

AGREEMENT FOR SALE OF POWER

THIS AGREEMENT FOR SALE OF POWER is made and executed at _____ on the _____ day of _____, 2017 (“Agreement”)

BY AND BETWEEN

National Aluminium Company Limited (NALCO) a company incorporated under the Companies Act, 1956 having its registered office at Nalco Bhavan, P/1, 751 013,, Nayapalli, Bhubaneswar, Odisha 751013, India, (hereinafter referred to as the “**Generator**”), which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns of the **ONE PART**;

AND

_____ a company incorporated under the Companies Act, 1956 having its registered office at _____ (hereinafter referred to as the **“Buyer”**) which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns of the **OTHER PART**.

The **“Generator”** and **“Buyer”** shall hereinafter be collectively referred to as **“Parties”** and individually as **“Party”**

WHEREAS:

- (A) NTPC Vidyut Vyapar Nigam Limited (herein referred as **“Trader”**) has invited the tender on behalf of Generator for sale of Renewable Power from of 50.4MW (consisting of 24 Nos. Wind Turbine Generator (WTG) of 2.1 MW each) wind power plant at Jath site in Sangli district of Maharashtra (hereinafter referred to as the **“Wind Power Project”**) state on medium / short-term basis through tariff based competitive bidding process project in the State of Maharashtra. NTPC Vidyut Vyapar Nigam Limited shall be authorised trader for the purpose of Billing, Payments, and Reconciliation & Settlements.
- (B) The Generator has represented that in view of the Distribution Open Access Regulations, 2016 by the Maharashtra Electricity Regulatory Commission (hereinafter referred to as **“MERC”**), dated 8th March 2017 to promote generation of energy through non-conventional sources to supplement the ever-increasing demand of electricity in the State of Maharashtra by allowing wind open access, the Generator is permitted to sell electricity to third party / parties.
- (C) The Generator has further represented that the Generator has the requisite experience and expertise to provide _____MW capacity of power to the Buyer.
- (D) The Buyer is willing to purchase power generated through the Wind Power Project set-up by the Generator and has participated in the NIT invited by Trader on behalf of Generator having reference no. NVVN/NALCO/NIT/SALE/RE POWER and was declared successful bidder. Trader vide letter ref. no. _____dated _____, had placed LOI on Buyer

for ____ MW and the Generator has agreed to sell generated units of power of ____ MW capacity to the Buyer as per the terms and conditions hereinafter appearing.

(E) The Buyer shall furnish CPG within 10 days of issuance of Lol for an amount of Rs. One Lakh (Rs.1,00,000/-) per MW for maximum quantum of bid in the form of Bank Guarantee issued by any Nationalized/Scheduled Bank and valid for the period of contract with a claim period of one month after the expiry of contract period. In the event, the CPG is not furnished within the stipulated date the Bid Security submitted against the bid shall be forfeited.

NOW THIS AGREEMENT FOR SALE OF POWER WITHNESSTH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS UNDER:

1. Terms and Conditions related to the sale of power:

1.1. The Buyer hereby agrees to purchase ____ MW of Wind power for the period _____ to _____ generated by the Generator using the said Wind Power Project. This is known to both the parties that wind is infirm power as such no obligation lies on Generator towards supply of such units.

1.2. The Generator has agreed to supply generated power of ____ MW capacity to the Buyer through Maharashtra State Electricity Distribution Company Limited (herein referred as "MSEDCL") at a fixed price of Rs ____ /kWh on consumed units on monthly basis. The sad tariff is inclusive of statutory cost.

1.3. Delivery Point:

The delivery point for supply of power shall be the metering point (billing meter) at 33 KV feeder line.

1.4. It is agreed by and between the Parties that a Special Energy Meter ("SEM") or Availability Based Tariff ("ABT") Meter is installed at 33 KV feeder line for recording the energy

consumption by the Buyer. The electricity bill generated by MSEDCL will reflect the units supplied by the Generator in the adjustment column of the bill. As per the adjustment of wind energy units in the MSEDCL electricity bill as per the data on MSLDC Website, the Trader / Generator will raise an invoice.

- 1.5. All losses upto delivery point if any shall be borne by the generator. All charges and losses beyond delivery point shall be borne by successful bidder(s) which shall include but not limited to the following: All mandatory Open Access/Transmission charges and losses, SLDC(s)/ charge and Losses, Application Fee and any other charges applicable beyond Delivery Point shall be borne by the successful bidder(s).
- 1.6. If any sales tax / electricity duty or any other refund is sought to be claimed on any of the charges at the instance of the Generator, only the Generator, being a wind renewable energy generator, will be the beneficiary of such refunds on receipt of the same by the Buyer. On receipt of credit of such refund by the Buyer in their MSEDCL bills, Buyer shall refund the amounts to the Generator.
- 1.7. For the purpose of calculating total number of units sold by the Generator to the Buyer, the units-adjusted in the Buyer in the bill raised by MSEDCL will form the basis for calculating the amount which the Buyer shall pay to the Trader / Generator. The Buyer shall give a copy of their bill & TSC Data promptly to Trader / Generator within 3 days of receipt by them.
- 1.8. The account for sale of power will be made on a monthly basis and shall be invoiced by the Trader on behalf of Generator to the Buyer based on the monthly units utilized by the Buyer as mentioned in Clause 1.7 herein above.

- 1.9. The invoices so raised by Trader shall be settled by the Buyer within a period of 5 (Five) days from the date of the fax / e-mail of the invoice by the Trade with applicable rebate of 2% if energy payments are made within due date.
- 1.10. It is clearly understood and agreed by all the parties Trader, Generator and Buyer that the Buyer is liable to make payments to the Trader for all the units as mentioned in Clause 1.1, 1.2, 1.3 & 1.7 hereinabove and certified by MSEDCL. Any discrepancy shall be adjusted after the confirmation of same by MSEDCL.
- 1.11. In case of any delay in settlement of invoices as mentioned in Clause 1.8 above, interest @ 1.5% per Month shall be payable on all outstanding payments after 15 days of receiving relevant bills. This surcharge would be calculated on a day to day basis for each day of the delay beyond 15th day (including the date of fax/e-mail) The Parties acknowledge and agree that during the Term of this Agreement, depending on the consumption of power, the Generator/Consumer will be entitled to increase the units of power as per terms and conditions mutually agreed between the Parties.
- 1.12. The Parties in accordance with the Distribution Open Access Regulations, 2016 acknowledge that for the supply of wind power to the Buyer through the MSEDCL certain approvals / permissions / no objection certificates from MSEDCL and other appropriate authorities are required and in view thereof, the Buyer agrees to procure the said approvals / permissions from MSEDCL and the OA application Consent from MSEDCL after depositing the requisite application fee and forward the same to Trader before the start of scheduling date.
- 1.13. This Agreement shall be effective from 1st December 2017 to 31st March 2019 (hereinafter referred to as the "Term") for the units generated from the said Wind Power Project and may be renewed / extended prior to the expiry of the Term on mutually acceptable terms and conditions.

1.14. Compensation for Reduced Supply / Offtake:

Without prejudice to the provisions of Force Majeure, if the Buyer fails to draw 100% of the Contracted Power, Buyer shall pay a compensation at 20% of the tariff per kWh at which successful bidder shall be purchasing power against this bid document from NVVN for the quantum of power that falls short of 100% of the Contracted Power. On the other hand, if Generator / NVVN fails to supply 70% of the Contracted Power, NVVN shall pay compensation at the same rate i.e. 20% of the tariff per kWh to the successful bidder for the quantum of offtake that falls short of 70% of Contracted Power. The quantum of power for calculation of compensation amount shall be undertaken on monthly basis. Reconciliation for compensation shall be on yearly basis.

1.15. The Buyer will provide Payment Security cover in form of suitable Bank Guarantee in a format to be furnished by NVVN from any nationalized bank/scheduled commercial bank for an amount _____ (equivalent to 90 (Ninety) days billing @ Rs.____/kWh based on maximum MW quantum as per LOI for entire duration of contract. In case of non-payment of any monthly invoice amount by successful bidder to NVVN within 15 days from the Invoice date, NVVN will encash the provided Bank Guarantee in full on 16th day from the invoice date. However, the excess amount (=BG amount -NVVN due amount), if any, realized from BG encashment by NVVN, would be remitted back to the designated bank account of the successful bidder within three (03) working days. In case of such encashment of the BG NVVN reserve the right to terminate the contract. In such an event the contract performance guarantee will also be forfeited. The validity of BG should be 45 days beyond the invoice date of the last Provisional bill of contract period raised by NVVN.

NVVN will not commence flow of power in absence of adequate payment security mechanism. In the event of failure to provide "Payment security mechanism" before the start of flow of power, NVVN shall reserve the right to cancel the award or not to schedule the power. The BG will be used only as back-up mechanism.

1.16. The failure of either Party at any time to exercise any of its rights under this Agreement will not be deemed to be a subsequent waiver of such right or a waiver of any other rights it may have hereunder.

1.17. If any provision/s and / or portion/s of this Agreement shall be in contravention or inconsistent with or repugnant to the provisions of the Electricity Act, 2003 or becomes invalid under any applicable law, regulation, judgment or order then in that event any such invalidity or unenforceability of any provision/s and / or portion/s of this Agreement shall not affect the validity or enforceability of any other provision/s and / or portion/s of this Agreement, which shall remain in full force and effect.

1.18. This Agreement may be amended or modified only by an instrument in writing, signed by both the Parties.

Each notice will be effective on the date of actual receipt. Written notices shall be delivered by hand or registered mail, or facsimile to the following address:

Generator	Buyer
Address:	Address :
Name:	Name:
Designation:	Designation:
Phone:	Phone:
Fax:	Fax:
E-mail:	E-mail:

1.19. Force Majeure:

Both the parties shall ensure compliance of the terms and conditions of the Power Sale Agreement However, no party shall be liable for any claim for any loss or damage

whatsoever arising out of failure to carry out the terms of this Agreement to the extent that such failure is due to Force Majeure events such as rebellion, mutiny, civil commotion, riots, strike, lock out, epidemic, plague, fire, explosion, flood, drought, cyclone, lightening, earth-quake, war or other forces, accident or act of God, terrorism, malicious act, landslide, sabotage, communal violence and kidnapping. Any party claiming the benefit of this clause shall satisfy the other Party of existence of such an event(s). Any restriction imposed by POWERGRID / RLDC/ MSLDC / MSEDCL on scheduling of power supply due to constraint(s) in transmission / Grid shall be treated as Force Majeure without any liability on either side.

1.20. Dispute Resolution Mechanism:

All differences or disputes between the parties arising out of or in connection with the bid documents shall be settled by both the parties amicably. In the event such disputes are not settled amicably through mutual discussions amongst parties concerned within two months, then dispute shall be referred to, arbitration as provided herein.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereto. Notwithstanding the existence of any disputes and differences referred to arbitration, the parties hereto shall continue to perform their respective obligations under this Agreement.

1.21. Change in Law:

In case of change in law or restriction imposed by Regulator (Central or State) or Government (Central or State) or Appellate Tribunal or Courts on any aspect of sale or purchase of power, the same shall be binding on both the parties

1.22. Jurisdiction:

Dispute of any nature that may arise in connection with this tender enquiry, which falls under Electricity Act, 2003, shall be filed and forwarded to the Court(s) located at Mumbai

alone. The courts at Mumbai shall have exclusive jurisdiction to entertain and try all matters arising out of this PSA.

1.23. Termination:

This Agreement shall terminate in the event either Party voluntarily or involuntarily becomes bankrupt and / or takes and / or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any part of its assets.

All other terms & conditions shall be in line with NIT Ref No. NVVN/NALCO/NIT/SALE/RE POWER and all corrigendum's issued in this regard.

IN WITNESS WHEREOF, the Parties have executed this Agreement for Sale of Power on the day and date at the place first herein above mentioned.

GENERATOR		BUYER	
For GENERATOR Ltd		For BUYER	
Authorized Signatory-		Authorized Signatory-	
Name	Signature	Name	Signature
1. _____	_____	1. _____	_____
2. _____	_____	2. _____	_____
Witnesses:		Witnesses:	
1.		1.	
2.		2.	