CONFIDENTIALITY AND NON DISCLOSURE AGREEMENT

[**Note**: *To be submitted by the interested party prior to (i) obtaining the bid document and (ii) receiving access to the virtual data room*]

This **CONFIDENTIALITY AND NON DISCLOSURE AGREEMENT** (hereinafter referred as the "**Agreement**") is made at [●] on this [●] day of [●] 2018 (hereinafter referred as **“Effective Date”**) between:

1. **SAI WARDHA POWER GENERATION LIMITED**,a company incorporated under the Companies Act, 1956 and an existing company under the Companies Act, 2013 and having its registered office at 8-2-293/ 82/A/ 431/A, Road Number 22, Jubilee Hills, Hyderabad – 500033 (hereinafter referred to as the “**Company**” or "**Disclosing Party**" which shall be deemed to mean and include its successors and assigns) of the **FIRST PART**

**And**

1. **[●],** a company incorporated under the Companies Act, 1956 and having its registered office at **[●]** (hereinafter referred to as the “**Receiving Party**” which shall be deemed to mean and include its successors and permitted assigns) of the **SECOND PART**; ***[Note: To be filled in by the interested party]***

The “**Disclosing Party**” and “**Receiving Party**” are hereinafter individually referred to as the “**Party**” and collectively referred to as “**Parties**”.

The term ‘Receiving Party’ shall mean and include its subsidiaries, partners, associate company, holding company and their respective directors, officers, and employees or its expressly authorized representatives or agents (hereinafter collectively referred to as “**Representative**”), and the rights and obligations of the Parties hereto therefore also shall enure to such Affiliates and may be enforced directly by or against such Affiliates. As an express condition to each Party disclosing Confidential Information (*as defined hereinafter*)to the other Party and in consideration of the mutual promises and covenants herein.

**WHEREAS:**

1. The Company is engaged in the business of owning and operating a 540 MW (4 x 135MW) coal based thermal power plant at Warora Growth Centre in the Maharashtra Industrial Development Corporation Industrial Area, Wardha, Maharashtra.
2. The consortium of lenders led by IDBI Bank Limited (“**Lenders**”) have extended certain credit facilities to the Company and upon default in servicing such credit facilities, the security trustee (acting for the benefit of the Lenders) has invoked the pledge of shares of the Company and currently holds 51% of the equity shares of the Company (as collateral for sale against the outstanding credit facilities) (the “**Invoked Shareholding**”).
3. The Lenders have now proposed to undertake a change in ownership and management control of the Company by transferring the Invoked Shareholding to a new investor/consortium of investors, in accordance with the terms of the extant guidelines and regulation of the Reserve Bank of India (the “Proposed Transaction”).
4. SBI Capital Markets Limited, a company incorporated under the Companies Act, 1956 and an existing company under the Companies Act, 2013 and having its registered office at 202, Maker Tower E, Cuffe Parade, Mumbai - 400005, (hereinafter referred to as the “**SBICAP**” which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors and permitted assigns) engaged in the business of investment banking, project advisory and financial services, has been mandated by the IDBI Bank Limited (acting on behalf of the Lenders), to assist the Lenders in identifying an investor/consortium of investors, for acquiring at least 51% of the equity shareholding in the Company (on fully dilutive basis) and effecting the change in ownership and management control of the Company.
5. SBICAP has, on behalf of the Lenders, invited for procurement of a bid document and subsequent submission of bid proposals by interested parties in relation to the Proposed Transaction, by way of newspaper advertisement published on June 28, 2018 and uploaded on the website of SBICAP and IDBI Bank Limited. Pursuant to the aforementioned advertisement, the Receiving Party had has procured its expression of interest and subsequently been selected to participate in the bid process.
6. In respect of exploring and evaluating the Proposed Transaction, the Disclosing Party shall be disclosing certain Confidential Information of the Disclosing Party to the Receiving Party, on a strictly confidential basis for the purposes of the Proposed Transaction and on the terms and conditions set out below.

**NOW, THEREFORE**, in consideration for the mutual promises and covenants hereunder the Disclosing Party and Receiving Partyagree as follows:

# DEFINITIONS

## “**Confidential Information**” shall mean and include the information provided, disclosed or submitted by the Disclosing Party to the Receiving Party, in written, representational, electronic, verbal or other form and includes all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, human resource information and any other information disclosed or submitted whether prior to the Effective Date of this Agreement or thereafter including without limitation, the information on the contents and existence of this Agreement and analysis, compilations, studies and other documents prepared by either Party or its representatives or which contain or otherwise reflect or are generated from any Confidential Information.

# RECEIVING PARTY'S OBLIGATIONS

## The Receiving Party agrees that the Confidential Information is to be considered confidential and proprietary to Disclosing Party and Receiving Party shall hold the same in confidence. The Receiving Party and its Representative shall make use of the Confidential Information solely for the purpose of the transaction or such other purposes from time to time agreed or consented by the Disclosing Party as evidenced in writing. The Receiving Party and any of its Representatives shall not without the prior consent of the Disclosing Party or as expressly permitted herein, disclose, publish or reveal or cause it to be disclosed, published or revealed or make available to any other person, or use or allow others to disclose or use, the Confidential Information in any manner whatsoever other than as provided in this Agreement.

## The Receiving Party and its Representatives shall exercise no lesser security or degree of care than it applies to its own Confidential Information of an equivalent nature, but in any event not less than the degree of care which a reasonable person with knowledge of the confidential nature of the information would exercise.

## Confidential Information furnished in tangible form shall not be duplicated or caused to be duplicated by Receiving Party or any of its Representatives. Upon the written request of Disclosing Party, Receiving Party shall return all Confidential Information received from the Disclosing Party in any form, including copies, or reproductions or other media containing such Confidential Information, within ten (10) days of such request. Any documents or other media developed by the Receiving Party containing Confidential Information shall be destroyed by Receiving Party. Receiving Party shall provide a written certificate to Disclosing Party regarding destruction within ten (10) days thereafter.

## It is agreed between the Parties that Receiving Party shall not disclose or direct its Representatives, to disclose (a) the Confidential Information has been made available to them, (b) that discussions or negotiations are taking place concerning a possible transaction between the Parties or (c) any terms, conditions or other facts with respect to any such possible transaction, including the status thereof, to any third party without the prior written consent of the Disclosing Party.

# EXCEPTIONS

## Confidential Information does not include any information that:

#### at the time of its disclosure, is in public domain or which after disclosure becomes part of public domain through no fault of the Receiving Party or its Representatives; or

#### is or has been developed independently by the Receiving Party without reference to or reliance on the Disclosing Party's Confidential Information.

# PERMITTED DISCLOSURES

## The Receiving Party shall restrict the possession, knowledge, development and use of the Disclosing Party’s Confidential Information to its Representatives or any person claiming under it:

#### who have a need to know such Confidential Information, and

#### who are bound by a non-disclosure agreement or confidentiality obligations consistent with and at least as protective as this Agreement.

However, the Receiving Party will remain responsible for any breach of the terms of this Agreement by any of the persons mentioned herein to whom this Confidential Information would be disclosed by the Receiving Party.

# COMPELLED DISCLOSURE

The Receiving Party may disclose Confidential Information to the extent necessary pursuant to applicable laws, regulation, court order, or other legal process, provided the Receiving Party notifies the Disclosing Party of the existence, terms and circumstances surrounding such a request so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.

# NO LICENSE

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. It is understood and agreed that neither party solicits any change in the organization, business practice, service or products of the other party, and that the disclosure of Confidential Information shall not be construed as evidencing any intent by a party to purchase any products or services of the other party nor as an encouragement to expend funds in development or research efforts. Confidential Information may pertain to prospective or unannounced products. Receiving Party agrees not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

# NO LIABILITY

The Receiving Party understands and agrees that neither the Disclosing Party nor any of its directors, officers, employees, agents, advisors or representatives (a) have made or make any representation, warranty or guaranty, expressed or implied, as to the accuracy or completeness of the Confidential Information or (b) shall have any liability, responsibility or obligation to Receiving Party or its affiliates relating to or resulting from the use of the Confidential Information or any errors therein or omissions therefrom.

# INJUNCTIVE RELIEF

The Parties acknowledge that monetary damages alone may be an inadequate remedy for breach of the Receiving Party’s obligations under this Agreement. In addition to any other remedy which may be available in law or equity, Disclosing Party shall be entitled to injunctive order or other equitable relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.

# TERM

This Agreement shall remain valid and binding on the Parties until one year from the Effective Date of this Agreement or signing of definitive agreement, whichever is earlier (“**Term**”). The obligations under this Agreement shall survive for a period of one (1) year from the expiry of this Agreement. Provided however that the obligation of the Receiving Party to keep the Confidential Information in confidence as set out in this Agreement shall survive the Term, including any early termination of this Agreement in accordance with the terms hereof.

# GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of India and the Parties consent to the exclusive jurisdiction of the courts in Mumbai for any dispute arising out of this Agreement.

# TERMINATION

This Agreement shall automatically stand terminated on the expiry of the Term. The Parties shall further have the right to terminate this Agreement by a prior written notice of 15 (fifteen) days without any obligation towards each other, except the obligation of the Parties which survive after termination of this Agreement.

# INDEMNITY

## The Parties agree and confirm that with effect on and from the date this Agreement is made on:

#### the Receiving Party shall indemnify, and hold the Disclosing Party and any officer, employee or agent, representatives, advisors and / or consultants of the Disclosing Party, harmless against any cost, loss or liability incurred by the Disclosing Party from any breach of this Agreement by the Receiving Party; and

#### the Disclosing Party shall indemnify, and hold the Receiving Party and any officer, employee or agent, representatives, advisors and / or consultants of the Receiving Party, harmless against any cost, loss or liability incurred by the Receiving Party from any breach of this Agreement by the Disclosing Party.

# MISCELLANEOUS

## This Agreement constitutes the entire Agreement amongst the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and understandings, whether written or oral, except obligations imposed by law which shall be deemed a part of this Agreement.This Agreement may not be amended except in writing signed by both Parties hereto. No failure or delay by any Party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or preclude any other or further exercise of any right hereunder. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. Nothing in this Agreement shall be implied, except as required under statue.

## The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. The obligations under this Agreement shall not be assigned or otherwise transferred in whole or in part by Receiving Party without the prior written consent of the Disclosing Party.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

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| **By:**  **Name:**  **Designation:**  [●] | **By:**  **Name:**  **Designation:**  **SAI WARDHA POWER GENERATION LIMITED** |