter are less than 90% of the estimated Receivables as outlined herein below.

#### 6.2 OCCURRENCE OF SPECIFIED EVENT

On the occurrence of a Specified Event, the lender shall have the right to ask the Borrower to provide alternate receivables such that the cashflows from those receivables in the Designated Account provides a cover of 1.2 times over the Lender dues for the balance tenure of the facility. In case the Borrower is unable or fails to do so, the Lender has the right to ask the Borrower to prepay part of the loan, with the appropriate prepayment premium.

In the event of the Borrower failing to do so, within 15 days of intimation, the event would be termed as an Event of Default.

#### 6.3 EVENTS OF DEFAULT

The Events of Default shall include but not be limited to:

- a) Failure to pay amounts due to the Lender on the respective due dates;
- b) The Borrower commencing development of the Property other than as envisaged and specified without the prior written approval of the Lender;
- c) Any representations or warranties made by the Borrower are found to be false or incorrect;
- d) Extraordinary circumstances have arisen which in the opinion of the Lender make it improbable for the Borrower to fulfill its obligations under this agreement;
- e) Breach of any Undertakings made by the Borrower to the Lender;
- f) Breach of any conditions by the Borrower under this agreement or any other agreement between the lender and the Borrower;
- g) Bankruptcy of the Borrower;
- h) Drawal of the Debt Service Reserve Money;

- i) The ratio of the cashflows through the escrow to the amount due to the Lender in any quarter falls below 1.0;
- j) If the total debt equity ratio of the Borrower exceeds 3:1 at any time after the disbursement of the Loan;
- k) Any other Event of Default as provided under the Loan Agreement dated \_\_\_\_\_ between the Lender and the Borrower.

#### **6.4 CONSEQUENCES OF DEFAULT**

Limited to, one or more of the following remedies against the Borrower:

- a) The Lender has the right to enforce the Security pertaining to the Loan.
- b) The Lender has the right to stop all overflows from the designated Account to the Borrower's Account.
- c) The Lender has the right to accelerate the Loan in a form and manner at the sole discretion of the Lender.

## ARTICLE – VII

### TRUST BANK

- 7.01 The Lender hereby appoints the Trust Bank to act as its agent and trustee in connection herewith, and authorise the Trust Bank to exercise such rights, power, authorities and discretion as are specially delegated to the Trust Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Trust Bank accepts such appointment pursuant to the terms thereof.
- 7.02 The Trust Bank:-
- (A) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact, which might reasonably be expected to be within the knowledge of the Lender upon a certificate signed by or on behalf of the Lender;
  - (B) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or documents believed by it to be authentic;
  - (C) shall, within 5 business Days after receipt, deliver a copy to the Lender of any notice or document received by it in its capacity as the Trust Bank from the Borrower or any other person hereunder or in connection herewith;
  - (D) shall, within five business Days after receipt, deliver a copy to the Borrower any notice or document received by it from the Lender or any person in connection herewith; and
  - (E) shall, if by the terms of this Agreement, any act would be required to be performed on or within a period ending on a public holiday being a public holiday under Section 25 of the Negotiable Instrument Act , 1881 (26 of 1881) at Delhi perform the act on or by the immediately preceding Business Day.
- 7.03 Moneys and other property received by the Trust Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held in trust for the purpose for which they were received, and shall be segregated from other funds and property of the Trust Bank.
- 7.04 This Agreement shall remain in full force and effect so long as amounts remain outstanding under the Loan Agreement, unless terminated earlier by the mutual consent of the parties.
- 7.05 The Borrower shall not be entitled to terminate this Agreement.

- 7.06 The trust Bank shall be entitled to terminate this Agreement, in consultation with the Lender if the Borrower fails to comply with any of its material obligations to the Trust Bank under this Agreement or fails to conduct its business in accordance with good business practice and fails to remedy the failure within 15 days after receipt of notice thereof from the Trust Bank and/or the Lender to the Borrower, with the approval of the Lender.
- 7.07 The Borrower shall pay the Trust Bank fees of an amount for service rendered by the Trust Bank, including any collection or cash management system that may be entailed in performing such services in terms of these presents and as such times as may be agreed between the Trust Bank and the Borrower.

**ARTICLE – VIII**

**CONFIDENTIALITY**

8.01 The parties to this Agreement will further maintain utmost confidentiality regarding the contents of this Agreement at all times and they shall not make any announcement to the public or to any third party regarding the arrangements contemplated by this Agreement without the consent of the parties involved, such consent not to be unreasonably withheld provided that the parties to this agreement shall not be liable for disclosure or use of any confidential information if the same is required to be disclosed by law or regulation pursuant to the legal process.

## ARTICLE – IX

### MISCELLANEOUS

#### 9.01 **Closure of Account**

The Trust Bank shall, at the request of the Lender made on or after the payment by the Borrower of all outstanding amounts under the Loan Agreement, Trust and Retention Account Agreement, close the Designated Account and pay any amount standing to the credit thereof to the Borrower.

#### 9.02 **Restriction on Assignment**

Save as provided in Clause 6.4 hereof neither the Borrower nor the Trust Bank shall assign or transfer any part of their respective rights or obligations under this Agreement without the prior consent of the Lender, provided that the Lender may assign or transfer its rights and obligations to a successive assignees with the consent of the Trust Bank (which shall not be unreasonably withheld) and this Clause shall not prevent the Lender from assigning or transferring its rights in respect of the Facility Agreement in accordance with the terms thereof.

#### 9.03 **Successors and Assigns**

This Agreement shall be binding on and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

#### 9.04 **No Set Off**

The Trust Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Designated Account.

For the avoidance of doubt, it is declared by the Borrower that the monies and properties held by the Trust Bank, until all the dues under the facility Agreement have been duly paid to the Lender, shall not be considered as part of the assets of the Borrower or the Trust Bank and being trust property, shall in the case of a bankruptcy or liquidation of the Borrower or the Trust Bank be wholly excluded from the assets of the Borrower or the Trust Bank in such bankruptcy or liquidation.

#### 9.05 **Notices**

All Notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier, registered or certified mail or facsimile. The address for service of each Party and its facsimile number is set out under its name on the signing pages thereto. All notices shall be effective upon actual receipt save that where a notice is transmitted by facsimile and is received after 5.30 P.M. on a Business Day or on a day that is not a Business Day, such notice shall be deemed to be received on the first Business Day following the date of actual receipt. Without prejudice to the foregoing, a party giving or making a notice or communication by facsimile shall promptly deliver a copy of such notice or communication personally, by courier or mail to the addressee of such notice or communication.

Any Party may by notice change the addresses and/or addresses to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

**9.06 Waiver**

Failure by any Party at any time to enforce any provision of this Agreement or to require performance by the other Parties of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part of it or the right of the relevant Party to enforce any provision in accordance with its terms.

**9.07 Severability**

If any condition, Clause or provisions of this Agreement not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby.

**9.08 Amendments**

No amendment to this Agreement shall be binding unless in writing and signed by the duly authorised representatives of the Parties.

**9.09 Governing Law**

This Agreement shall be governed by and construed in accordance with Indian Law.

**9.10 Regulatory Approvals**

The Trust Bank and the Borrower shall maintain and comply with all regulatory approvals required for it to establish and operate the designated Account. The Trust Bank/Borrower represents and warrants to the other Parties that it is not aware of any reason why such regulatory approvals will not be ordinarily granted to the Trust Bank/Borrower

IN WITNESS whereof the Borrower have caused these and copies to be executed on the date first above written and the Trust Bank and the Lender have caused the same and the said copies to be executed by the hand of an authorised official.

THE COMMON SEAL OF THE Borrower  
M/s. \_\_\_\_\_ LIMITED  
pursuant to the Resolutions of its Board of  
Directors passed in that behalf on the \_\_\_\_  
day of \_\_\_\_\_ 20... hereunto , been  
affixed in the presence of Shri  
\_\_\_\_\_, AND Shri  
\_\_\_\_\_, two of the  
Directors of the Company who has signed  
these presents in token thereof.

Address \_\_\_\_\_

Fax No \_\_\_\_\_

SIGNED AND DELIVERED BY the within  
named Indian Renewable Energy  
Development Agency Ltd. by the hand of  
Shri \_\_\_\_\_ an  
authorised official of IREDA.

Address: Core 4-A, East Court, 1st  
Floor, India Habitat Centre, Lodhi  
Road, New Delhi – 110 003

Fax No. 011 2468 2202

SIGNED AND DELIVERED BY the within  
named \_\_\_\_\_ by the hand  
of Shri \_\_\_\_\_, an  
authorised \_\_\_\_\_ official \_\_\_\_\_ of  
\_\_\_\_\_ .

Address:

Fax Number:

**SCHEDULE – 1**

**PRESCRIBED FORMAT OF THE BILL TO BE RAISED BY THE BORROWER**

**SCHEDULE – 2**

**AGGREGATE AMOUNT PAYABLE BY THE BORROWER TO THE LENDER ON  
EACH DUE DATE**

