

SUBORDINATED LOAN AGREEMENT

(“Loan Agreement”)

dated 17th of June 2005

between

SIEMENS LIMITED

Mumbai, India

as the Lender

and

TORRENT POWER GENERATION LIMITED

Ahmedabad, India

as the Company

THE PAYMENT OF PRINCIPAL, INTEREST AND OTHER AMOUNTS UNDER THIS AGREEMENT IS
SUBJECT TO THE TERMS OF A SUBORDINATION AGREEMENT

Contents

Preamble

1. Definitions and Interpretation
2. Conditions Precedent
3. Loans
4. Interest Period
5. Interest and Interest Rates
6. Fees and Expenses
7. Repayment and Final Maturity Date
8. Payments
9. Security
10. Representations and Warranties
11. Affirmative Covenants, Financial Covenants and Reporting Requirements
12. Negative Covenants
13. Events of Default
14. Indemnities and Increased Costs
15. Independent Obligations
16. Assignment
17. Statements and Notices
18. General Legal Provisions
19. Applicable Law, Submission to Jurisdiction

Annexure 1 Legal Opinion

Annexure 2 Disbursement Request

Annexure 3 Interest Disbursement Request

This AGREEMENT is made at Budapest on 17th of June 2005

BETWEEN:

- (1) **SIEMENS LIMITED** of Mumbai, India (the “**Lender**”); and
- (2) **TORRENT POWER GENERATION LIMITED** of Ahmedabad, India (the “**Company**”)

PREAMBLE

The Company proposes to design, finance, construct, operate and maintain a 1100 MW SUGEN gas based combined cycle power project (consisting of three identical blocks) at Akhakhol Village (Taluka Kamej, Surat District) in the State of Gujarat, India (the “**Project**”).

The Lender has agreed to make available a credit to the Company of an amount up to the Commitment for the purpose of financing the Project Costs.

This Agreement is subject to the terms of the Subordination Agreement, as defined below

1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

Capitalized terms used in this Loan Agreement shall have the meanings ascribed to them in this Section 1.1. Any capitalized terms used in this Loan Agreement and not expressly defined in this Section 1.1 shall have the meanings ascribed to them in Sections 1.1 and 1.2 of the Common Terms Schedule.

“**Accounting Principles**” means generally accepted accounting principles in India.

“**Affiliate**” means, with respect to any person, a Subsidiary of that person or a Holding Company of that person or any other subsidiary of that Holding Company.

“**Availability Period**” means the period commencing on the date of Financial Close and ending on whichever is the earlier of: (i) the Commercial Operation Date, (ii) the day on which the Loan is equal to the Commitment, (iii) the day of any termination of the Commitment in accordance with the terms and conditions of this Loan Agreement, and (iv) 30 March 2009. The Availability Period may be extended by written agreement of the Parties.

“**Bank Rate**” means “Bank Rate” as quoted by the Reserve Bank of India from time to time.

“**Business Day**” means a day on which banks are generally open for business in Mumbai, India.

“**Commitment**” means the obligation of the Lender to make available a Loan or Loans, in accordance with the terms of this Agreement, in the maximum aggregate amount of INR 120

Crores, consisting of INR 93 Crores related to Project Costs other than cost relating to interest due to the Lender and of up to INR 27 Crores relating to interest accruing hereunder up to the Commercial Operation Date.

“Common Rupee Loan Agreement” means the Common Rupee Loan Agreement dated as of September 22, 2004, as entered into between the Company and Senior Lenders

“Common Terms Schedule” means Schedule 5 of the Common Rupee Loan Agreement.

“Conversion Right” shall have the meaning ascribed to it in Section 13.3 hereto.

“Commercial Operation Date” shall have the meaning as as defined in the Common Rupee Loan Agreement

“Crores” means a unit of value equal to ten million Indian Rupees (INR 10,000,000).

“Date of Conversion” shall have the meaning ascribed to it in Section 13.3 hereto.

“Default” means an Event of Default or any event or circumstance which with the giving of notice and/or the making of any determination of materiality or fulfillment of any other applicable condition (or any combination of the foregoing) may constitute an Event of Default.

“Disbursement” means a disbursement under this Loan Agreement pursuant to a Disbursement Request, and Interest Disbursement Request or otherwise.

“Disbursement Date” means the date of a Disbursement, being the date on which the relevant Loan is to be made.

“Disbursement Ratio” means the Commitment divided by the total amount of Equity Committed.

“Disbursement Request” means a notice substantially in the form of Annexure 2, containing all information and/or documentation required therein.

“EPC Contract” means the Equipment, Procurement and Construction Contract, dated 17.06.2005 between the EPC Contractor and the Company with respect to the Project.

“EPC Contractor” means Siemens AG and Siemens Ltd..

“Event of Default” means any of the events of default specified in Section 13.1 of this Loan Agreement.

“Equity Committed” means the total amount of Equity and subordinated debt committed to the project as of the date of this agreement, which is equal to [INR 930 Crore].

“Facility” means the term loan facility made available under this Loan Agreement as described in Section 3 (*Loans*) of this Loan Agreement.

“Final Maturity Date” means the date that falls 24 month after the Commercial Operation Date but in no event later than on 15 March 2011. Any extension of such date to be mutually agreed upon.

“Financial Close” means the date as defined under the Common Rupee Loan Agreement.

“Financing Agreements” means:

- (a) this Loan Agreement;
- (b) the Subordination Agreement;
- (c) the Security Documents;
- (d) such other agreements entered into between the Company and the Lender and notices, certificates and applications issued by the Company in connection with the Financing Agreements; and
- (e) any other agreements entered into by any, other than the Lender, in connection with this Loan Agreement or the transaction contemplated by the Loan Agreement.

“Financial Indebtedness” means any Debt as defined in the Common Terms Schedule.

“First Disbursement” means the first disbursement to be made under this Loan Agreement, which shall be equal to Rs 46.50 Crores representing 50% of Commitment towards Project Cost .

“Holding Company” means in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

“INR” means “Indian Rupees”, the lawful currency of India.

“Interest Disbursement Request” means a notice substantially in the form of Annexure 3, containing all information and/or documentation required therein.

“Interest Payment Date” means the last day of each Interest Period, as specified in Sections 4 and 5.

“Interest Period” shall have the meaning ascribed to it in Section 4.2 of this Loan Agreement.

“Loan” means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

“Margin” means 0.75 percent per annum, provided however, that if the Security Interests to be provided for the benefit of the Lender have not been created and perfected within six (6) months after the date of this Loan Agreement, “Margin” shall mean 1.75 percent per annum until such filings are duly completed.

“Notice of Conversion” shall have the meaning ascribed to it in Section 13.3 hereto.

“Other Lenders” means the Senior Lenders and the Subordinated Lenders, other than the Lender.

“Party” means any party to this Loan Agreement.

“Project” shall have the meaning ascribed to in the preamble to this Loan Agreement.

“Project Account” means specific bank account of the company in which the proceeds of debt and equity for the project are credited, or any successor thereof

“**Project Costs**” has the same meaning as defined in the per Common Term Schedule

“**Reference Banks**” means Canara Bank, Punjab National Bank and UCO Bank.

“**Required Funds**” means from time to time the equity contributions required by the Senior Lenders to be made to the Company.

“**Security Interest**” means any mortgage, pledge, lien, charge, assignment by way of security, hypothecation, security interest or title retention, or any other agreement or arrangement having the effect of conferring security.

“**Security Provider(s)**” means any party to a Security Document, other than the Lender or any security trustee or agent who holds the Security Interests on behalf of the Lender.

“**Senior Lenders**” means Infrastructure Development Finance Company Limited; Industrial Development Bank of India; Power Finance Corporation Limited; Canara Bank; Punjab National Bank; UCO Bank; and/or their respective successors in interest.

“**Subordinated Debt Service Reserve Account**” means Account established and maintained in accordance with Section 9.1(b) hereto.

“**Subordinated Lenders**” means Siemens Ltd, India

“**Subordination Agreement**” means the Subordination and Intercreditor Agreement to be concluded between the Lender, the Senior Lender, and/or the Lender’s Agent and then attached hereto.

“**Subsidiary**” means, with respect to any legal entity, any other entity over 50 % of whose capital is owned, directly or indirectly, by such entity or which is otherwise effectively controlled by such entity.

“**Taxes**” means any present or future tax, impost, duty (customs or otherwise), stamp duty, royalty, levy, rate, assessment or charge of a similar nature payable to or imposed by any governmental, federal, state, local or municipal taxing authority, body or official, whether in India or elsewhere (together with any related penalties, fines, surcharges and interest).

“**Torrent Group**” means Torrent Private Ltd. and the companies owned and/or controlled by Torrent Private Ltd.

1.2 INTERPRETATION

In this Loan Agreement:

- (a) unless the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting persons include corporations, partnerships and other legal persons and references to a Lender and/or to the EPC Contractor include its successors and assigns;
- (b) unless the context otherwise requires, a reference to a specified Section, Schedule or Annexure shall be construed as a reference to that specified Section of, or Schedule or Annexure to, this Loan Agreement;

- (c) a reference to an agreement shall be construed as a reference to such agreement as it may be amended, varied, supplemented or novated from time to time;
- (d) the headings and the Table of contents are inserted for convenience of reference only and shall not affect the interpretation of this Loan Agreement;
- (e) references to “**law**” include references to any applicable law and any treaty, constitution, statute, legislation, decree, normative act, rule, regulation, judgement, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law;
- (f) references to “**assets**” include all or part of any business, undertaking, real property, personal property, uncalled capital and any rights (whether actual or contingent, present or future) to receive, or require delivery of, any of the foregoing;
- (g) references to a “**guarantee**” include references to an indemnity or other assurance against financial loss including, without limitation, an obligation to purchase assets or services as a consequence of a default by any other person to pay any Financial Indebtedness and “guaranteed” shall be construed accordingly;
- (h) “**share capital**” includes any class of shares, securities or other instruments carrying a right to vote, or a right to receive dividends, income or other distributions, or any security or instrument which is convertible into, or which confers a right to convert into, such shares, securities or other instruments issued on or by way of conversion, redemption, bonus, preference, option or otherwise or in respect of any substitution or exchange thereof;
- (i) a Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived; and
- (j) references to “**certified copy**” is a reference to a true and correct and complete copy of the original documents as certified by a director or secretary or chief financial officer or an authorised officer of the relevant person whom is certifying such original documents.

2. CONDITIONS PRECEDENT

2.1 Conditions Precedent to the First Disbursement

The obligation of the Lender to make the First Disbursement is subject to (i) the fulfilment by the Company of the conditions contained in Sections 4.1, 4.2 and 5.6(1)(a) of the Common Terms Schedule, with each reference to the “Senior Lenders” and/or the “Lenders’ Agent” being a reference hereunder to the Lender and (ii) providing to the Lender the following documents in form and substance satisfactory to the Lender:

- (a) a specimen signature list of those persons authorised to sign the Financing Agreements;
- (b) evidence that each person which has signed the Financing Agreements on behalf of the Company is duly authorised to do so;
- (c) a certified copy of the board resolution or a legal opinion of in-house counsel of the Company evidencing the authorising of, the entering into, and

- execution of the Financing Agreements and performance of its respective obligations under Financing Agreements;
- (d) the executed Financing Agreements;
 - (e) a certified copy of the executed EPC Contract and certification that it is in full force and effect;
 - (f) the Lender has been irrevocably and unconditionally paid in full for all expenses which are due and payable in accordance with Section 6;
 - (g) an executed legal opinion, addressed to the Lender and provided by a legal adviser acceptable to the Lender and substantially in the form of Annexure 1;
 - (h) evidence that the down payment required to be made under the EPC Contract as reduced by an amount equivalent to First Disbursement has been received in full by the EPC Contactor ;
 - (i) evidence that the Security Documents have been duly executed by the Security Providers and delivered to the Lender and are legal, valid and binding obligations and that all requirements to perfect the Security Interests have been completed; and
 - (j) such other documents, certificates, opinions and other matters as the Lender may reasonably require.

2.2 Conditions Precedent for all Disbursements

The obligation of the Lender to make any Disbursement, including the First Disbursement, is subject to (i) the fulfilment by the Company of the conditions contained in Section 4.3 of the Common Terms Schedule and (ii) the fulfilment to the satisfaction of the Lender of the following conditions:

- (a) the representations and warranties set out in Section 10 (*Representations*) are correct and will be correct immediately after such Disbursement;
- (b) no Default shall have occurred or would occur as a result of such Disbursement or the proposed Loan;
- (c) the total amount of such Disbursement together with all Loans previously made hereunder does not exceed the Commitment;
- (d) the Company shall have received from each of its shareholders all amounts that they are required to contribute as equity as of the relevant date..

3. LOANS AND DISBURSEMENT

- 3.1 On the terms and conditions set out in this Loan Agreement, the Lender agrees to make available to the Company, a term loan facility in an aggregate amount not exceeding the Commitment for the sole purpose of financing, in part, the Project Costs. Loans to be made under this Loan Agreement shall be made pursuant to Disbursement Requests and or Interest Disbursement Requests, which in each case shall not be issued more often than once for every calendar month.
- 3.2 On or after Financial Close and on the terms and conditions set out in this Loan Agreement, the Company shall be entitled to issue a Disbursement Request for the First Disbursement.
- 3.3 After the First Disbursement shall have occurred and the Company having received from each of the shareholders an amount equal to fifty (50) percent of the amounts committed by each of them as equity or subordinated loans, the Company shall be

entitled to issue Disbursement Requests to the Lender, in each case for an amount equal to the Disbursement Ratio multiplied by the amount of the Required Funds

- 3.4 Until the Commercial Operation Date and subject to the terms and conditions of this Loan Agreement, the Company shall be entitled to issue Interest Disbursement Requests to the Lender for interest payments due during the Availability Period.
- 3.5 To the extent that the Conditions Precedent contained in Section 2 hereof have been fulfilled: (i) any Disbursements made by the Lender pursuant to Section 3.2 or Section 3.3 shall be made to the Project Account within ten (10) Business Days after receipt of the relevant Disbursement Request and (ii) any Disbursements requested by the Company pursuant to Section 3.4 shall be credited by the Lender as an interest payment on due date after receipt of the relevant Interest Disbursement Request.
- 3.6 The Company unconditionally acknowledges that it is indebted to the Lender under this Loan Agreement upon disbursement or crediting, as the case may be, for a sum equal to the relevant Disbursement under a Disbursement Request or an Interest Disbursement Request.
- 3.7 At the end of the Availability Period any unused funds under the facility shall automatically be cancelled. The outstanding amount shall thereafter be converted into principal.

4. INTEREST PERIODS

- 4.1 With respect to each Interest Period, the Company shall pay interest (as determined in accordance with Section 5.1 or as applicable, 5.2) on the Loan on the last day of each Interest Period (an "**Interest Payment Date**"), provided however, that a direct payment of interest to the Lender shall not be required to the extent that a Disbursement is made pursuant to an Interest Disbursement Request for such Interest Period. The first Interest Period relating to each Disbursement shall start on the Disbursement Date applicable to that Disbursement and each subsequent Interest Period shall start on the first day after the last day of the preceding Interest Period.
- 4.2. The Interest Period in relation to a Loan shall be a calendar month, provided, however, that (i) the Interest Period applicable to each Disbursement shall be adjusted so as to end on the last day of the calendar month in which the disbursement has been made and (ii) the Interest Period in which the Repayment Date falls shall be shortened (if need be) so as to end on such Repayment Date;

4.3 As of the beginning of the Interest Period following the date on which the Availability Period ends, the Loans will be consolidated into, and treated as, a single Loan.

5. INTEREST AND INTEREST RATES

- 5.1 Subject to Section 5.4, the rate of interest applicable to each Disbursement shall be fixed at the percentage rate per annum, which is the aggregate of the applicable:

- (a) Margin; and
 - (b) the weighted average of the interest rate applicable to the Senior Loans provided to the Company by three (or if three are not available, at least two) of the Reference Banks with respect to the relevant Disbursement, weighted with respect to the individual commitments of each of the Reference Banks. In case the applicable interest rate should be below the Bank Rate as quoted by the Reserve Bank of India from time to time, the Bank Rate shall apply.
- 5.2 If the interest rate for the relevant Disbursement can not be determined as provided for in Section 5.1, the rate of interest for the relevant Disbursement shall be the Bank Rate plus 2% per annum.
- 5.3 In the event that the Lender does not receive on the due date, any amount payable under this Loan Agreement, the Company shall on demand pay interest on such amount from and including the due date to the date such amount is received by the Lender at two (2) per cent per annum above the rate otherwise payable hereunder.
- 5.4 The interest rate applicable with respect to all Disbursements shall be consolidated once the Availability Period Ends. Beginning with the Interest Period immediately subsequent to the Interest Period in which the Availability Period ends, the consolidated rate of interest applicable with respect to all Loans shall be the weighted average of the interest rate applicable with respect to all Disbursements.
- 5.5 The Lender shall notify the Company of the determination of a rate of interest under this Loan Agreement.

6. FEES AND EXPENSES

The Company shall, on demand, reimburse the Lender for all costs and expenses in relation to (i) the registration and perfection of all Financing Agreements and Security Interests created by the Security Documents and (ii) the enforcement or preservation of any rights of the Lender under this Loan Agreement or any of the Financing Agreements..

7. REPAYMENT AND FINAL MATURITY DATE

All and any amounts outstanding pursuant to this Loan Agreement shall be paid in full on the Final Maturity Date.

8. PAYMENTS

- 8.1 The Lender shall not later than five (5) Business Days before each Interest Payment Date and the Final Maturity Date, notify the Company in writing of the amount of the interest and the repayment instalment (if any) due on such day and the current interest rate, provided, however, that the failure by the Lender to give such notice shall not affect the Company's obligation to pay any amount hereunder on its due date.

- 8.2 The Company shall make all payments to be made to the Lender under this Loan Agreement, prior to 12 a.m. Mumbai time on the due date for payment, in immediately available freely transferable and cleared funds to Account No. 0000786000 – Current Account with Deutsche Bank, Hazarimal Somani Marg, Fort Mumbai 400001 or any other bank account specified to the Company by the Lender, from time to time.
- 8.3 Whenever a payment is due on a day, which is not a Business Day, such payment shall be made on the next Business Day.
- 8.4 If the Lender receives a payment insufficient to discharge all the amounts then due and payable by the Company under any Financing Agreement, the Lender may apply that payment towards the obligations of the Company under any Financing Agreement in the order that the Lender, in its absolute discretion, considers appropriate.
- 8.5 All payments hereunder shall be made by the Company without any set-off or counterclaim whatsoever.
- 8.6 In the event that the Company is required by law to make any deduction or withholding on account of tax or otherwise from any such payments, the Company shall promptly supply to the Lender with copies of official tax deduction certificates (TDS certificates etc.) in the prescribed form evidencing payment of such taxes
- 8.7 The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the amounts from time to time lent by, owing to and paid to it pursuant to any Financing Agreement and such account or accounts are, in the absence of manifest error, conclusive evidence of such amounts.
- 8.8 Interest and agency or other fees, if any, shall accrue from the first day of each applicable period to, and including, the last day of such applicable period and on the basis of the actual number of days elapsed in a 365-day year.
- 8.9 The Company shall be entitled to prepay any portion of the outstanding amount of the Loan before repayment of that portion becomes due under this Loan Agreement. The Company shall notify the Lender of its intention to prepay one calendar month before the prepayment. Interest on the portion prepaid shall accrue up to and including the day of prepayment. All notices of prepayment shall be irrevocable.

9. SECURITY

- 9.1 To secure the Company's payment obligations hereunder, the following security shall be provided in form and substance satisfactory to the Lender prior to the Lender making available the First Disbursement:
- (a) Security Interests ranking second only to the Senior Lenders with respect to the Security provided to the Senior Lenders pursuant to the Security Documents; and
 - (b) Subject to the terms of the Subordination Agreement, the Subordinated Debt Service Reserve Account shall be opened by the Company and pledged with a first ranking Security Interest to the Lender on the date an Event of Default under section 13.1. (a) herein occurs.. The Company shall maintain a balance in the Subordinated Debt Service Reserve Account equal at all times to twenty-five (25)

percent of the amount outstanding from time to time under this Loan Agreement in case of an Event of Default under section 13.1 (a) of this Agreement.

10. REPRESENTATIONS AND WARRANTIES

10.1 The Company represents and warrants to the Lender on the date hereof as follows:

- (a) The Financing Agreements constitute valid and legally binding obligations of the Company, which are enforceable in accordance with their respective terms.
- (b) Every consent, authorisation, licence or approval of, or registration with or declaration to, governmental or public bodies or authorities or courts required by the Company to authorise, or required by the Company in connection with the Project, the execution, delivery, validity, enforceability or admissibility in evidence of the Financing Agreements or the performance by the Company of its obligations under any Financing Agreement has been made and is in full force and effect and there has been no default in the observance of the conditions or restrictions (if any) imposed in, or in connection with, any of the same.
- (c) It is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of any Financing Agreement that it or any other instrument be notarised, filed, recorded, registered or enrolled in any court, public office or elsewhere in India or that any stamp, registration or similar tax or charge be paid in India on or in relation to any Financing Agreement and the Financing Agreements are in proper form for its respective enforcement in the courts of India.
- (d) No insolvency or similar proceedings, litigation, dispute resolution, arbitration or administrative proceeding is taking place, pending or, to the knowledge of the Company, threatened, against the Company which could have a material effect on the ability of the Company to comply with its payment obligations hereunder.
- (e) It is not in Default in relation to any other borrowing, or agreement to borrow.
- (f) The Company has no knowledge of any fact or circumstance that has not been disclosed to the Lender in writing, which may have affected the Lender's decision to enter into any Financing Agreements, or which may make it possible that the Company will not be able to comply with its obligations under any Financing Agreement.
- (g) There has been no material adverse change in the Company's financial position since the date of the last audited financial statements.
- (h) There has not been nor are there any intentions to transfer, assign or dispose of any material portion of the Company's assets, without prior written consent of the Lender, except for disposals in the ordinary course of business and for full value on arm's length terms and for cash.
- (i) The Security Interests created for the benefit of the Lender under the Security Documents constitute a priority Security Interest in favour of the Lender ranking second only to the Senior Lenders and securing the Company's obligations to the Lender under the Financing Agreements and such Security Interests have been perfected and are in full force and effect and enforceable in accordance with their terms.

(j) The Company hereby repeats for the benefit of the Lender the representations and warranties contained in Section 3.1 of the Common Terms Schedule

10.2 The representations and warranties set out in Section 10.1 shall survive the execution of this Loan Agreement and shall be deemed to be repeated on each Disbursement Request or Interest Disbursement Request and on each Disbursement Date and on each Interest Payment Date, with reference to the facts and circumstances then existing, as made at each such time.

11. AFFIRMATIVE COVENANTS, FINANCIAL COVENANTS AND REPORTING REQUIREMENTS

11.1 The Company agrees that, so long as the Commitment or any part thereof remains outstanding or any amount payable under this Loan Agreement remains unpaid, the Company shall observe and perform in accordance with their terms unless waived hereunder each of:

(i) the affirmative covenants set forth in Section 5.1 of the Common Terms Schedule; (ii) the financial covenants set forth in Section 5.4 of the Common Terms Schedule; (iii) the reporting requirements set forth in Section 5.5 of the Common Terms Schedule; and (iv) the conditions set forth in Section 5.6 of the Common Terms Schedule, each of which are incorporated by reference in this Loan Agreement as if fully set forth herein, with references to the Senior Lenders and/or the Lenders' Agent being references to the Lender

11.2 The Company agrees that, so long as the Commitment or any part thereof remains outstanding or any amount payable under this Loan Agreement remains unpaid, the Company shall give immediate written information to the Lender of any amendments or proposed amendments to the Common Rupee Loan Agreement or the Senior Loans.

12. NEGATIVE COVENANTS

The Company agrees that, so long as the Commitment or any part thereof remains outstanding or any amount payable under this Loan Agreement remains unpaid, the Company shall (i) observe and perform in accordance with their terms unless waived hereunder each of the negative covenants set forth in Section 5.2 of the Common Terms Schedule (ii) not amend any terms of the Common Rupee Loan Agreement or the Senior Loans, which would materially adversely change the tenor, the amount (other than for EPC costs) or the security, without the prior written consent of the Lender

13. EVENTS OF DEFAULT

13.1 Each of the following events shall constitute an Event of Default:

(a) **Failure to pay**

The Company fails to pay any amount payable under any Financing Agreement unless

- (i) its failure to pay is caused solely by administrative or technical error by a party other than the Company; and
- (ii) payment is made within 5 days of its due date.

(b) **Failure to comply with the Financial Covenants**

The Company fails to comply with the financial covenants contained in Section 5.4 of the Common Terms Schedule.

(c) **Failure to perform other obligations**

The Company fails to perform or observe any other obligation or covenant to the Lender (other than Section 13.1 (a) and (b) above), and such non-performance (if capable of being remedied) remains unremedied for 30 days from the earlier of (i) the date of the notice of the Lender requiring compliance or (ii) the date upon which the Company became aware of such breach or failure to perform;

(d) **Misrepresentation**

Any declaration, confirmation, information or representation or warranty made or deemed to be made by the Company in any Financing Agreements or any other document delivered by or on behalf of the Company under or in connection with any Financing Agreement is or proves to have been incorrect or misleading in any material respect when made or deemed to be made;

(e) **Cross default**

- (i) Any Financial Indebtedness of the Company is not paid when due nor within any originally applicable grace period.
- (ii) Any Financial Indebtedness of the Company is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (iii) Any commitment for any Financial Indebtedness of the Company is cancelled or suspended by a creditor of the Company as a result of an event of default (however described).
- (iv) Any creditor of the Company becomes entitled to declare any Financial Indebtedness of the Company due and payable prior to its specified maturity as a result of an event of default (however described).
- (v) No Event of Default will occur under this Section 13.1 (e) if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within subparagraphs (i) to (iv) above is less than INR 50 Mio..

(f) **Insolvency**

- (i) The Company is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (ii) A moratorium is declared in respect of any indebtedness of the Company.

(g) **Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company;
- (ii) a composition, assignment or arrangement with any creditor of the Company;

- (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Company or any of its assets; or
 - (iv) enforcement of any Security Interests over any assets of the Company, or any analogous procedure or step is taken in any jurisdiction.
- (h) **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Company [having an aggregate value of INR 50 Million and is not discharged within 45 days.
- (i) The Company ceases to be a member of the Torrent Group.
- (j) **Unlawfulness**

It is or becomes unlawful for the Company to perform any of its obligations under the Financing Agreements.
- (k) **Law and Regulation**

Any law, regulation, decision, directive or any act of any authority or any order of any court precludes the due performance and fulfilment or may affect or impair the validity of any Financing Agreement or any Security Interest created pursuant to any of the Financing Agreements;
- (l) **Inability to continue business**

Any event or circumstance occurs to the Company which leads to (i) the discontinuance of the business or (ii) the threatened discontinuance of the business and/or (iii) sale of an essential portion of assets or (iv) any nationalisation, appropriation by the governmental authority or private company or individual of any asset of the Company; trust or (v) any event similar to any of the foregoing;
- (m) **Authorisations**

Any order, permission, concession, consent, approval, licence, authorisation, registration, validation, notice, filing or exemption required for the carrying out of the Company's business (including, without limitation, all those required to enable the Company to carry on its business) shall not have been granted, or shall have been revoked, rescinded or nullified, or shall not have been renewed;
- (n) **Material Adverse Effect**

Any event or circumstance occurs which might have a Material Adverse Effect in the Lender's reasonable judgement, the Company's financial situation materially deteriorates or the assets of the Company are endangered or other exceptional circumstances occur may imperil delay or preclude the fulfilment of any obligations under any Financing Agreement;
- (o) **Invalidity**

Any Financing Agreement or the EPC Contract ceases to be in full force and effect;
- (p) **Termination of EPC Contract**

The EPC Contract has been terminated due to Owner's Default or for Owner's Convenience as defined in the EPC Contract.;
- (q) **Illegality**

It becomes illegal for the Lender to provide, or to continue to provide the Facility to the Company; or

(r) **Repudiation**

The Company repudiates any Financing Agreement or evidences an intention to repudiate any Financing Agreement.

13.2 Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, to the extent permitted pursuant to the Subordination Agreement, the Lender may, at its option, declare this Loan Agreement to be in default and the Lender may, in addition to any other remedies provided herein or by applicable law, in its absolute discretion elect to:

- (a) forthwith cancel, in whole or in part, any portion of the Commitment;
- (b) declare that the Loan and all interest and all other sums payable under of the Financing Agreements have become immediately due and payable or have become due and payable on demand, whereupon the same shall, immediately or in accordance with the terms of such notice, become so due and payable;
- (c) enforce all or any of its rights and remedies under any Financing Agreement (including any of the Security Document(s)).

13.3 **Conversion Right**

- (a) Upon the occurrence of an events described in Section 13.1 above pursuant to which the Senior Lenders exercise their right to convert all or a portion of the Senior Loans into equity of the Company, the Lender shall also have the right to convert (the "**Conversion Right**") the whole or the part ,in proportion with senior lenders of the defaulted or outstanding amount into fully paid-up equity shares of the Company, at par, in the manner specified in a notice in writing to be given by the Lender to the Company (the "**Notice of Conversion**") prior to the date on which the conversion is to take effect, which date shall be specified in the Notice of Conversion (the "**Date of Conversion**").
- (b) On receipt of a Notice of Conversion, the Company shall allot and issue the requisite number of fully paid-up equity shares of the Company, at par, to the Lender as from the Date of Conversion and the Senior Lenders shall accept the same in satisfaction of the defaulted or outstanding amount, as the case may be, to the extent so converted. The equity shares so allotted and issued to the Lender shall carry, from the Date of Conversion, the right to receive proportionately the dividends and other distributions declared or to be declared in respect of the equity capital of the Company. Save as aforesaid, the shares shall rank pari passu with the existing equity shares of the Company in all respects. The Company shall, at all times, maintain sufficient unissued equity shares for the above purpose.
- (c) The Conversion Right may be exercised by the Lender on one or more occasions.
- (d) The Company assures and undertakes that in the event of the Lender exercising the Conversion Right, the Company shall in accordance with the applicable listing requirements and if so required by the Senior Lenders get the equity shares which will be issued to the Lender as a result of the conversion listed with the Stock Exchange(s) at Mumbai and such other places as may be notified by the

Lender to the Company and allot shares in dematerialised form, if so permitted under the Applicable Law.

- (e) For the purposes of this Section 13.3, the Company shall not be construed in default if, pursuant to its request made well in advance of the due date(s) the Lender has agreed to postpone payment of any instalment of principal or interest, as the case may be, of the Loans.

14. INDEMNITIES AND INCREASED COSTS

14.1 The Company shall pay and forthwith on demand indemnify the Lender (i) against any liability it incurs in respect of any stamp, registration and similar charges, and (ii) any other taxes, duties and other charges levied or imposed against it on interest, during the currency of this Agreement, except for taxes on the Lender's overall net income in its jurisdiction of incorporation.

14.2 The Company shall forthwith on demand indemnify the Lender against any loss or liability, which the Lender incurs as a consequence of:

- (a) the occurrence of any Default; and
- (b) the operation of Section 13.2 except 13.2 (a)

The indemnities contained in this Section shall not extend to any loss to the extent that such loss is caused by the wilful misconduct or gross negligence of the Lender.

14.3 The indemnities contained in this Section shall continue in full force and effect notwithstanding the termination of this Loan Agreement.

14.4 The Lender shall not be liable for damage which results from legislation, the decisions of government agencies, acts of war, strikes, blockades, boycotts, lockouts or similar circumstances. The Lender shall not be liable for other damages, which may arise where the Lender has acted with normal care. The Lender shall not be liable for indirect or other consequential damages.

15. ASSIGNMENT

The Lender shall be entitled to assign, transfer or novate its rights and/or obligations under any Financing Agreement after Commercial Operation Date with the prior written consent of the Company, such consent not to be unreasonably withheld, provided however that no consent will be required for assignments, transfers or novations with respect to Affiliates of the Lender. The Lender shall be entitled to provide all reasonable information concerning the Company, any Financing Agreement and the Common Rupee Loan Agreement to permitted transferees or assignees, without the prior written consent of the Company. The Company is not entitled to assign or transfer any or all of its rights, benefits and obligations hereunder or thereunder, without the prior written consent of the Lender.

16. STATEMENTS AND NOTICE

- 16.1 Modifications of, or amendments to, any Financing Agreement shall be in writing only. Any waiver of this provision shall only be in writing.
- 16.2 Any statements or notices and communications in respect of any Financing Agreement shall be dispatched by letter or by fax to the following addresses:

<p>For the Lender:</p> <p>Head Corporate Finance Siemens Ltd 130 Pandurang Budkhar Marg Worli, Mumbai - 400018 India</p>	<p>For the Company:</p> <p>Torrent Power Generation Limited Attn: Managing Director Torrent House Off Ashram Road, Ahmedabad 380 009 India</p>
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Any such statement, notice or communication shall be deemed to have been received:

- (a) if made by mail letter, 15 working days after the relevant letter has been dispatched by registered airmail, prepaid postage; or
- (b) if made by fax, when transmission has been completed and a confirmation of successful and complete transmission has been received by the sending Party.
- 16.3 All correspondence between the Lender and the Company in connection with any Financing Agreement shall be conducted in the English language. Any document or information to be given by the Company hereunder shall be in the English language or if the original is not made up in the English language the original shall be accompanied by a certified translation into the English language (which version shall be binding in the event of disputes).

17. GENERAL LEGAL PROVISIONS

- 17.1 If any term of any Financing Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
- (a) the legality, validity or enforceability in that jurisdiction of any other term of any Financing Agreement; and
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of any Financing Agreement.
- 17.2 No failure to exercise and no delay in exercising on the part of the Lender any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude any other or further exercise thereof in future.
- 17.3 To the extent that the Company may now or in future in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such

immunity, the Company hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction. The Company confirms that the act of entering into any Financing Agreement is its private and commercial act.

- 17.4 The terms and conditions of any Financing Agreement are confidential and shall neither in whole or in part be disclosed to any person nor published without the prior written consent of the parties hereto, provided that this Section shall not prevent disclosures as required by law or ministerial or judicial or parliamentary authority or regulations or stock exchange listing requirements or to the legal or audit or taxation advisers or prevent the Lender from disclosing any Financing Agreement, or its terms or any information is or will be provided under such agreements to banks, financial institutions, affiliates, other entities or any person to whom the Lender is considering assigning or transferring or sub-participating all or part of its right and/or obligations herein.
- 17.5 The Company shall, from time to time, do and perform such other and further acts and execute all such other documents and instruments and do all such other acts and things as the Lender may reasonable determine are necessary or desirable to give effect to the provisions of the Financing Agreements and to cause the Financing Agreements to be duly registered, notarised and stamped in any applicable jurisdiction. The Company hereby irrevocably appoints and constitutes the Lender as the Company's true and lawful attorney with right of substitution (in the name of the Company or otherwise) to execute such documents and instruments and to do such acts and things in the name of and on behalf of the Company in order to carry out the provisions hereof if, within a reasonable period of time (as specified by the Lender) after notice from the Lender, the Company fails to do so.
- 17.6 This Loan Agreement supersedes all other agreements prior to the date hereof, oral or written, with respect to the subject matter hereof, and contains the entire agreement between the Lender and the Company with respect to the transactions contemplated hereunder.
- 17.7 Each Financing Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of the Financing Agreement.
- 17.8 A person who is not a party to this Loan Agreement has no right to enforce or enjoy the benefit of any of its terms.

18. APPLICABLE LAW AND ARBITRATION AND SUBMISSION TO JURISDICTION

- 18.1 This Loan Agreement shall be governed by and construed in accordance with Indian law.
- 18.2 Disputes
- (a) All disputes arising out of or in connection with the present Loan Agreement or any Financing Agreement including any question regarding its existence, validity or termination, which cannot be settled in due time (which shall not exceed 30 working days) by the parties, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, Paris (the "Rules"), by three arbitrators in accordance with the such Rules.

- (b) Each Party shall nominate one arbitrator for confirmation by the competent authority under the applicable Rules (Appointing Authority). Both arbitrators shall agree on the third arbitrator within 30 days. Should the two arbitrators fail, within the above time limit, to reach agreement on the third arbitrator, he shall be appointed by the Appointing Authority.
- (c) The seat of arbitration shall be Mumbai, India. The procedural law of this place shall apply where the Rules are silent.
- (d) The language to be used in the arbitration proceeding shall be English.

IN WITNESS HEREOF the parties have caused this Loan Agreement to be duly executed on 17th June, 2005

For and on behalf of
Siemens Ltd.

For and on behalf of
Torrent Power Generation Ltd.

Signature:**Sd/-**.....

Signature:**Sd/-**.....

Name:

Name:

Designation:

Designation:

Witness:

Witness:

Signature:**Sd/-**.....

Signature:**Sd/-**.....

Name:

Name:

Designation:

Designation:

Annexure 1

Legal Opinion

[Letterhead of independent legal adviser]

To: Siemens Limited
[address]
India
in its capacity as Lender under the Loan Agreement (as defined below)

Re: Subordinated Loan Agreement, dated _____
between
[...].....("Company")
and
Siemens Limited (the "Lender")

[Date]

Dear Sirs,

This opinion is being addressed and delivered to you pursuant to the above-mentioned Loan Agreement.

Terms used herein shall have the same meaning as used in the Loan Agreement.

We have acted as legal counsel for [...]. In connection with this opinion, we have examined (inter alia) the following documents:

- a) a copy of an executed version of the following documents: [list each of the Financing Agreements].
- [b) the Articles of Incorporation of the Company, its Regulations, the By-Laws of its Board of Directors and the corporate minutes including all of its corporate proceedings relating to any Financing Agreements.]
(each of sub-clauses (a) ... (...) are collectively defined as "**Financing Documents**")

We have also made such a review of other documents and records of the Company as we deem necessary to express the opinions hereinafter stated. In our opinion, the examination and review described above is all that is necessary in order to enable us to express an informed opinion as to the matters hereinafter stated. Based upon the foregoing we are of the opinion that:

- (i) the Company is a corporation duly incorporated and validly existing under the laws of India and has the corporate and other power and authority to own its property and assets and carry on its business as it is now being conducted;
- (ii) the Company has the full corporate and other power and authority to execute, deliver and carry out the terms and provisions of the Financing Agreements and has taken all necessary corporate and other action to authorise the execution and delivery of the Financing Agreements and borrowings thereunder;

(iii) neither the execution nor the delivery of the Financing Agreements nor the transactions therein contemplated, nor compliance with the terms and conditions thereof, will (a) contravene any provision of law, statute, decree, rule or regulation to which the Company is subject or, any judgement, decree, franchise, order or permit applicable to the Company; (b) conflict or be inconsistent with, or result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, security interest, charge or encumbrance upon any of the property or assets of the Company pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument, to which the Company is a party, or (c) violate any provisions of the governing statutes, letters currently known to us, by-laws or resolutions of the Company;

(iv) the Company has received or obtained every consent, licence, approval of, registration with or exemption from, any governmental, judicial or public body or authority required to authorize, or required in connection with the execution, delivery and performance of the Financing Agreements or the taking of any action thereby contemplated, including, but not limited to, any foreign exchange transfer approval by any governmental or other body; under the laws of India, the Company has full authority to make all payments under the Financing Agreements in [INR] or any alternative currency, as the case may be, by transfer of the same to you;

(v) the Financing Agreements as executed and delivered constitute legal, valid and binding obligations of the Company, enforceable in accordance with their terms. The obligations of the Company under the Financing Agreements rank and will rank at least pari passu without any preference of one above the other, by reason of priority of date of incurrence, currency of payment or otherwise, with all other secured subordinated obligations of the Company;

(vi) the choice of Indian law to govern the Financing Agreement is a valid choice of law and the consent of the Company to the jurisdictions as described in the Loan Agreement is a valid and binding consent of the Company and such choice and consent would be upheld in any proceedings brought in the courts of Mumbai;

(vii) it is not necessary or advisable to ensure the legality, validity, effectiveness, enforceability or admissibility in evidence of the Financing Agreements that it be filed, recorded, registered or enrolled with any agency or in any public office or elsewhere in India or that it be stamped with any stamp, registration or similar transaction tax in India;

(viii) the persons who signed the Financing Agreements have the right, power and authority to execute and deliver the Financing Agreements and any one of the authorised signatories of the Company has the right, power and authority to sign all notices and all other notices or communications to be given by the Company pursuant to the Financing Agreements;

(ix) the execution and delivery of the Financing Agreements by the Company and the performance of its obligations under the Financing Agreements by the Company do not constitute governmental acts and the Company is not entitled to claim immunity from arbitration, suit or judgement in India;

(x) there is no applicable law or regulation of India which requires the Company to make any deduction or withholdings for or on account of any taxes, levies, imposts, duties, charges or fees from any payments to be made by the Company under the Financing Agreements;

(xi) to the best of our knowledge, after due inquiry, there are no actions, suits or proceedings pending that are reasonably likely to materially and adversely affect the operations, business, property, assets or financial condition of the Company and its subsidiaries;

(xii) will not be deemed to be resident, domiciled or carrying on business in, or subject to the laws of, the country of incorporation of the Company by reason only of the execution, delivery, performance or enforcement of the Financing Agreements;

(xiii) according to the laws of India, there do not exist any interest ceilings or other regulations which could affect the legal validity and enforceability of the Lender's claims for interest according to Section 4 and 5 of the Loan Agreement.

We are qualified to practice law in India.

Although this opinion is dated _____, 20__, you may continue to rely on the opinions stated herein unless we will have notified you in writing of any change in any opinions herein expressed.

Yours faithfully

Annexure 2

Disbursement Request

From: [Company]

To: [Lender]

Dated:

RE: Subordinated Loan Agreement dated [] between [Company] and [Lender] (the "Loan Agreement")

Dear Sirs:

1. We refer to the Loan Agreement. This is a Disbursement Request. Terms defined in the Loan Agreement have the same meaning in this Disbursement Request unless given a different meaning herein.
2. We request a Disbursement in INR under the Loan Agreement on the following terms:
Proposed Disbursement Date: [] (or, if that is not a Business Day, the next Business Day)
Amount: []
3. The proceeds of this Disbursement should be credited to [account] and will be applied to the payment of Project Costs other than costs relating to interest payable to Lender.
4. This Disbursement Request is irrevocable and is made in accordance with the terms of the Loan Agreement.
5. We hereby certify that as of the date hereof and as of the Disbursement Date described above, both before and after giving effect thereto and to the application of the proceeds from the proposed Disbursement:
 - (k) the Conditions Precedent of Section 2 of the Loan Agreement relating to this Disbursement have been fulfilled;
 - (l) the Representations and Warranties of Section 10 of the Loan Agreement are true and correct as though made on and as of such date (except to the extent such representations and warranties expressly relate to an earlier date, in which case they are true and correct as of such earlier date);
 - (m) no Default exists, is continuing or will result from the Disbursement;
 - (n) the amount of proceeds of the Proposed Disbursement, when added to the aggregate amount of the proceeds of all previous Disbursements, will not exceed the Commitment;
 - (o) the amount requested hereunder represents an amount equal to the Disbursement Ratio multiplied by the Required Funds;
 - (p) the Shareholders of the Company have contributed or will have contributed on or by the Disbursement Date the balance of the Required Funds (i.e. one (1) minus the Disbursement Ratio, multiplied by the Required Funds) and
 - (q) no Material Adverse Effect has occurred.
6. We hereby unconditionally acknowledge that we are indebted to you under the Loan Agreement upon disbursement for a sum equal to the amount of the Disbursement requested hereunder, plus any interest payable thereon.

Yours faithfully

.....
authorized signatory for the Company

Annexure 3

Interest Disbursement Request

From: [Company]

To: [Lender]

Dated:

RE: Subordinated Loan Agreement dated [] between [Company] and [Lender] (the "Loan Agreement")

Dear Sirs:

7. We refer to the Loan Agreement. This is an Interest Disbursement Request. Terms defined in the Loan Agreement have the same meaning in this Interest Disbursement Request unless given a different meaning herein.
8. We request a Disbursement in INR under the Loan Agreement on the following terms:
Proposed Disbursement Date: [] (or, if that is not a Business Day, the next Business Day)
Amount: []
9. The proceeds of this Disbursement should be credited against interest due and payable on the Proposed Disbursement Date under the Loan Agreement.
10. This Interest Disbursement Request is irrevocable and is made in accordance with the terms of the Loan Agreement.
11. We hereby certify that as of the date hereof and as of the Disbursement Date described above, both before and after giving effect thereto and to the application of the proceeds from the proposed Disbursement:
 - (r) the Conditions Precedent of Section 2 of the Loan Agreement relating to this Disbursement have been fulfilled;
 - (s) the Representations and Warranties of Section 10 of the Loan Agreement are true and correct as though made on and as of such date (except to the extent such representations and warranties expressly relate to an earlier date, in which case they are true and correct as of such earlier date);
 - (t) no Default exists, is continuing or will result from the Disbursement;
 - (u) the amount of proceeds of the Proposed Disbursement, when added to the aggregate amount of the proceeds of all previous Disbursements, will not exceed the Commitment; and
 - (v) no Material Adverse Effect has occurred.
12. We hereby unconditionally acknowledge that we are indebted to you under the Loan Agreement upon disbursement for a sum equal to the amount of the Disbursement requested hereunder, plus any interest payable thereon.

Yours faithfully

.....
authorized signatory for the Company