

**POWER PURCHASE AGREEMENT (PPA)**

**FOR**

**PROCUREMENT OF 500 kWp SOLAR POWER ON LONG TERM BASIS**

**(Under RESCO Model)**

**Between**

**AMPSolar Renewable Energy Private Limited**

**(Power Producer)**

**And**

**PDPM Indian Institute of Information Technology, Design  
& Manufacturing, Jabalpur**

**(Procurer)**

**December 2018**

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RESCO-I Power Purchase Agreement

This Power Purchase PPA is made on the \_\_\_\_ Day of December of 2018 at Bhopal, Madhya Pradesh.

Between

AMPSolar Renewable Energy Private Limited, a Company/Limited Liability Partnership (LLP) firm/ Partnership Firm/ Sole Proprietor/ Consortium/Project Company in any form submitting the Bid incorporated under the Appropriate Act /any other relevant laws as applicable, having its registered office at 309, Rectangle One, Behind Sheraton Hotel, Saket, New Delhi 110017 (hereinafter referred to as "Power Producer", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the first part;

And

PDPM Indian Institute of Information Technology Design & Manufacturing, Jabalpur - having its registered office at Dumma Airport Road, Dumma, Dist. Jabalpur - 482005 (hereinafter referred to as "Procurer", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) as a Party of the second part.

The Power Producer and Procurer are individually referred to as 'Party' and collectively referred to as 'Parties'.

Whereas:

- A. Nodal Agency has identified the Procurer for procuring the grid interactive rooftop solar PV Project.
- B. After meeting the eligibility requirements, the Power Producer has been selected by Nodal Agency for development of solar power Project, generation and sale of solar energy.
- C. The Power Producer has been notified by Nodal Agency for "Design, engineering, supply, installation, erection, testing & Commissioning along with Comprehensive Operation and Maintenance (O&M) of the Grid Connected Rooftop Solar Project for Sale of Solar Power for a period of 25 Operational Years" and has been awarded 500 kWp of capacity in as per technical specification & other details of the RFP no. MPUVN/GCRT-RESCO 2017-18/1692 and this PPA.

- D. Pursuant to the issuance of Letter Inviting Consent for Agreement (LICA) by Nodal Agency for signing of PPA and other agreement, if any, the Power Producer has agreed to set-up solar PV Project based on Photo-voltaic technology of 500 kWp capacity at the Premises of Procurer at \_\_\_\_\_.
- E. The Power Producer is engaged in the business of building and operating power plants, including grid interactive rooftop solar PV Project.
- F. The Power Producer has agreed to sign this PPA with Procurer to sell solar power from the Project to Procurer as per the terms and conditions of this PPA read in conjunction with those of RFP.
- G. Procurer has agreed to purchase such solar power from Power Producer for consumption within Premise.
- H. Procurer agrees to procure entire power from the Power Producer up to the PPA Capacity at Tariff offered by Power Producer and finalized through the selection process as per the terms of RFP.
- I. The Parties, hereby, agree to execute this PPA setting out the terms and conditions for the sale of power by Power Producer to Procurer.

Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:

## ARTICLE 1: DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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

"Act" or "Electricity Act, 2003"	shall mean the Electricity Act, 2003 and include any amendments and substitution from time to time;
"Agreement"	shall mean agreement executed thereof between Power Producer and Procurer for power purchase, and permission for use of whole Premise or part thereof and other related documents, including the schedules, amendments, modification and supplements made in writing by the parties from time to time;
"Affected Party"	shall have meaning as per ARTICLE 10:
"Appropriate Commission"	shall mean the State Electricity Regulatory Commission referred to in section 82 of the Electricity Act 2003 (as amended from time to time);
"Bid"	shall mean technical Bid or/ and Financial Bid submitted by a Bidder, in response to RFP, in accordance with the terms and conditions of the RFP;
"Bid Documents" or "Bidding Documents"	means the RFP No. MPUVN/GCRT-RESCO 2017-18/1692 dated 26 <sup>th</sup> July 2017 along with all its attachments or/ and any amendments thereto or clarifications thereof.
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to Power Producer and Procurer, a Day other than Sunday/ public holiday or a statutory holiday, on which the banks remain open for business in Bhopal;
"Capacity Utilisation Factor" or "CUF"	shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 as amended from time to time;
"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
"Category 1, Category 2"	shall mean as categories notified under Madhya Pradesh Policy for

and Category 3”	Decentralized Renewable Energy System, 2016 and its amendment and substitution from time to time.
“Change in Law”	shall have the meaning ascribed thereto in ARTICLE 11: of this PPA;
“Completion”	As defined in Article 5.2.2 of this PPA.
“Commissioning”	shall have the meaning ascribed in ARTICLE 5: of this PPA;
“Commercial Operation Date” or “COD”	shall mean the Day when full PPA Capacity of the Project is commissioned;
“Competent Authority”	shall mean Managing Director of MPUVNL, himself and/or a person or group of persons nominated by him for the mentioned purpose herein;
“Competent Court of Law”	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this PPA;
“Consents, Clearances and/ or Permits” or “Consents”	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
“Consumer(s)”	shall mean any person who is supplied electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose Premises are, for the time being, connected for the purpose of receiving electricity with the works of a Distribution Licensee, the Government or such other person, as the case may be. Users who have merely wheeling/ supply arrangements with the licensee are also covered as Consumers;
“Construction Period”	shall mean the period between the Effective Date and COD of full PPA Capacity;
“Consultation Period”	shall mean the period of sixty (60) Days or such other longer/ shorter period as the Parties may agree, commencing from the date of issuance of a Power Producer Preliminary Default Notice or Procurer Preliminary Default Notice as provided in ARTICLE 12: of this PPA, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

“Day(s)”	shall mean a 24 (twenty four) hour period beginning at 00:00 hours Indian Standard Time and ending at 23:59:59 hours Indian Standard Time;
“Delivery Point(s)”	shall mean such points, at such a location mutually agreed by the parties, in line with applicable policy/ regulation/ rules, where solar power is delivered by the Power Producer from the Project to the Procurer, in such a way as to enable measurement of gross energy generated by Project. Multiple Delivery Points are possible even in case of a single Project;
“Deemed Generation”	shall mean energy (in units or kWh) deemed to have been generated per day average from the Project in the same month of previous Year or, if the period of consideration is within the first twelve (12) Months of Operation, the deemed generation per day will be equal to multiplication of PPA Capacity (kWp) and 3.6; where in if the affected period between 6 am to 6 pm, it could be prorated for on hourly basis by considering 12 hours of operation;
“Designated Bank Account”	Shall mean a bank account opened as stated by the lender which will be used only for transactions related the assets funded by the lender.
“Discom” or “Discom(s)”	shall mean the local distribution utility providing electric distribution and interconnection services to Procurer at the Premises of Procurer;
“Dispute”	shall mean any dispute or difference of any kind between Procurer and the Power Producer, in connection with or arising out of this PPA including but not limited to any issue on the interpretation and scope of the terms of this PPA or/ and relevant provisions of RFP;
“DREO”	shall mean District Renewable Energy Officer, an authorized representative of Nodal Agency;
"Due Date"	shall have the same meaning ascribed thereto in Article 8.3 of this PPA;
“Effective Date”	shall have the meaning ascribed thereto in Article 2.1 of this PPA;
“Electricity Laws”	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
“Event of Default”	shall mean the events as defined in ARTICLE 12: of this PPA;
“Expiry Date”	shall mean the 25 <sup>th</sup> anniversary of the Scheduled Commercial Operation Date of the Project for full PPA Capacity, considering the extensions granted, if any, by Nodal Agency;

“Financing Agreements”	shall mean the agreements pursuant to which the Power Producer has sought financing for the Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of Procurer;
“First Operational Year”	shall mean the period commencing from the Initial Part Commissioning and expiring at the end of the Calendar Month in which Project completes twelve (12) Months from the COD;
“Force Majeure” or “Force Majeure Event”	shall have the meaning ascribed thereto in ARTICLE 10: of this PPA;
“Functional / Technical Specifications”	means the technical requirements and parameters described in SCHEDULE 1 of this PPA and as provided in Grid Code relating to the operation, maintenance and dispatch of the Project;
“Grid Code” / “IEGC” or “State Grid Code”	shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Subsection (1) of Section 86 of the Electricity Act 2003, as applicable;
“Indian Governmental Instrumentality”	shall mean the Government of India, Governments of state(s) of Madhya Pradesh and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
“Initial Part Commissioning”	shall mean the commissioning of first part capacity of PPA Capacity by Power Producer, and shall include COD if the entire project is commissioned together;
“Insurances”	shall mean the insurance cover to be obtained and maintained by the Power Producer in accordance with ARTICLE 9: of this PPA;
“Invoice” or “Bill”	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
“Late Payment Surcharge”	shall have the meaning ascribed thereto in Article 8.5.1 of this PPA;



"Liquidated Damages or LD"	shall mean the penalty levied on the Power Producer due to delay in commencement of supply of solar power, from the SCOD or extended SCOD in accordance with ARTICLE 4.14, to Procurer;
"Law"	shall mean in relation to this PPA, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
"Lenders"	means the banks, other financial institutions, multilateral agencies, Reserve Bank of India registered non-banking financial companies, mutual funds and agents or trustees of debenture / bond holders, including their successors and assignees, who have agreed as on or before COD of the grid interactive rooftop solar PV Project to provide the Power Producer with the senior debt financing described in the Capital Structure Schedule, and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned:  Provided that, such assignment or transfer shall not relieve the Power Producer of its obligations to Procurer under this PPA in any manner and shall also does not lead to an increase in the liability of any of Procurer;
"Letter of Credit" or "L C"	shall have the meaning ascribed thereto in Article 8.8 of this PPA;
"Meters" or "Metering System"	means meter(s) and metering devices owned by the Power Producer and installed at the Delivery Point(s) for measuring and recording the delivery and receipt of solar energy, as required by a Project as per RFP;
"Metering Date"	means the first Business Day of each calendar month, subsequent to the month in which the solar power is generated by Project, on which the Power Producer takes joint meter reading with the Procurer. The billable units shall be equal to the difference between the meter reading on the Metering Date and the meter reading on the previous month's Metering Date;
"Maintenance Outage"	shall have the meaning as ascribed to this term as per the provisions of

	the Grid Code;
"Minimum CUF"	shall mean the 12% CUF to be maintained by the Generator for each and every Operational Year;
"Month(s)"	shall mean a calendar month as per the Gregorian calendar;
"Nodal Agency"	shall mean Madhya Pradesh Urja Vikas Nigam Limited;
"Nodal Agency's"	
"Normative Project Cost"	Benchmark Capex for 2018-19 notified by MNRE + Lower of (SOR cost, Actual cost) for any additional work done.
Designated Bank Account"	Shall mean a Bank Account as notified by MPUVNL which shall be used for transaction with parties under this RfP.
"Operational Year(s)"	shall mean the First Operational Year and thereafter each period of 12 (twelve) Months till the Expiry Date of PPA;
Part Commissioning	shall mean the Commissioning of capacity lower than the PPA capacity for the purpose of receiving the Commissioning certificate for part capacity;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this PPA;
"Payment Security Mechanism"	shall have the meaning ascribed thereto in Article 8.8 of this PPA;
"Construction Performance Bank Guarantee" or "C-PBG"	Means the irrevocable, unconditional bank guarantee, to be submitted by the Power Producer to Nodal Agency in the form as mentioned in RFP and which shall include any additional bank guarantee furnished by the Power Producer under this PPA, if any;
"Performance Test "	means the test carried out in accordance with RFP;
"Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"PPA Capacity"	shall mean the capacity of 500 kWp or the capacity as approved by the Nodal Agency as per Article 3.2.3 for implementation of grid connected roof top solar PV Projects for sale of solar power to Procurer after undertaking a technical analysis of the likely capacity under the PPA, which shall be within 80% to 150% of the kWp as provided in the RFP;
"Preliminary Default Notice"	shall have the meaning ascribed thereto in ARTICLE 12: of this PPA;

<p>“Premise(s)”</p>	<p>shall mean any land, building or structure or part thereof or combination thereof including any other vacant /non vacant area which is part of the Procurer establishment;</p>
<p>“Power Purchase Agreement” or “PPA”</p>	<p>shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;</p>
<p>“Procurer(s)”</p>	<p>shall mean the person or company or organization procuring solar power from the Power Producer at competitively determined tariff for at least 25 Operational Years;</p>
<p>“Project(s)”</p>	<p>means grid interactive rooftop solar PV project for which Power Producer has been given responsibility to design, engineering, supply, erection, testing, commissioning and comprehensive operation and maintenance and sale of solar power for a period of 25 Operational Years having any of the individual or combination of projects: a) grid connected net metered systems or b) grid connected systems for consumption within premises with no export of power.</p>
<p>“Project Documents”</p>	<p>Mean Power Purchase Agreement Land Lease or Land Use Permission Agreement Documents as required in RFP as well as RFP documents; and any other agreements designated in writing as such, from time to time, by Procurer and the Power Producer;</p>
<p>“Prudent Utility Practices”</p>	<p>shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power station; b) the requirements of Indian Law; and c) the physical conditions at the site of the Project;</p>
<p>“Rebate”</p>	<p>shall have the same meaning as ascribed thereto in Article 8.6 of this</p>

	PPA;
“RESCO MODEL”	shall mean where the Power Producer intend to use a Premise owned/used by the Procurer and enters into the PPA with Procurer for supply of Solar Power for 25 Operational Years at a tariff determined through mutual arrangement or competitive bidding;
“RFP”	shall mean Request For Proposal No. MPUVN/GCRT-RESCO 2017-18/1692 dated 26 <sup>th</sup> July 2017, with all its terms and conditions along with all schedules, Annexure and RFP Project Documents attached thereto, issued by Nodal Agency and shall include any modifications, amendments or alterations thereto.
“Rupees” or “Rs”	shall mean Indian rupees, the lawful currency of India;
“Power Producer”	shall mean the Bidder selected pursuant to the RFP to set up the Project and supply power therefrom to Procurer as per the terms of PPA or/ and RFP;
“Scheduled Commercial Operation Date” or “SCOD”	shall mean date nine months from Effective Date under the PPA;
“Supplementary Bill” or “Supplementary Invoice”	means a bill other than a Monthly Bill or Monthly Invoice raised by any of the Parties in accordance with Article 8.7;
“Tariff”	shall have the same meaning as provided for in ARTICLE 8: of this PPA;
“Tariff Payment”	shall mean the payments to be made under Monthly Bills as referred to in Article 8.1.1 and the relevant Supplementary Bills in accordance with the Article 8.10
“Termination Notice”	shall mean the notice given by either Parties for termination of this PPA in accordance with ARTICLE 12: of this PPA;
“Term of PPA”	shall have the meaning ascribed thereto in ARTICLE 2: of this PPA;
“Total Debt Amount”	means the sum of the following amounts, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the Reference Exchange Rate, the selling rate in Rupees for the Foreign Currency on the relevant Day, as notified by the State Bank of India as its TT Rate at 12:00 noon on the date of issuance of Substitution Notice by the Lenders  (a) the principal amount of the senior debt incurred by the Power Producer (as per the terms of the Financing agreements) to finance the

	<p>Project according to the Capital Structure Schedule which remains outstanding on the date of issuance of Substitution Notice by the Lender after taking account of any senior debt repayments which could have been made out of the Monthly Tariff Payments received by the Power Producer on or before the date of issuance of Substitution Notice by the Lender as per the terms provided in the Financing agreements ; and</p> <p>(b) all accrued interest and financing fees payable under the Financing agreements on the amounts referred to in (a) above from the date of supply of power till the date preceding the date of issuance of Substitution Notice by the Lender or, if supply of power has not yet begun, from the most recent date when interest and financing fees were capitalised, and</p> <p>(c) if this PPA is terminated during the Construction Period, any amounts owed to the construction contractor for work performed but not paid for under the construction contract (other than amounts falling due by reason of the Power Producer's default);</p>
<p>"Week"</p>	<p>shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;</p>
<p>"Year"</p>	<p>shall mean 365 days or 366 days in case of leap year when February is of 29 days;</p>

## 1.2 Interpretation

Save where the contrary is indicated, any reference in this PPA to:

- 1.2.1. "PPA" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexure;
- 1.2.2. An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this PPA;
- 1.2.3. An "affiliate" of any party shall mean a company that either directly or indirectly controls or is controlled by or is under common control of the same person which controls the concerned party; and control means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;
- 1.2.4. A "Crore" means a reference to ten million (10,000,000) and a "Lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.5. An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.6. "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.7. A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.8. "Rupee", "Rupees", "INR" or "Rs" shall denote Indian Rupees, the lawful currency of India;
- 1.2.9. The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution,

arrangement, protection or relief of debtors;

1.2.10. Words importing the singular shall include the plural and vice versa;

1.2.11. This PPA itself or any other PPA or document shall be construed as a reference to this or to such other PPA or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;

1.2.12. A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;

1.2.13. A time of Day shall, save as otherwise provided in any PPA or document be construed as a reference to Indian Standard Time;

1.2.14. Different parts of this PPA are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this PPA, they shall be interpreted in a harmonious manner so as to give effect to each part;

1.2.15. The tables of contents and any headings or sub-headings in this PPA have been inserted for ease of reference only and shall not affect the interpretation of this PPA;

1.2.16. All interest, if applicable and payable under this PPA, shall accrue from Day to Day and be calculated on the basis of a year of three hundred and sixty five (365) Days;

1.2.17. The words "hereof" or "herein", if and when used in this PPA shall mean a reference to this PPA;

1.2.18. The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

## **ARTICLE 2: TERM OF PPA**

### **2.1 Effective Date**

2.1.1 This PPA shall come into effect from the date of accomplishment of all the conditions precedent mentioned Article 3.1 and 3.2.

### **2.2 Term of PPA**

2.2.1 This PPA, subject to Article 2.3 and 2.4, shall be valid for a term from the Effective Date until the Expiry Date.

### **2.3 Early Termination**

2.3.1 This PPA shall terminate before the Expiry Date provided:

- a) if either Procurer or Power Producer terminates the PPA, pursuant to ARTICLE 12: of this PPA; or
- a) in such other circumstances as the Procurer may agree, in writing, in accordance with Article 12.7 (Premature Termination).

### **2.4 Survival**

2.4.1 Notwithstanding anything to the contrary herein, the expiry or termination of this PPA shall not affect any accrued rights, obligations and liabilities of the Parties under this PPA, including the right to receive penalty as per the terms of this PPA, nor shall it affect the survival of any continuing obligations for which this PPA provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 4.3.1, ARTICLE 9: (Insurance), Liquidated Damages for delay in commencement of supply of power to Procurers under Article 4.14, ARTICLE 10: (Force Majeure), ARTICLE 12: (Events of Default and Termination), ARTICLE 13: (Liability and Indemnification), ARTICLE 16: (Governing Law and Dispute Resolution), ARTICLE 17: (Miscellaneous Provisions), and other Articles and Schedules of this PPA which are indispensable for survival or amicable settlement of events and transactions pursuant to this PPA.



### **ARTICLE 3: CONDITION PRECEDENT**

#### **3.1 Condition Precedent of the Procurer**

- 3.1.1 Procurer shall allocate sufficient shadow free space in its Premise, within fifteen (15) Days of signing of PPA, and provide last twelve (12) Months of electricity bills (at least of six (6) Months), to the Power Producer. During these fifteen (15) Days, Procurer shall allow Power Producer to visit the Premise for assessment of required space and locating the proposed project. Minimum space provided by Procurer shall be based on 110 square feet per kWp.
- 3.1.2 Procurer should inform Nodal Agency and Power Producer, in writing, about the space provided for Project implementation within fifteen (15) Days of signing of PPA.
- 3.1.3 Within 10 days of approval by Nodal Agency consequent to Article no. 3.2.2, Procurer shall confirm the capacity and send a confirmation copy to Nodal Agency and Power Producer.

#### **3.2 Condition Precedent of the Power Producer**

- 3.2.1 Within 30 days after signing of PPA, the Power Producer shall undertake Site Survey, assess free capacity of the concerned DT, analyse last twelve (12) Months of electricity bills (at least six (6) Months) received from Procurer, and submit a letter of request for change in Capacity (if any, with due analysis) to MPUVN, copying Procurer. For project groups where number of sites are more than one hundred (100), the Power Producer shall be given sixty (60) days to undertake site survey.
- 3.2.2 Nodal Agency shall, within ten (10) Days of submission of letter of request for change in capacity as per clause 3.2.1, communicate to the Power Producer with a copy to the Procurer, change in capacity, if any, in accordance with clause no. 2.6.1.9 of the RfP.
- 3.2.3 The Nodal Agency shall release a letter pursuant to clause 3.1.3 to the Power Producer within 5 days, with a copy to the Procurer confirming the PPA capacity and the consequent subsidy. This shall form an integral part of the PPA and shall be annexed as Annexure-II of the PPA.
- 3.2.4 Consequent to Article 3.2.2, if there is any change in capacity, revised C-PBG shall be submitted within 15 days of confirmation of the capacity by Nodal Agency.

**3.3 Consequences of non-fulfilment of conditions precedent**

- 3.3.1 Unless any delay from Procurer in allocating space for the project, if the Power Producer fails to complete the conditions precedents mentioned in Article 3.2 of the PPA, Nodal Agency may forfeit the C-PBG submitted by the Power Producer and the PPA may be terminated.
- 3.3.2 Power Producer shall be entitled for a day to day extension for delay by Procurer pursuant to Article 3.3.1. Any delay beyond thirty (30) Days in providing sufficient space to Power Producer by the Procurer shall lead to termination of PPA and C-PBG for the project shall be returned to the Power Producer.
- 3.3.3 In case of termination of PPA pursuant to Article 3.3.2, both the parties shall be relieved from their responsibilities and no party shall be liable to make any payment to the other party.

**ARTICLE 4: CONSTRUCTION AND INSTALLATION OF THE SYSTEM**

**4.1 Condition Subsequent of the Procurer**

- 4.1.1 Procurer shall set up the payment security mechanism, in accordance with RFP, within sixty (60) Days from the Effective Date;

**4.2 Condition Subsequent of the Power Producer**

- 4.2.1 Submit Project design and drawings to the Procurer within thirty (30) Days from the Effective Date; for project group with more than 100 sites additional thirty (30) Days shall be provided.
- 4.2.2 Power Producer shall have sent a written notice, within thirty (30) Days from the Effective Date, to Procurer and Nodal Agency indicating the major Milestones to achieve the SCOD (in the format provided in 0). Power Producer must mention the progress of Net-Metering application, without failing, in every monthly progress report; for project group with more than 100 sites the timeline shall be sixty (60) days from Effective Date.
- 4.2.3 Successful Completion of Project;
- 4.2.4 Power Producer shall be accountable for submission of below mentioned details to Procurer, copying Nodal Agency, within sixty (60) Days from the Effective Date:
- i. Copy of Net-Metering application and acknowledgement of Discom on successfully receipt of application;
  - ii. Project layout/drawing;
  - iii. Bill of Material (BoM) along with requisite test reports and relevant certifications;

### **4.3 Consequences of non-fulfilment of conditions subsequent**

- 4.3.1 In case of delay of the Power Producer to fulfil any one or more of the conditions specified in Article 4.1 due to any Force Majeure event, the time period for fulfilment of the conditions subsequent by Nodal Agency/Procurer as mentioned in Article 4.1, shall be appropriately extended. Accordingly, any delay in the fulfilment of Conditions subsequent as mentioned under Article 4.1 by Nodal Agency/Procurer, shall also lead to appropriate extension in the time period for fulfilment of the conditions subsequent by the Power Producer as mentioned in Article 4.2, especially the SCOD. In such cases, Power Producer must have sent a written notice to Procurer and Nodal Agency indicating the timelines to complete the remaining major Milestones along with extended SCOD, once Power Producer gets the appropriate extension in Schedule COD.
- 4.3.2 Save for Article 4.3.1, 4.4.1 e) and 4.13, in case of a failure to meet the requirements mentioned under Article 4.2, the Procurer shall have right to terminate this PPA by giving a notice to the Power Producer, with information to Nodal Agency, in writing only after fifteen (15) Days of breach from the timelines provided in Article 4.2. The termination of the PPA shall take effect upon the expiry of the 15th Day of the above notice. For the avoidance of doubt, it is clarified that this Article shall survive the termination of this PPA. Further, C-PBG shall be forfeited, in accordance with Article 4.16, in case of delay by Power Producer in fulfilling any of the conditions mentioned in 4.2.

### **4.4 Power Producer's Obligations**

- 4.4.1 The Power Producer undertakes to be responsible, at its own cost and risk, for:
- a) all approvals including Consents required under local regulations, building codes and approvals required from Discom(s) etc. relating to installation and operation of the Project and generation and supply of solar power from the Project to Procurer and maintain the same in full force and effect during the Term of this PPA and Indian Law, as required and relevant. Power shall update SNA each month on the status of the approvals, In case the Power Producer is facing any difficulties in obtaining any approval it can request SNA for timeline extension for the same.
  - b) supply to Procurer promptly with copies of each application that it submits to relevant authorities, and copy/ies of each Consent/ license which it obtains. For the avoidance of doubt, it is clarified that the Power Producer shall be solely responsible for maintaining/ renewing any Consents and for fulfilling all conditions specified therein during the Term of the PPA.
  - c) design, engineering, supply, erection, testing and Commissioning along with

Comprehensive Operation & Maintenance of the grid interactive rooftop solar PV Project along with supply of power, with desired level of performance, for a period of twenty five (25) Operational Years of Project in accordance with the applicable Law, the Grid Code and the terms and conditions of this PPA and those prescribed in RFP.

- d) providing a timely basis relevant information on Project specifications which may be required for interconnecting Project with the Grid. However, any capital expenses incurred towards grid connection of the Projects shall be borne by Procurer and shall be carried out by Power Producer in accordance with technical requirement of relevant rules, regulations and procedures.
- e) save for Force Majeure events, commencing the supply of power for the PPA Capacity to Procurer no later than the SCOD and continuance of the supply of power throughout the Term of PPA.
- f) operate and maintain the Project throughout the Term of PPA free and clear of encumbrances, except those expressly permitted under ARTICLE 15:.
- g) maintaining its controlling shareholding prevalent at the time of signing of PPA up to a period of one (1) Operational Year after COD in accordance with the RfP.
- h) fulfilling all obligations undertaken by the Power Producer under this PPA, read in conjunction with terms and conditions of RFP; upon Termination, it shall be the responsibility of the Power Producer to transfer the rooftop to Procurer free of all encumbrances and at zero cost.
- i) Upon Termination, it shall be the responsibility of the Power Producer to restore the rooftop and clear all the surfaces at power producer's cost.
- j) ensure operations of the solar power plant in a prudent utility basis with an objective of regular power supply to Procurer.
- k) submission of Project Manager name to Procurer and Nodal Agency, who will act as a single point of contact for future communication.
- l) submit a monthly progress report during Construction Period (from Effective Date to COD) to Nodal Agency, copying Procurer, within first seven (7) days of the subsequent month.

#### 4.5 **Procurer's Obligations**

4.5.1 The Procurer shall be responsible to fulfil obligation undertaken by it, including those required as facilitation for installation of Project at the Premises of Procurer, under this PPA at its own cost and risk.

4.5.2 Provide access to Power Producer to the Premises for project COD and for regular operation and maintenance of the Project.

Provide access to Project Lenders and Lenders Representatives during the tenor of the loan facility. In cases, where the Procurer and Building Owner are different, then similar undertaking for access to premises in favour of Lenders has to be provided by the Building Owner.

Procurer should not have any lien over the assets financed by Banks like solar modules, inverters, etc. on the procurer's rooftop as those assets belong to the lenders financing the project.

4.5.3 Regularly pay bills for power offtake as per the Monthly Bills submitted by the Power Producer.

4.5.4 Pay the Termination Payment, if required, as per the terms of PPA

#### 4.6 **Power Producer's Construction Responsibilities**

4.6.1 The Power Producer shall be responsible for design, engineering, supply, erection, testing and Commissioning along with Comprehensive Operation & Maintenance of the grid interactive rooftop solar PV Project, with desired level of performance, for a period of 25 Operational Years of the Project in accordance with the following, it being clearly understood that in the event of inconsistency between two or more of the following, the order of priority as between them shall be the order in which they are placed, with 'applicable law' being the first:

- a. Applicable Law;
- b. the Grid Code;
- c. the terms and conditions of this PPA;
- d. the Functional Specifications as per RFP; and
- e. Prudent Utility Practices.

- 4.6.2 Notwithstanding anything to the contrary contained in this PPA, the Power Producer shall ensure that the technical parameters or equipment limits of the Project shall always be subject to the requirements as specified in points Article 4.6.1 (a) to (e) above and under no event shall over-ride or contradict the provisions of this PPA and shall not excuse the Power Producer from the performance of his obligations under this PPA.
- 4.6.3 During construction of the Project, Power Producer shall be allowed to demand for advance subsidy, to Nodal Agency, at any point of time before SCOD, as mentioned in RFP;
- 4.6.4 Construction, Installation, Testing and Commissioning of the Project
- a) The Power Producer will be responsible for design, engineering, supply, erection, testing and Commissioning along with Comprehensive Operation & Maintenance of the grid interactive rooftop solar PV Project, with desired level of performance, for a period of 25 Operational Years in accordance with this PPA/ RFP. The Power Producer shall provide to the Nodal Agency, with a copy to Procurer, a bill of materials listing the major equipment constituting the Project. Such bill of materials shall be provided within 30 Days of the COD.
  - b) The Power Producer shall have access to Premises, as reasonably permitted by the Procurer, to perform the works related to Commissioning and O&M during the Term of PPA at the Premises in a manner that minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical for the purpose of the Project.
  - c) The Power Producer shall provide and lay the dedicated electrical cables for delivery of solar power from the Project up to the Delivery Point(s). Distribution of solar power beyond this point will be responsibility of the Procurer in accordance with this PPA.
  - d) Unless otherwise agreed between the Parties, the Power Producer shall not do (a) chipping of rooftop; or (b) disturb water proofing of roof (c) carry out any other modification of the Premises without the written consent of the Procurer. One time cost for strengthening of Premise to the extent required for setting up Solar PV Project during construction shall be borne by Power Producer. Any delay due to strengthening of Premise shall not be considered to extend the SCOD unless it is approved by Procurer in written. Cost of repair or maintenance of Premise to the extent required for the Solar PV Project, during the Comprehensive O &M of Project, shall be the responsibility of Power Producer, other than cost required for water proofing. The cost for water proofing will be the responsibility of Power Producer for a period of first three (3) Operational Years.
  - e) The Power Producer shall maintain general cleanliness of area around the Project during construction and operation period, i.e., Term of the PPA of the Project. In case any damages is caused to the equipment / facilities owned by the Procurer due to the Power

Producer, the same shall be made good / rectified by the Power Producer at its risk and cost.

- f) Subject to any punch-list items which shall be agreed by the Procurer as not being material to Completion of the Project, the Power Producer agrees that it shall achieve the COD of the Project within nine (9) Months from execution of this agreement (“SCOD”).
- g) At the time of Commissioning, Procurer shall ensure that sufficient load is available at the Delivery Point(s) to ensure synchronization and drawl of power from the Project.
- h) If the Power Producer is unable to commence supply of solar power to the Procurer by the SCOD, other than for the reasons specified in ARTICLE 10: or Article 12.3 , the Power Producer shall pay to Procurer Liquidated Damages for the delay in such commencement of supply of solar power as per the RFP and/or PPA.
- i) Procurer, in coordination with Power Producer, shall ensure that all arrangements and infrastructure for transmission or/ and distribution solar power beyond the Delivery Point(s) are ready on or prior to the COD and is maintained in such state in accordance with applicable laws through the Term of PPA.

#### **4.7 System Acceptance Testing**

- 4.7.1 The Power Producer shall, in the presence of designated representatives of Nodal Agency and Procurer, conduct testing of the Project, as prescribed in RFP, to establish successful Commissioning of the Project.
- 4.7.2 If the results of such testing indicate that the Project is capable of generating electrical energy and Power Producer shall submit Commissioning certificate of the Project issued by the concerned Discom and/or Nodal Agency as the case may be, in accordance with the applicable rules/regulation/policies, as prescribed in RFP, Power Producer shall send a written notice to Nodal Agency, with a copy to Procurer, to that effect, and the date of successful conducting such tests and injection of solar power at Delivery Point(s) shall be the “Commercial Operation Date” as certified as per RFP and/or PPA.

#### **4.8 Project Operation & Maintenance (O&M)**

- 4.8.1 Power Producer shall operate and maintain Project, with desired level of performance, during the Term of PPA, read with terms and conditions of RFP, at its sole cost and expenses; provided, that any repair or maintenance costs incurred by the Power Producer as a result of Procurer’s negligence or breach of its obligations hereunder, as certified by Nodal Agency, shall be reimbursed in full by Procurer. The timelines for O&M would be 7 A.M. to 7 P.M. plus one hour during non-generation hours as mutually decided between Procurer and the Power Producer.

4.8.2 Procurer shall not undertake any O&M activity related to Project. Power Producer shall ensure that Project is adequately maintained and operated to serve the purpose envisaged in PPA and RFP.

#### 4.9 Project Disruptions

##### 4.9.1 Unavailability of Premises

- a) If, for reasons other than the Power Producer's breach of its obligations under PPA/ RFP, Power Producer is not provided with the access to the Premises as necessary to operate and maintain the Project, such time period shall be excluded from the calculation of CUF.
- b) If, for reasons other than the Power Producer's breach of its obligations under PPA/ RFP, energy generation from Project is hampered significantly or stopped, such time period shall be excluded from the calculation of CUF.
- c) Period during which the grid is unavailable due to power cut or grid is unstable during generation hours and in turn leading to lower generation, such hours shall be excluded for the purpose of calculation of CUF.
- d) Procurer shall continue to make all payments for the solar power during such period of Project disruption other than Clause 4.9.1 c) at same Tariff as applicable for the period of Project disruption ("Disruption Period"). For the purpose of calculating solar power payments and lost revenue for such Disruption Period, Deemed Generation shall be considered for calculation of lost revenue or payment obligation of Procurer. Loss in revenue for the Disruption Period would be multiplication of Tariff of that Operational Year and difference in Deemed Generation and Actual Generation over such period. Power Producer shall inform about the disruption or outage in Project, for reasons attributable to Procurer in writing with date and time of such occurrence, and Procurer's liability shall start from the date of intimation of disruption or outage in the rooftop system, on account of Procurer.

##### 4.9.2 Roof repair and other Project disruptions

- a) In the event that (i) the Procurer repairs the Premises' roof for any reason not directly related to damage, if any, caused by the Project, and such repair requires the partial or complete temporary disassembly or movement of Project, or (ii) any act or omission of Procurer or Procurer's employees, affiliates, agents or subcontractors (collectively, a "Procurer Act") results in a disruption or outage in Project generation, and such events are attributable to Procurer except Force Majeure, then, in either case, Procurer shall:
  - i. Pay the Power Producer such amount of money as prudently determined and agreed by and between Power Producer and Procurer for all work required by the Power



- Producer to disassemble or move or shifting the Project. The costing would be at mutually decided rate or latest Schedule of Rates (SOR) published by concerned distribution utility whichever is lower for similar works; and
- ii. Continue to make all payments for the solar power during such period of Project disruption at same Tariff as applicable for the period of Project disruption (“Disruption Period”). For the purpose of calculating solar power payments and lost revenue for such Disruption Period, Deemed Generation shall be considered for calculation of lost revenue or payment obligation of Procurer. Loss in revenue for the Disruption Period would be multiplication of Tariff of that Operational Year and difference in Deemed Generation for number of days such event occurs and Actual Generation. Power Producer shall inform about the disruption or outage in Project, for reasons attributable to Procurer in writing with date and time of such occurrence, and Procurer’s liability shall start from the date of intimation of disruption or outage in system production, on account of Procurer.
  - b) In the event that the Procurer fails to ensure adequate space for solar equipment to ensure that other structures do not partially or wholly shade any part of the Project and if such shading occurs, the Power Producer may apply for Deemed Generation furnishing the calculation for loss in revenue due to such shading supported by the relevant data, which shall be approved by Procurer within one month of submission, failing which the Power Producer shall claim provisional Deemed Generation till the issue is finally settled.  
Calculation for loss in revenue for the period = (Deemed Generation X number of days such event occurs - Actual generation) X Tariff of that Operational Year.
  - c) The Power Producer is responsible for the waterproofing of the roof disturbed/ pierced for installation of Project for the Comprehensive O &M period of first 3 Operational Years. The Power Producer should immediately take necessary action to repair any damage to the water proofing. However, in such situations, Power Producer shall bear any loss or damage to Project and rectify the same within reasonable timeframe but any generation loss in such eventualities shall not be passed on to Procurer. If Power Producer fails to do required water proofing within 7 days from the day of identification of issue, Procurer may get the same done at prevailing market rate and Power Producer shall reimburse the same to Procurer. If the Power Producer fails to reimburse the expenses to the Procurer then such expenses shall be adjusted by the Procurer from the energy bills of the next six (6) months.

#### **4.10 Quality of Workmanship**

4.10.1 The Power Producer shall ensure that the Project is designed, built and completed in a

good workman like manner using sound engineering construction practices and using only materials and equipment that are new and of international utility grade quality such that, the useful life of the Project will be till the Expiry Date.

4.10.2 The Power Producer shall ensure that design, construction and testing of all equipment, facilities, components and systems of the Project shall be in accordance with Indian Standards and Codes issued by Bureau of Indian Standards (BIS)/ International Electro technical Commission (IEC).

#### 4.11 Construction Documents

4.11.1 The Power Producer shall retain at the Premises, and make available for inspection to Procurer at all reasonable times, copies of the results of all tests specified in 0 hereof.

#### 4.12 Delivery of Solar Power

##### 4.12.1 Purchase Requirement

- i. Procurer agrees to purchase one hundred percent (100%) of the solar energy generated by the Project and made available by the Power Producer to Procurer at the Delivery Point(s) during each relevant month of the Term of PPA.
- ii. It is possible that the Power Producer is not able to achieve optimum generation from the installation due to the following reasons:-
  - a) It could be due to demand side variations i.e. consumer loads being reduced leading to lower power flow;
  - b) It could be due to supply side variation i.e. significant degradation of the panel, not sufficient maintenance and operations and Power Producer not able to achieve Minimum CUF for consecutive four (4) months.
  - c) The following clauses are applicable for generation under Category 3 supply only.
    - a. In cases where lower generation is due to demand side variation then:-**
      - a) Procurer to pay the Power Producer, for the loss in revenue due to lower demand of Procurer. Loss in Revenue for the period would be equal to the multiplication of (Deemed Generation X number of days such event occurs - Actual Generation under Category 3) with Tariff of that Operational Year.
    - b. In cases where lower generation is due to supply side reasons:**
      - a) Then generator to be penalized for generation lower than Minimum CUF. Penalty for the period would be equal to the multiplication of difference of (Deemed Generation X number of days such event occurs - Actual Generation) with 20% of Tariff of that Operational Year. Penalty amount shall be adjusted in the subsequent bills;
      - b) While calculating Minimum CUF, period of unavailability of Grid shall be excluded.

#### **4.12.2 Suspension of Delivery**

The Power Producer shall be entitled to suspend delivery of electricity from the Project to the Delivery Point(s) for the purpose of maintaining and repairing the Project upon giving notice of at least 3 days in advance to the Procurer, except in the case of emergency repairs. Such suspension of service shall not constitute a breach of this PPA, provided that the Power Producer shall use commercially reasonable efforts to minimize any interruption in service to the Procurer. However, any preventive maintenance shall be done only during the period when Project is not generating.

#### **4.12.3 Title to the Project**

Throughout the duration of the PPA, the Power Producer shall be the legal and beneficial owner of the Project at all times, and the Project shall remain a property of the Power Producer and shall not attach to or be deemed a part of, or fixture to, the Premises. The title to the project will be transferred to the Procurer at Termination of the PPA at the end of the Term (i.e after completion of 25 Operational Years) within thirty (30) days. The title to be transferred to Procurer free of all encumbrances and at zero cost to the Procurer.

#### **4.13 Extensions of Time**

4.13.1 In the event that the Power Producer is prevented from performing its obligations under Article 4.4 by the SCOD due to:

- a. any Procurer Event of Default; or
- b. Force Majeure Events affecting Procurer; or
- c. Force Majeure Events affecting the Power Producer; or
- d. Power Producer, after successful Completion, shall not be able to achieve Commissioning on or before SCOD due to delay on account of receipt of commissioning approval/certificate from concerned Distribution Company.

The SCOD shall be deferred, subject to the limit prescribed in Article 4.13.2, for a reasonable period but not less than 'Day for Day' basis, to permit the Power Producer or Procurer through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Power Producer or Procurer, or till such time such Event of Default is rectified by Procurer.

4.13.2 Subject to Article 4.13.6 and 4.13.7, in case of extension occurring due to reasons specified in Article 4.13.1a and d, any of the dates specified therein can be extended, subject to the condition that the SCOD would not be extended by more than one hundred and fifty (150) Days.

4.13.3 In case of extension due to reasons specified in Article 4.13.1 b and c, and if such Force Majeure Event continues even after a maximum period of sixty (60) Days, any of the Parties may choose to terminate the PPA as per the provisions of Article 12.6.

4.13.4 If the Parties have not agreed, within fifteen (15) Days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the SCOD should be deferred by, any Party may raise the Dispute to be resolved in accordance with ARTICLE 16:.

4.13.5 As a result of such extension, the SCOD newly determined shall be deemed to be the SCOD for the purposes of this PPA.

4.13.6 Notwithstanding anything to the contrary contained in this PPA, any extension of the SCOD arising due to any reason envisaged in this PPA shall not be allowed beyond six (6) Months or the Date determined pursuant to Articles 4.13.2 or/ and 4.13.3, whichever is later.

4.13.7 For getting extension of time under Article 4.13.1 d), Power Producer shall notify Nodal Agency and Procurer, at least fifteen (15) days in advance of SCOD, and detailed out the probable reasons for delay. Any delay on account of non-compliance of Power Producer, in accordance with Policy and Regulation, in getting Commissioning approval/certificate, Nodal Agency shall levy a one-time penalty of INR 500 /kWp for full PPA Capacity.

**4.14 Liquidated Damages for delay in commencement of supply of power to Procurer**

4.14.1 If the Power Producer is unable to commence supply of solar power to Procurer by the SCOD (including time extension approved by Nodal Agency and Procurer) for reasons other than those specified in Article 4.13.1, the Power Producer shall pay to Nodal Agency, Liquidated Damages of a sum equivalent to 5% of C-PBG shall be levied per week of delay or part thereof, If delay is beyond 20 weeks, Nodal Agency may:

- a. Allow Power Producer to continue the work with additional penalty at the said rate in Article 4.14.2; OR
- b. Terminate the PPA and Power Producer is liable to pay Liquidated Damaged to the Nodal Agency.

In case b) of above, Nodal Agency would recover loss of advance subsidy paid, if any, from Power Producer, it is exclusive of the Liquidated Damages.

4.14.2 In case, Nodal Agency allows Power Producer to work with additional penalty at the said rate, COD shall be done within 20 weeks from the SCOD. Further extension shall be granted, only when Power Producer submits the Liquidated Damages of sum equivalent to 50% of C-PBG value in the form of FDR or bank guarantee as mentioned in RFP, but not more than 10 weeks (in addition to earlier 20 weeks extension). If COD shall not be achieved within second granted extension time period, Nodal Agency may terminate the PPA.

#### **4.15 Inspection/ Verification**

4.15.1 The Power Producer shall be further required to provide entry to the Premises of the Project free of all encumbrances at all times during the Term of PPA to Procurer and Nodal Agency. The Lenders and Lender's Representatives shall be provided access to the Premises of the project by the Procurer/Building Owner (as the case may be) so as to enable Lenders to conduct regular site inspection.

4.15.2 Nodal Agency shall be responsible for inspection and verification of the Project works being carried out by the Power Producer at the Premises. If it is found that the construction works/ operation of the Project is not as per RFP/ PPA, it may seek clarifications from Power Producer or require the works to be stopped or to comply with the instructions of Nodal Agency.

#### **4.16 Liquidated Damages on non-compliance during Construction Period**

4.16.1 Liquidated Damages shall be imposed on Power Producer at the rate of 2% of C-PBG value per week of delay or part thereof, in case of failure of adhering in submission of details as mentioned in 4.2.2 and 4.2.3. Procurer/Nodal Agency shall terminate PPA and forfeit the C-PBG, in case of delay beyond four (4) Weeks in submission of requisite details.

4.16.2 Power Producer shall be responsible for completion of all activities mentioned in COD Schedule within the given time frame. Power Producer shall include the detail of COD Schedule in monthly progress report.

4.16.3 Progress in the implementation of the Project shall be monitored by Nodal Agency for milestones mentioned in COD Schedule.

4.16.4 Delay beyond ten (10) Days to achieve any milestone mentioned in COD Schedule shall attract penalty of 0.5% of C-PBG per week of delay or part thereof except for final milestone.

4.16.5 Any of the penalty accumulated during Construction Period shall not be levied in case Commissioning will be achieved on or before SCOD.

## **ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION**

### **5.1 Synchronization**

- 5.1.1 The Power Producer shall give the concerned Discom, Nodal Agency and Procurer at least Thirty (30) Days advanced preliminary written notice and at least Fifteen (15) Days advanced final written notice, of the date on which it intends to synchronize the Project.
- 5.1.2 Subject to Article 5.1.1, the Project may be synchronized by the Power Producer when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid. Prior to synchronization of the Project, the Power Producer shall be required to get the Project certified for the requisite acceptance/ performance test as may be laid down by Central Electricity Authority or an agency identified by the central government / state government to carry out testing and certification for the solar rooftop projects.
- 5.1.3 The synchronization equipment shall be installed by the Power Producer at its generation facility of the Project at its own cost. The Power Producer shall synchronize its system with the utility system only after the approval of synchronization scheme is granted by the concerned Discom and checking/verification is made by the concerned authorities of the Discom.

### **5.2 Completion, Commissioning and Commercial Operation**

- 5.2.1 When the Power Producer fulfils his obligation under the PPA, it shall obtain completion certificate from Nodal Agency. Nodal Agency shall issue separate Completion Certificate for the capacity of Project under Category I and III
- 5.2.2 For the purpose of obtaining Completion certificate following documents shall be required.
- 5.2.2.1 Inspection Report of the Work(s) as per prescribed format provided by Nodal Agency.
- 5.2.2.2 CEIG Approval for the PPA Capacity, if applicable;  
(In compliance with section 162 of Electricity Act, 2003 installation of Grid Connected RE System up to 100 kW capacity is exempt from Chief Electrical Inspector to Government (CEIG) approval, Further, Grid Connected RE System up to 500 kVA capacity as per MOP notification no 1204, May 2016 would be exempt from obtaining approval from Chief Electrical Inspector to Government (CEIG))
- 5.2.2.3 Project fulfilment certificate from Procurer and DREO for the PPA Capacity. If PPA Capacity divided under Category I and III, Power Producer shall submit separate Part Capacity fulfilment certificate from Procurer and DREO for capacity under Category I

and III. From Initial Part Commissioning to full PPA Capacity commissioning, Power Producer shall be required to submit Part Capacity/PPA Capacity Fulfilment certificate (in accordance with 0 certified by DREO and Procurer both.

- 5.2.2.4 Document in support of performance of the Project and achievement of CUF of 15% subject to seasonality as per provisions of RFP, as certified by the Nodal Agency. Separate performance report for the capacity under Category I and III shall be submitted by Power Producer.
- 5.2.3 Full PPA Capacity of the Project shall be commissioned by SCOD.
- 5.2.4 Part Commissioning:
- i. Part Commissioning of the Project shall be allowed;
  - ii. Power Producer shall need to comply with all the compliances and regulations to be required and undertake the commissioning in accordance with RFP for Part Commissioning as well;
- 5.2.5 The Power Producer shall undertake a commissioning in accordance with RFP, as soon as reasonably practicable [and in no event later than two (2) weeks or such longer period as mutually agreed between the Power Producer and Procurer after the point at which it is no longer prevented from doing so by the effects of Force Majeure Events or Procurer's Event of Default (as appropriate and applicable)] and if such Commissioning of PPA Capacity is not duly completed on or before the SCOD, Power Producer shall be required to pay Liquidated Damages to Nodal Agency in accordance with Article 4.14.
- 5.2.6 Power Producer shall be required to get the Project certified for the desired performance for Commissioning as laid down in RFP. Project shall be commissioned on the Day after the date when Procurer receives a final Commissioning certificate from the Nodal Agency in accordance with prevalent policy and regulation along with relevant clauses mentioned in RFP. Power Producer starts injecting power from the Project to the Delivery Point(s) from the day of Initial Part Commissioning but only limited to Commissioned part of the PPA Capacity.
- 5.2.7 The Power Producer expressly agrees that all costs incurred by it in synchronising, connecting, Commissioning and/ or Testing a Project shall be solely and completely to its account and Procurer's liability shall not exceed the amount of the Tariff payable for such power output or as per relevant Law applicable at the time.
- 5.2.8 The Parties shall comply with the provisions of the applicable Law including, in particular, Grid Code as amended from time to time regarding operation and maintenance of the Project and all matters incidental thereto.
- 5.2.9 For clarification, Power Producer shall submit the commissioning certificate certified by Discom and Nodal Agency for the capacity Commissioned under Category I and Category III respectively.

**ARTICLE 6: DISPATCH**

**6.1 Dispatch**

6.1.1 The Project shall be required to maintain compliance to the applicable Grid Code requirements and directions, if any, as specified by concerned SLDC/ RLDC from time to time.



## **ARTICLE 7: METERING AND BILLING**

### **7.1 Metering**

- 7.1.1 Metering and grid connectivity, if required, of Project would be the responsibility of the Power Producer in accordance with the prevailing guidelines of the concerned DISCOM and / or CEA and Policy for Decentralized Renewable Energy System, Madhya Pradesh/ MPERC (Grid Connected Net Metering) Regulations, 2015 and their amendments/ substitutions. Nodal Agency/ Procurer could facilitate in the process; however the entire responsibility towards such arrangements lies with Power Producer only.
- 7.1.2 In case of Category I and Category III systems, the Power Producer shall install the Generation Meter separately near the output of Inverter of both the Category systems and Net-Meter shall be located in place of present discom's metering system.
- The accuracy class, current rating and certifications of the net meter and generation meter shall confirm with the standards for net meter and standards for generation meter as provided Madhya Pradesh Policy for Decentralized Renewable Energy System, 2016 and any subsequent amendment.
- 7.1.3 The Metering System shall have such inbuilt provisions that it senses grid availability and when grid is not available:
- a. Isolates Project, operating on net metered basis from the grid;
- 7.1.4 The meter will be read by the Power Producer's personnel on the Metering Date on monthly basis. The authorized representative of the Procurer can be present at the time of meter reading. Both the Parties shall sign a joint meter reading report. However, in case the joint meter reading report is not signed in the first three Business Days of Metering Date of any month due to non-availability of the Procurer's authorized representative, the report signed by the Power Producer shall be considered as joint meter reading report, the Parties agree that such joint meter reading report shall be final and binding on the Parties.
- 7.1.5 Meters and metering equipment shall be tested as per provision of MPERC and as per IS 14697 at CPRI or at any NABL accredited lab before installation at site on the cost of power producer and should be properly sealed in the presence of designated authority from MPUVNL at the time of installation.
- 7.1.6 The Metering System at the Delivery Point(s) and any additional meters required by Applicable Law shall be tested, maintained and owned by the Power Producer.
- 7.1.7 The Procurer may, at its own discretion, install a check meter, at its cost, to verify the measurements of the Metering System.
- 7.1.8 The risk and title to the solar power supplied by the Power Producer shall pass to the

Procurer at the Delivery Point(s).

7.1.9 The energy metering of Projects, in kWh separately, shall be on monthly basis as follows:

- a) equal to gross energy generated for a net metered Project;
- b) equal to gross energy generation for Project installed for consumption within Premises with no export of power.

## 7.2 **Billing**

7.2.1 The energy billable to Procurer, by Power Producer, shall be computed on monthly basis by multiplying the Tariff of that particular Operational Year with the summation of:

- a) gross energy generated for a net metered Project;  
OR/AND
- b) gross energy generation for Project installed for consumption within Premises with no export of power;

7.2.2 Import and export of energy from Project operating on net metered basis shall be settled as per MPERC (Grid Connected Net Metering) Regulations, 2015 / Policy for Decentralized Renewable Energy System, Madhya Pradesh, 2016 and their amendments/ substitutions.

7.2.3 Settlement of Projects operating for consumption within Premises with no export of power shall be done as described under ARTICLE 8:

## **ARTICLE 8: TARIFF AND PAYMENT**

### **8.1 Consideration**

8.1.1 Procurer shall pay to the Power Producer monthly payment towards energy consumed from the Project as per the Metering and Billing as described in ARTICLE 7: above for each calendar month during the period from the Commissioning of Part Capacity to Expiry Date at a Tariff corresponding to the Operational Year upon pursuant to RFP.

All the payment to Power Producer from Procurer shall be routed through the Lender's designated Bank Account.

8.1.2 Tariff as per Annexure III for First Operational Year shall be applicable for the period from Initial Part Commissioning till the end of 1<sup>st</sup> Operational year.

### **8.2 Invoice**

8.2.1 The Power Producer shall invoice Procurer on third Business Day of each month ("Metering Date") in respect of energy generated the immediately preceding month. However, the last monthly invoice pursuant to this PPA shall include energy generated only till the Expiration Date of this PPA.

8.2.2 The Procurer shall be billed for Category - 3 in the following manner:-

- a) The Procurer consuming energy under Category - 3 shall be billed for actual consumption for a month, if it is more than the Deemed Generation for the month. In case, actual consumption is less than the Deemed Generation, Power Producer shall charge in accordance with the article 4.12.

8.2.3 The Invoice to the Procurer shall include:

- a) Depending on the mode of Project Commissioning, Gross energy generated for a net metered Project or Gross energy generation for Project installed for consumption within Premises with no export of power
- b) Supporting data, documents and calculations in accordance with this PPA;

### **8.3 Due Date**

8.3.1 If there is no dispute on an Invoice, Procurer shall pay all amounts due under the Invoice within fifteen (15) Business Days after the date of the receipt of the invoice in Procurer's office ("Due Date") through e-mail or/ and FAX.

### **8.4 Method of Payment**

8.4.1 Procurer shall make all payments under the PPA by cheque or electronic funds transfer of immediately available funds to the designated bank account. All payments made hereunder shall be non-refundable, subject to the applicable tax deduction at source, and be made free and clear of any other tax, levy, assessment, duties or other charges and not subject to reduction, set-off, or adjustment of any kind. If the Procurer deducts any tax at source, the Procurer will issue a tax credit certificate as per law.

### **8.5 Late Payment**

8.5.1 Save for provisions in for disputed bills, in case payment against any Invoice is delayed by the Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by Procurer to the Power Producer at the rate of 1.5% per month ("Late Payment Surcharge") calculated on the amount of outstanding payment, calculated on a Day to Day basis for each Day of the delay beyond the Due Date, compounded on monthly basis. Late Payment Surcharge shall be claimed by the Power Producer through its subsequent Invoice.

### **8.6 Rebate**

8.6.1 Save for any dispute, Procurer shall be eligible for rebate of 1% on the amount of outstanding payment, for payment of any Bill within first seven (7) Business Days from the Metering Date, calculated on a Day to Day basis for each Day of the.

8.6.2 In case of any disputed bill, the rebate shall be allowed on only that payment which is made within first seven (7) days of Metering Date, irrespective of the outcome of final settlement of the dispute.

8.6.3 No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess etc.

### **8.7 Disputed Bill**

8.7.1 If the Procurer does not dispute a Monthly Bill or a Supplementary Bill raised by Power Producer by the Due Date, such Bill shall be taken as conclusive.

8.7.2 If the Procurer disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall within seven (7) Days of receipt of such Bill, issue a notice (the "Bill Dispute Notice") to the Power Producer setting out:

- a) the details of the disputed amount;

- b) its estimate of what the correct amount should be; and
  - c) all written material in support of its claim.
- 8.7.3 If the Power Producer agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.7.2, the Power Producer shall revise such Bill and present along with the next Monthly Bill.
- 8.7.4 If the Power Producer does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.7.2, it shall, within seven (7) Days of receiving the Bill Dispute Notice, furnish a reply to Bill Dispute Notice to the Procurer providing:
- a) its reasons against dispute;
  - b) its estimate of what the correct amount should be; and
  - c) all written material in support of its counter-claim.
- 8.7.5 Upon receipt of the reply to Bill Dispute Notice from Power Producer, by Procurer, under Article 8.7.4, authorized representative(s) or a director of the board of directors/ member of board of the Procurer and Power Producer shall meet and make best endeavours to amicably resolve such dispute within seven (7) Days of receipt of the reply to the Bill Dispute Notice.
- 8.7.6 If the Parties do not amicably resolve the Dispute within seven (7) Days of receipt of reply to the Bill Dispute Notice pursuant to Article 8.7.4, the matter shall be referred to Dispute resolution in accordance with ARTICLE 16:.
- 8.7.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, Procurer shall, without prejudice to its right to Dispute, be under an obligation to make payment of 100% of the undisputed amount of the concerned Monthly Bill, and 90% of disputed amount under protest within fifteen (15) Business Days after the date of the receipt of the invoice. Once the dispute is settled, the correction amount shall be adjusted with the monthly interest rate of 1.50% computed on daily basis;

## 8.8 Payment Security Mechanism

8.8.1 Procurer shall provide to the Power Producer, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the Power Producer in accordance with this Article.

8.8.2 Not later than one (1) Month before the SCOD, including the extension granted, if any, Procurer through a scheduled bank at Bhopal open a Letter of Credit in favour of the Power Producer, to be made operative from a date prior to the Due Date of its first Monthly Bill under this PPA.

8.8.3 The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount:

### **For Government entities**

- a) for the first Operational Year, equal to one hundred twenty percent (120%) of the estimated average monthly billing;
- b) for each subsequent Operational Year, equal to one hundred and twenty percent (120%) of the average of the monthly billing of the previous Operational Year.

### **For Private entities**

- a) for the first Operational Year, equal to four hundred percent (400%) of the estimated average monthly billing;
- b) for each subsequent Operational Year, equal to four hundred percent (400%) of the average of the monthly billing of the previous Operational Year.

8.8.4 Provided that the Power Producer shall not draw upon such Letter of Credit prior to the end of 30<sup>th</sup> Day from the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one withdrawal in a Month.

8.8.5 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 8.8.2 due to any reason whatsoever, Procurer shall restore such shortfall within seven (7) Business Days.

8.8.6 If the Power Producer draws from the Letter of Credit, the amount corresponding to the drawn amount shall be deposited in the designated bank account.

8.8.7 Procurer shall cause the scheduled bank issuing the Letter of Credit to intimate the Power Producer, in writing regarding establishing of such irrevocable Letter of Credit.

8.8.8 Procurer shall ensure that the Letter of Credit shall be renewed not later than thirty (30) Business Days prior to its expiry.

8.8.9 All costs relating to opening, maintenance of the Letter of Credit shall be borne by Procurer.

8.8.10 Where necessary, the Letter of Credit may also be substituted by an

8.8.10.1 unconditional and irrevocable bank guarantee;

8.8.10.2 Fixed Deposit Receipt with Nodal Agency;

8.8.10.3 Cash receipt with Nodal Agency;

8.8.10.4 Guarantee/Assurance of the concerned Department.

8.8.11 If Procurer fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the 30th day from the Due Date, then, subject to Article 8.8.7, the Power Producer may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from Procurer, an amount equal to the shortfall of the payment made towards such Monthly Bill or Supplementary Bill or part thereof, if applicable, in accordance with Article 8.5 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- a) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to Power Producer and;
- b) a certificate from the Power Producer to the effect that the bill at item a) above, or specified part thereof, is in accordance with the PPA and has remained unpaid beyond the Due Date;

#### **8.9 Quarterly and Annual Reconciliation**

8.9.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 Days of the end of the quarter of each Operational Year and annual reconciliation at the end of each Operational Year within thirty (30) Days of the end of the Operational Year to take into account the Energy Accounts, payment adjustments, Tariff rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this PPA.

8.9.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of an Operational Year or a full Operational Year, as the case may be, has been finally verified and adjusted, the Power Producer and Procurer shall jointly sign such reconciliation statement. Within fifteen (15) Days of signing of a reconciliation statement, the Power Producer shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the Power Producer or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of ARTICLE 16:

**8.10 Payment of Supplementary Bill**

8.10.1 Procurer/ Power Producer may raise a ("Supplementary Bill") for payment on account of:

- a) Adjustments required by the Energy Accounts (if applicable); or
- b) Change in Law as provided in ARTICLE 11:

8.10.2 Procurer shall remit all amounts due under a Supplementary Bill raised by the Power Producer to the Power Producer's Designated Account by Due Date. Similarly, the Power Producer shall pay all amounts due under a Supplementary Bill raised by Procurer by the Due Date to Procurer's designated bank account and notify such Procurer of such payment on the same Day.

8.10.3 In the event of delay in payment of a Supplementary Bill by the Power Producer beyond its Due Date or by Procurer beyond the end of 30th Day from the Due Date, as the case may be, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 88.5.



## **ARTICLE 9: INSURANCES**

### **9.1 Insurance**

9.1.1 The Power Producer shall maintain at its own costs, throughout the Term of PPA and any extensions thereof all mandatory insurance coverage for adequate amount including but not restricted to, theft, damages, comprehensive general liability insurance covering the Project and accidental losses, bodily harm, injury, death of all individuals employed/assigned by the Power Producer to perform the services required under this PPA.

### **9.2 Application of Insurance Proceeds**

9.2.1 Save as expressly provided in this PPA or respective Insurances, the proceeds of any insurance claim made due to loss or damage to the Project or any part of the Project shall be first applied to reinstatement, replacement or renewal or making good of such loss or damage of the Project.

9.2.2 If a Force Majeure Event renders the Project no longer economically and technically viable and the insurers under the respective Insurances make payment on a "total loss" or equivalent basis, Procurer shall have no claim on such proceeds of such Insurance.

### **9.3 Effect on liability of Procurer**

9.3.1 Notwithstanding any liability or obligation that may arise under this PPA, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the Power Producer can claim compensation, under any Insurance shall not be charged to or payable by Procurer.

## **ARTICLE 10: FORCE MAJEURE**

### **10.1 Definitions**

10.1.1 In this Article, the following terms shall have the following meanings:

**Affected Party**

10.1.2 An affected Party means Procurer or the Power Producer whose performance has been affected by an event of Force Majeure.

10.1.3 An event of Force Majeure affecting the Discom, which has affected the interconnection facilities, shall be deemed to be an event of Force Majeure affecting the Power Producer.

10.1.4 Any event of Force Majeure affecting the performance of the Power Producer's contractors, shall be deemed to be an event of Force Majeure affecting Power Producer only if the Force Majeure event is affecting and resulting in:

- a) late delivery of plant, machinery, equipment, materials, spare parts, fuel, water or consumables for the Project; or
- b) a delay in the performance of any of the Power Producer's contractors for other works associated with Project.

**Force Majeure**

10.1.5 A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this PPA, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care:

- a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado, or exceptionally adverse weather conditions which are in excess of historical statistical measures, act of war, terrorist attack, public disorders, civil disturbances, riots, insurrection, sabotage, rebellion, blockade, embargo ;
- b) A Force Majeure Event shall not be based on the Economic hardship of either Party. In case of any damage because of force majeure event, the Project shall be repaired / commissioned at its own cost by the Power Producer.
- c) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consent required by the Power Producer or any of the Power Producer's contractors to perform their obligations under the Project documents or any unlawful, unreasonable or discriminatory refusal to grant any other consent required for the development/

operation of the Project. Provided that an appropriate court of law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.

- d) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party.
- e) Industry wide strikes and labour disturbances having a nationwide impact in India.

## 10.2 Force Majeure Exclusions

10.2.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- a) Inability to obtain permission from discom (for Category-I projects)
- b) Inability to obtain commissioning certificate from discom
- c) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, fuel or consumables for the Project;
- d) Delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 10.1.5;
- e) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- f) Strikes at the facilities of the Affected Party;
- g) Insufficiency of finances or funds or the PPA becoming onerous to perform; and
- h) Non-performance caused by, or connected with, the Affected Party's:
  - i. Negligent or intentional acts, errors or omissions;
  - ii. Failure to comply with an Indian Law; or
  - iii. Breach of, or default under this PPA.

### **10.3 Notification of Force Majeure Event**

10.3.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) Days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than three (3) Days after such reinstatement.

10.3.2 Provided that such notice of Force Majeure shall be a pre-condition to the Affected Party's entitlement to claim relief under this PPA. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (weekly or monthly basis, as communicated and agreed upon between the Parties in writing) reports on the existence Force Majeure and/ or progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

10.3.3 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this PPA, as soon as practicable, but not later than seven (7) Days after becoming aware of each of these cessations.

10.3.4 In case of delay in Payment due to Force Majeure, Affected Party shall have inform the other Party and make payment as soon as effect of Force Majeure shall be ended on Affected Party payment obligation.

### **10.4 Duty to Perform and Duty to Mitigate**

10.4.1 To the extent not prevented by a Force Majeure Event pursuant to Article 10.3, the Affected Party shall continue to perform its obligations pursuant to this PPA. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

### **10.5 Available Relief for a Force Majeure Event**

10.5.1 Subject to this ARTICLE 10:

- a) no Party shall be in breach of its obligations pursuant to this PPA except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard

- to its obligations, including but not limited to those specified under Article 4.13;
- c) For avoidance of doubt, none of either Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this PPA shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
  - d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

## **ARTICLE 11: CHANGE IN LAW**

### **11.1 Definitions**

In this article, the following terms shall have the following meanings:

11.1.1 "Change in Law" means the occurrence of any of the following events after the Bid Submission Date resulting into any additional recurring/ non-recurring expenditure by the Power Producer or any income to the Power Producer:

- a) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- b) change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- c) the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- d) change in any Consents, approvals or licenses available or obtained for the Project, otherwise than for default of the Power Producer, which results in any change in any cost of or revenue from the business of selling electricity by the Power Producer to Procurer under the terms of this PPA;
- e) a change in the terms and conditions prescribed for obtaining any Consents or the inclusion of any new terms or conditions for obtaining such Consents; except due to any default of the Power Producer;
- f) any change in taxes, duties and cess or introduction of any taxes, duties and cess made applicable for generation and sale/ supply of power by Power Producer as per the terms of this PPA but shall not include: (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Power Producer, or (ii) any change on account of regulatory measures by the Appropriate Commission or (iii) change in the rates of existing taxes applicable to the Power Producer or (iv) change in income taxes applicable for the Power Producer

## 11.2 Notification of Change in Law

11.2.1 If the Power Producer is affected by a Change in Law in accordance with this ARTICLE 11: and wishes to invoke a Change in Law provision, it shall give notice to Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

11.2.2 Notwithstanding Article 11.2.1, the Power Producer shall be obliged to serve a notice to Procurer if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this PPA, the obligation to inform Procurer contained herein shall be material. However, in case the Power Producer has not provided such notice, Procurer shall have the right to issue such notice to the Power Producer.

11.2.3 Any notice served pursuant to Change in Law shall provide, amongst other things, precise details of:

- a) the Change in Law; and
- b) the effects on the Power Producer of the matters relevant for Construction Period and the operation period for the Project.

## 11.3 Relief for Change in Law

11.3.1 Procurer shall not be liable to pay any compensation or relief to Power Producer under Change in Law and Procurer's rights under this PPA shall not be affected by Change in Law

11.3.2 The aggrieved Party shall be required to approach the State Nodal Agency for seeking appropriate relief under Change in Law.

11.3.3 The decision of the State Nodal Agency to acknowledge a Change in Law and the date from which it will become effective and relief provided for the same shall be final and binding on both the Parties. Principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly bill payment, to the extent contemplated in this Article 11, the affected Party to the same economic position as if such Change in Law has not occurred.

## **ARTICLE 12: EVENTS OF DEFAULT AND TERMINATION**

### 12.1

#### **12.2 Power Producer's Event of Default**

12.2.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Procurer of its obligations under this PPA, shall constitute a Power Producer Event of Default:

- a) the failure to achieve COD for the PPA Capacity, within the definite time period, as defined under RFP and PPA, or any extension granted by Nodal Agency and/or Procurer;
- b) if
  - i. the Power Producer assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project in contravention of the provisions of this PPA; or
  - ii. the Power Producer transfers or novates any of its rights and/ or obligations under this PPA, in a manner contrary to the provisions of this PPA; except where such transfer.
    - a. is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this PPA or
    - b. is to a transferee who assumes such obligations under this PPA and the PPA remains effective with respect to the transferee; or
- c) If
  - i. the Power Producer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) Days, or
  - ii. any winding up or bankruptcy or insolvency order is passed against the Power Producer, or
  - iii. the Power Producer goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law; or
  - iv. Provided that a dissolution or liquidation of the Power Producer will not be a Power Producer Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar or more than the Power Producer and expressly assumes all obligations of the Power Producer under this PPA and is in a position to perform them; or



- v. the Power Producer fails to make any payment (i) of an amount exceeding Rupees Five (5) Lakh required to be made to Procurer under this PPA, within three (3) Months after the Due Date of an undisputed invoice /demand raised by Procurer on the Power Producer; or
- vi. any of the representations and warranties made by the Power Producer in PPA being found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the undertakings submitted by the Power Producer at the time of submission of the Bid being found to be breached or inaccurate, including but not limited to undertakings from its parent company/ affiliates related to the minimum equity obligation; Provided however, prior to considering any event specified under this sub-article to be an Event of Default, Procurer shall give a notice to the Power Producer in writing of at least thirty (30) Days; or
- vii. the Power Producer repudiates this PPA and does not rectify such breach within a period of thirty (30) Days from a notice from Procurer in this regard; or
- viii. except where due to Procurer's failure to comply with its material obligations, the Power Producer is in breach of any of its material obligations pursuant to this PPA, and such material breach is not rectified by the Power Producer within thirty (30) Days of receipt of first notice in this regard given by Procurer.
- ix. the Power Producer fails to complete/ fulfil the activities/conditions specified in Article 4.2, beyond a period of twenty (20) weeks from the period SCOD and Article 4.14, the right of termination under this PPA can be invoked by Procurer; or
- x. The Power Producer fails to maintain the C-PBG in accordance with PPA and RFP; or
- xi. change in controlling shareholding before the specified time frame as mentioned in Article 4.4.1 of this PPA; or
- xii. occurrence of any other event which is not specified in this PPA to be a material breach/ default of the Power Producer;
- xiii. Power Producer generates solar power lower than 10% CUF on a monthly basis continuously for 6 months.

### 12.3 Procurer's Event of Default

12.3.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Power Producer of its obligations under this PPA, shall constitute the Event of Default on the part of defaulting Procurer:

- a) Procurer fails to set up a Payment Security Mechanism in accordance with Article 8.8.2 at

- least one (1) Month before the SCOD or the newly determined SCOD based on extension granted by Nodal Agency/Procurer; or
- b) Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill), as per ARTICLE 8:, for a period of ninety (90) Days after the Due Date and the Power Producer is unable to recover the amount outstanding to the Power Producer through the Payment Security Mechanism; or
  - c) Procurer repudiates this PPA and does not rectify such breach even within a period of thirty (30) Days from a notice from the Power Producer in this regard; or
  - d) except where due to the Power Producer's failure to comply with its obligations under PPA and RFP, Procurer is in material breach of any of its obligations pursuant to this PPA and RFP, and such material breach is not rectified by Procurer within thirty (30) Days of receipt of notice in this regard from the Power Producer; or
  - e) If
    - i. Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) Days, or
    - ii. any winding up or bankruptcy or insolvency order is passed against Procurer, or
    - iii. Procurer goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,
    - iv. Procurer vacates the premises of the Project
  - f) Provided that it shall not constitute a Procurer Event of Default, where such dissolution or liquidation of Procurer or Procurer is for the purpose of a merger, consolidation or reorganization or the Procurer vacating the premises to a new entity and where the resulting entity has the financial standing to perform its obligations under this PPA and has creditworthiness similar or more than the Procurer and expressly assumes all obligations of Procurer and is in a position to perform them; or;
  - g) occurrence of any other event which is not specified in this PPA but leading to a material breach or default by Procurer.

#### **12.4 Procedure for cases of Power Producer Event of Default**

- 12.4.1 Upon the occurrence and continuation of any Power Producer Event of Default under Article 12.3 Procurer shall have the right to deliver to the Power Producer, with a copy to the lenders of the Power Producer with whom the Power Producer has executed the Financing agreement, with a copy to the Nodal Agency, a notice stating its intention to

terminate this PPA ("Procurer Preliminary Default Notice"), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

12.4.2 Following the issue of a Procurer Preliminary Default Notice, the Consultation Period of sixty (60) Days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

12.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this PPA & RFP.

12.4.4 Within a period of seven (7) Days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Power Producer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Lenders shall have the right to seek the substitution of the Power Producer by a Selectee for the residual period of this PPA for the purpose of performing obligations of the Power Producer. Such substitution of the Power Producer by a Selectee shall be as per the procedure prescribed in this PPA and with prior approval of Procurer, provided Selectee as aforesaid shall have the required qualification and experience as prescribed under the RFP.

12.4.5 In the event the Lender's total debt obligations have been completely satisfied at the time of issue of Procurer's Preliminary Default Notice and upon the occurrence and continuation of Power Producer Default and the failure by the Power Producer to rectify such default within the applicable Consultation Period specified in this ARTICLE 12: Procurer will have the option of owing the Project at the fees determined as per below formula and later Procurer may terminate this PPA by serving a fifteen (15) Days' notice to the Power Producer ("Procurer Termination Notice").

After COD

Termination payment = Net Asset Value X 50% [After COD]

Net Asset Value = Normative Project Cost X (1 - (4% X No of Operational Years))

The handover of full assets shall be without any encumbrance/liability along with warranties and insurances in force.

In such case the termination payment shall be deposited on Nodal Agency's designated bank account. Nodal Agency shall keep the share of termination payment in the ratio of subsidy paid to total Normative Project Cost. The rest will be deposited in the designated bank account.

There will be no Termination Payment to Power Producer if the termination happens because of

the reasons mentioned below:

- a) Termination before the Project COD or;
- b) event of default occurs due to cause mentioned in 12.2.1

12.4.6 The Power Producer is obligated to perform all duties mentioned in PPA and pay the Termination Payment, in case of Power Producer Event of Default, on or before the last Day of Procurer Termination Notice.

In situations where there is no transfer of asset based on the above clauses then the Power Producer should return the rooftop/project premises in the original condition existing before the start of this Project. This has to be undertaken at Power Producers cost without any liability to Procurer.

#### **12.5 Procedure for cases of Procurer Event of Default**

12.5.1 Upon the occurrence and continuation of any Procurer Event of Default specified in Article 12.3 the Power Producer shall have the right to deliver to Procurer, a Power Producer Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

12.5.2 Following the issue of a Power Producer Preliminary Default Notice, the Consultation Period of sixty (60) Days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

12.5.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this PPA.

12.5.4 After a period of seven (7) Days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Procurer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied. Upon the occurrence and continuation of Power Producer Default and the failure by the Procurer to rectify such default within the applicable Consultation Period specified in this ARTICLE 12: the Power Producer shall take the termination payment, to be paid by Procurer at the end of PPA termination, calculated as per below formula, and later Power Producer may terminate this PPA by serving a fifteen (15) Day's notice to the Procurer ("Power Producer Termination Notice").

Termination payment = Net Asset Value

Net Asset Value = Normative Project Cost X (1 – (4% X No of Operational Years))

In such case the termination payment shall be deposited on Nodal Agency's designated bank

account. Nodal Agency shall keep the share of termination payment in the ratio of subsidy paid to total Normative Project Cost. The rest will be deposited in the designated bank account.

If the Power Producer exercises his right to remove the assets from the premises, then the termination payment would be as below:-

Termination payment = 10% of Net Assets Value (as defined above). In such cases Power Producer will be responsible to pay the Nodal Agency the subsidy amount as below:

Subsidy payment to Nodal Agency = [Subsidy received / Normative Project Cost] X Net Asset Value

12.5.5 Procurer obligated to perform all duties mentioned in PPA and pay the termination fees, in case of Procurer Event of Default, on or before the last Day of Power Producer Termination Notice.

12.5.6 In situations where there is no transfer of asset based on the above clauses then the Power Producer should return the rooftop/project premises in the original condition existing before the start of this Project. This has to be undertaken at Power Producers cost without any liability to Procurer.

## 12.6 Termination due to Force Majeure

If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.13.3, either Party shall have the right to cause termination of the PPA. In such an event, this PPA shall terminate on the date of such Termination Notice.

## 12.7 Termination on request of the Procurer

12.7.1 Procurer may, on giving at least 6 months written notice to the Project Developer with a copy marked to the Lenders, terminate the PPA only after the completion of 5 Operational Years. Following the issue of a "Default Notice", a Conciliation Period of sixty (60) days or such longer period as the parties may agree, shall apply and it shall be the responsibility of the parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant solar power developer / Procurer Event of Default having regard to all the circumstances.

However after the expiry of the default notice if both parties can't reach to an amicable solution, In such case the Procurer shall pay to Power Producer a sum as per formula given hereunder:

*Termination payment = Net Asset Value*

*Net Asset Value = Normative Project Cost X (1- (2% X No of Operational Years)) for first 15 Operational Years;*

*OR*

*Net Asset Value = Normative Project Cost (1- (4% X No of Operational Years)) after 15 Operational Years*

In such case the termination payment shall be deposited on Nodal Agency's designated bank account. Nodal Agency shall keep the share of termination payment in the ratio of subsidy paid to total Normative Project Cost. The rest will be deposited in the designated bank account.

The Parties shall promptly execute all documents necessary to cause title to the Project to pass to Procurer on the date of termination free and clear of all liens and assign all vendor warranties for the Project to the Procurer. Upon execution of the documents and payment of the applicable purchase price in each case as described in the preceding sentence, the agreement shall stand terminated and the Procurer shall become the owner of the Project. The transfer of Project will be without any encumbrances, no assignments.

Upon such termination, the Power Producer may offer its operations and maintenance ("O&M") services to the Purchaser and the Parties may enter into an O&M agreement in this regard. The terms and conditions of the O&M agreement will be negotiated in good faith between the Parties.

12.7.2 Notwithstanding Terminations, both Power Producer and Procurer shall ensure full and final settlement of respective rights and obligations pursuant to terms and conditions of this RFP and Agreement/ PPA, so that neither would have to carry and bear the burden of the other's rights and obligations. Towards fulfilment of this provision, an affidavit on a non-judicial stamp paper shall have to be furnished by both Power Producer and Procurer to each other at the time of termination.

## **ARTICLE 13: LIABILITY AND INDEMNIFICATION**

### **13.1 Indemnity**

13.1.1 The Power Producer shall indemnify, defend and hold Procurer harmless against:

- a. any and all third party claims against Procurer for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Power Producer of any of its obligations under this PPA; and
- b. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurer from third party claims arising by reason of a breach by the Power Producer of any of its obligations under this PPA or any of the representations or warranties of the Power Producer under this PPA being found to be inaccurate or untrue.
- c. Notwithstanding any liability or obligation that may arise under this PPA, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the Procurer can claim compensation under any insurance policy, shall not be charged to or payable by the Procurer.
- d. However, this ARTICLE 13: shall not apply to such breaches by the Power Producer, for which specific remedies have been provided for under this PPA)

### **13.2 Procedure for claiming Indemnity**

13.2.1 Third party claims

- a. Where the indemnified Party is entitled to indemnification from the indemnifying Party pursuant to Article 13.1.1a, the indemnified Party shall promptly notify the indemnifying Party of such claim referred to in to Article 13.1.1a in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the indemnified Party becomes aware of such claim. The indemnifying Party shall be liable to settle the indemnification claim within thirty (30) Days of receipt of the above notice. However, if:
  - i. the Parties choose to refer the dispute before the Arbitrator in accordance with Article16.3; and
  - ii. the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute;
- b. the indemnifying Party shall become liable to pay the claim amount to the indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the indemnifying Party.
- c. An indemnifying Party may, at its own expense, assume control of the defence of any

proceedings brought against it by the indemnified Party.

### **13.3 Indemnifiable Losses**

13.3.1 Where an indemnified Party is entitled to indemnifiable losses from the indemnifying Party pursuant to Article 13.1.1b, the indemnified Party shall promptly notify the Indemnifying Party of the indemnifiable losses actually incurred by the indemnified Party. The indemnifiable losses shall be reimbursed by the indemnifying Party within thirty (30) Days of receipt of the notice seeking indemnifiable losses by the indemnified Party. In case of non-payment of such losses after a valid notice under this Article, such event shall constitute a payment default under ARTICLE 12:.

### **13.4 Limitation on Liability**

13.4.1 Except as expressly provided in this PPA, neither the Power Producer nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this PPA, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this PPA), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, the Power Producer or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

13.4.2 Procurer shall have no recourse against any officer, director or shareholder of the Power Producer or any affiliate of the Power Producer or any of its officers, directors or shareholders for such claims excluded under this Article. The Power Producer shall have no recourse against any officer, director or shareholder of Procurer, or any affiliate of Procurer or any of its officers, directors or shareholders for such claims excluded under this Article.

13.4.3 Notwithstanding anything to the contrary contained elsewhere in this PPA, the provisions of this ARTICLE 13: shall apply mutatis mutandis to any claim against Procurer under ARTICLE 13:

### **13.5 Duty to Mitigate**

13.5.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this ARTICLE 13:



## **ARTICLE 14: GENERAL COVENANTS**

### **14.1 Power Producer's Covenants**

14.1.1 The Power Producer covenants and agrees to the following:

- a) **Notice of Damage or Emergency:** The Power Producer shall (a) promptly notify Procurer if it becomes aware of any damage to or loss of the use of the Project or that could reasonably be expected to adversely affect the Project, (b) immediately notify Procurer once it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the Project or the Premises.
- b) **Project Condition:** The Power Producer shall take all actions reasonably necessary to ensure that the Project is capable of generation and delivery of solar energy at agreed rate as per PPA & RFP. Subject to there being no Procurer Default, the Power Producer shall provide 24X7 onsite / offsite monitoring and maintenance of the Project throughout the period of this PPA at no additional cost.
- c) **Consents and Approvals:** While providing the installation work, solar power and system operations, the Power Producer shall obtain and maintain and secure all Consents and Approvals required to be obtained and maintained and secured by the Power Producer and to enable the Power Producer to perform such obligations as required under PPA and RFP.
- d) **Interconnection with Discom:** The interconnection of the Project with the network of the distribution licensee shall be made as per the technical standards for connectivity of distributed generated resources regulations as may be notified by the competent authority. The interconnection of the Project shall be as per the contracted Load and/or respective voltage level applicable to the Procurer as per the provisions of the guidelines issued by the competent authority.
- e) **Health and Safety:** The Power Producer shall take all necessary and reasonable safety precautions with respect to providing the installation work, solar energy, and system operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property.

## 14.2 Power Producer's Representatives

14.2.1 During the subsistence of this PPA, the Power Producer undertakes to respond to all questions, concerns and complaints of the Procurer regarding the Project in a prompt and efficient manner. The Power Producer designates the following individual as its representative pertaining to performance of this PPA for the period from Effective date till the COD:

Name: Shubham Chhabra

Telephone: +91 11 4388890

E-mail: schhabra@amp.energy

14.2.2 The Power Producer designates the following individual as its representative and primary point of contact pertaining to performance of this PPA following the COD till Expiry Date:

Name: Imran Usmani– Project Manager

Telephone: +91 99906 29959

E-mail: iusmani@amp.energy

## 14.3 Procurer's Covenants

14.3.1 Procurer covenants and agrees to the following:

- a) Notice of Damage or Emergency:** Procurer shall (a) promptly notify the Power Producer if it becomes aware of any damage to or loss of the use of the Project or that could reasonably be expected to adversely affect the Project; (b) immediately notify the Power Producer once it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the Project or the Premises.
- b) Consents:** The Procurer shall cooperate with the Power Producer to obtain such approvals, permits, rebates or other financial incentives including those required for installation of Project at the Premises and to draw/ consume/ sell solar energy. However, it would be sole responsibility of Power Producer to obtain such approvals, permits, rebates or other financial incentives including those required for installation of Project at the Premises and to draw/ consume/ sell solar energy.  
The Procurer should grant similar access/grants/licenses to the Lenders and Lenders Representative to enable them smooth access to the site for site inspection.
- c)** In cases, where the Procurer and Building Owner are different, then similar undertaking for access to premises in favor of Lenders has to be provided by the Building Owner.
- d) Access to Premises, Grant of Licenses:** Procurer hereby grants to the Power Producer a license co-terminus with the Term of PPA, containing all the rights necessary for the Power Producer to use and occupy portions of the Premises for the installation, operation

and maintenance of the Project pursuant to the terms of this PPA, including ingress and egress rights to the Premises for the Power Producer and its employees, agents, contractors and subcontractors and access to electrical panels and conduits to interconnect or disconnect the Project with the Premises' electrical wiring with the consent and approval of the Procurer's authorized representative identified by the Procurer.

- e) **Security:** Procurer shall be responsible for maintaining the physical security of the Premises. Procurer will not conduct activities on, in or about the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Project.
- f) Regardless of whether Procurer is owner of the Premises or leases the Premises from a building owner, Procurer hereby covenants that (a) the Power Producer shall have access to the Premises and Project during the Term of this PPA and for so long as needed after termination to remove the Project pursuant to the applicable provisions herein, and (b) neither Procurer nor Procurer's owner will interfere or handle any of the Power Producer's equipment or the Project without written authorization from the Power Producer.
- g) **Temporary storage space during installation or removal:** Procurer shall provide sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the installation work, Project operations or Project removal, and access for rigging and material handling.
- h) **Storage space during O &M period:** Procurer shall provide some space, if required, for keeping minimum tools and tackles compulsory for O &M activities, from the Initial Part Commissioning to Expiry Date. Also, if required, minimum necessary equipments shall be kept at or near the Premises, with due permission from Procurer.
- i) **Sunlight Easements:** Procurer will take all reasonable actions as necessary to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of sunlight to the Project, including but not limited to such actions as may be reasonably necessary to obtain a solar access easement for such purpose.
  - i. In the event that the Procurer fails to ensure adequate space for solar equipment to ensure that other structures within his premises do not partially or wholly shade any part of the Project and if such shading occurs, the Power Producer may apply for Deemed Generation furnishing the calculation for loss in revenue due to such shading supported by the relevant data, which shall be approved by Procurer within one month of submission failing which the Power Producer shall claim provisional

Deemed Generation till the issue is finally settled. In case, Procurer requested to shift the Project within the Premises to reduce/minimize the impact of shading then complete cost of shifting shall be borne by the Procurer. The costing would be as per latest Standard of Rates (SOR) published by concerned distribution utility for similar works;

- ii. In the event that the Procurer fails to ensure adequate space for solar equipment to ensure that other structures outside his premises do not partially or wholly shade any part of the Project and if such shading occurs, the Power Producer may apply for 80% of Deemed Generation furnishing the calculation for loss in revenue due to such shading supported by the relevant data, which shall be approved by Procurer within one month of submission failing which the Power Producer shall claim provisional Deemed Generation till the issue is finally settled. In case, Procurer requested to shift the Project within the Premises to reduce/minimize the impact of shading then 80% of cost of shifting shall be borne by the Procurer and remaining will be borne by Power Producer. The costing would be as per latest Standard of Rates (SOR) published by concerned distribution utility for similar works

**j) Evacuation:** Procurer shall offtake 100% of the solar energy generated, as per PPA Capacity as agreed under this PPA, from the Delivery Point(s), and pay all invoices raised by the Power Producer under this PPA by the Due Date and pay interest on delayed payments, if any, as per this PPA.

**k) Water:** Power Producer shall arrange water, as per the requirements of the Power Producer, for periodic cleaning of the solar panels. The raw water connection point may be provided by Procurer at site but water bill or charges against such connection shall be borne by Power Producer and to be mutually agreed between the Parties.

#### 14.4 Procurer's Representatives

14.4.1 During the subsistence of this PPA, the Procurer undertakes to respond to all questions, concerns and complaints of the Power Producer regarding the Project in a prompt and efficient manner. The Procurer designates the following individual as its representative pertaining to performance of this PPA during the Term of PPA:

Name: \_\_\_\_\_

Telephone: +91 \_\_\_\_\_

E-mail: \_\_\_\_\_

## **ARTICLE 15: ASSIGNMENTS AND CHARGES**

### **15.1 Assignments**

15.1.1 This PPA shall be binding upon, and inure to the benefit of the Parties and their respective successor and permitted assign. This PPA shall not be assigned by any Party other than by mutual consent between the Parties to be provided and evidenced in writing.

15.1.2 Provided that, respective successor or permitted assign shall meet eligibility criteria as per RFP and shall not be inferior, in any respect, to the concerned Party.

15.1.3 Provided that, Procurer shall permit assignment of any of Power Producer's rights and obligations under this PPA in favour of lenders of the Power Producer, if required under the Financing agreement.

15.1.4 Provided that, such consent shall not be withheld if Procurer seeks to transfer to any transferee all of its rights and obligations under this PPA.

15.1.5 Provided further that any successor or permitted assign identified after mutual PPA between the Parties may be required to execute a new PPA on the same terms and conditions as are included in this PPA.

### **15.2 Permitted Charges**

15.2.1 Power Producer shall not create or permit to subsist any encumbrance over all or any of its rights and benefits under this PPA, other than as set forth in ARTICLE 15:.

## **ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION**

### **16.1 Governing Law**

16.1.1 This PPA shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this PPA shall be under the jurisdiction of appropriate courts in Bhopal/ Jabalpur/ Indore.

### **16.2 Amicable Settlement**

16.2.1 Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with PPA or RFP ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:

- a) a description of the Dispute;
- b) the grounds for such Dispute; and
- c) all written material in support of its claim

16.2.2 The other Party shall, within thirty (30) Days of issue of Dispute Notice issued under Article 16.2.1, furnish:

- a) counter-claim and defences, if any, regarding the Dispute; and
- b) all written material in support of its defences and counter-claim.

16.2.3 Within thirty (30) Days of issue of Dispute Notice by any Party pursuant to Article 16.2.1 if the other Party does not furnish any counter claim or defence under Article 16.2.2 or thirty (30) Days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet amicably to settle such Dispute. If the Parties fail to resolve the Dispute amicably within thirty (30) Days from the later of the dates mentioned in this Article 16.2.3, the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

### **16.3 Dispute Resolution**

16.3.1 In case of dispute with Discom related to Net-Meter, Power Producer shall seek Appropriate Commission help and other parties will extend their full support in getting favourable decision;

16.3.2 In case of Disputed Bills, it shall be open to the aggrieved Party to approach the Nodal Agency or Court for dispute resolution in accordance with settled Law and also for interim orders protecting its interest and the Parties shall be bound by the decision of the Nodal Agency.

Dispute Resolution by the Nodal Agency

16.3.3 Nodal Agency can be approached by either Party for settlement of a dispute:

- a) Where any Dispute (i) arises from a claim made by any Party for any matter related to

Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (ii) relates to any matter agreed to be referred to the Nodal Agency, such Dispute shall be submitted to the Nodal Agency.

#### Dispute Resolution through Arbitration

16.3.4 Dispute shall be resolved by arbitration under the provisions of the "Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983", as amended, as under, provided not settled amicably as per this ARTICLE 16:. In such events, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration:

- a) The Arbitration Tribunal shall consist of three (3) Arbitrators. Each party shall appoint one Arbitrator within 30 Days of the receipt of request for settlement of dispute by Arbitration. The two appointed Arbitrators shall within 30 Days of their appointment, appoint a third Arbitrator who shall act as presiding Arbitrator. In case the party fails to appoint an Arbitrator within 30 Days from the date of receipt of request or the two appointed Arbitrator fails to agree on third Arbitrator within 30 Days of their appointment, the appointment of Arbitrator, as the case may be, shall be made in accordance with the Indian Arbitration and Conciliation Act, 1996.
- b) The place of arbitration shall be Bhopal/ Jabalpur/ Indore. The language of the arbitration shall be English.
- c) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- d) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.
- e) The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.
- f) Procurer shall be entitled to co-opt Discom(s) as a supporting party in such arbitration proceedings.

#### 16.4 Parties to Perform Obligations

16.4.1 Notwithstanding the existence of any Dispute and difference referred to the Arbitration Tribunal as provided in Article 16.3 and save as the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this PPA or RFP.

## **ARTICLE 17: SUBSTITUTION RIGHTS OF LENDERS**

### **17.1 Substitution of the Power Producer**

17.1.1 Subject to the terms of the PPA, upon occurrence of an Power Producer Event of Default under the PPA, the Lenders shall, have the right to seek substitution of the Power Producer by a Selectee, meeting or exceeding eligibility criteria as per PPA or/ and RFP, for the residual period of the PPA, for the purposes of securing the payments of the Total Debt Amount from the Power Producer and performing the obligations of the Power Producer, in accordance with the provisions of this Article.

17.1.2 The Lenders may seek to exercise right of substitution by an amendment or novation of the PPA and other Project Documents executed between Procurer and the Power Producer in favour of the Selectee, Procurer and the Power Producer shall cooperate with the Lenders to carry out such substitution.

### **17.2 Procurer Preliminary Default Notice**

17.2.1 Procurer shall, simultaneously to delivering a Procurer Preliminary Default Notice to the Power Producer, also issue a copy of it to the Lenders.

### **17.3 Substitution Notice**

17.3.1 In the event of failure of the Power Producer to rectify the Event of Default giving rise to Procurer Preliminary Default Notice, the lenders, upon receipt of a written advice from Procurer confirming such failure, either on their own or through its representative (“the Lenders’ Representative”) shall be entitled to notify Procurer and the Power Producer of the intention of the Lenders to substitute the Power Producer by the Selectee, meeting or exceeding eligibility criteria as per PPA or/ and RFP, for the residual period of the PPA (the “Substitution Notice”).

### **17.4 Interim operation of Project**

17.4.1 On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Article of this PPA.



- 17.4.2 On issue of a Substitution Notice, the Lenders shall have the right to request Procurer to enter upon and takeover the Project for the interim and till the substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Project, including levy, collection and appropriation of payments thereunder, subject to, the servicing of monies owed in respect of the Total Debt Amount as per the Financing agreements and the Power Producer shall completely cooperate in any such takeover of the Project by Procurer. If Procurer, at its sole and exclusive discretion agrees to enter upon and takeover the Project, till substitution of the Selectee in accordance with this PPA, Procurer shall be compensated for rendering such services in accordance with Article 17.8 herein.
- 17.4.3 If Procurer refuses to take over the Project on request by the Lenders in accordance with Article 17.4.2 above, the Power Producer shall have the duty and obligation to continue to operate the Project in accordance with the PPA till such time as the Selectee is finally substituted under Article 17.6.10 hereof.
- 17.4.4 The Lenders and Procurer shall, simultaneously have the right to commence the process of substitution of the Power Producer by the Selectee in accordance with these terms and the Power Producer hereby irrevocably consents to the same.

#### **17.5 Process of Substitution of Power Producer**

- 17.5.1 The Lenders' Representative may, on delivery of a Substitution Notice notify Procurer and the Power Producer on behalf of all the Lenders about the Lenders' decision to invite and negotiate, at the cost of the Lenders, offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of, such Selectee shall be entitled to receive all the rights of the Power Producer and shall undertake all the obligations of the Power Producer under the PPA and other Project Documents executed between the Power Producer and Procurer, in accordance with these terms of substitution.
- 17.5.2 The Lenders and the Power Producer shall ensure that, upon Procurer approving the Selectee, the Power Producer shall transfer absolutely and irrevocably, the ownership of the Project to such Selectee simultaneously with the amendment or novation of the PPA and other Project Documents executed between the Power Producer and Procurer in favour of the Selectee as mentioned in Article 17.1.2.

#### **17.6 Modality for Substitution**

Criteria for selection of the Selectee:

17.6.1 The Lenders and / or the Lenders' Representative shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:

- a) if the Power Producer is proposed to be substituted during the Construction Period, the Selectee shall possess the financial capability used to pre-qualify bidders in the RFQ stage (including the methodology prescribed therein) to perform and discharge all the residual duties, obligations and liabilities of the under the PPA. If the Power Producer is proposed to be substituted during the Operation Period, this criteria shall not be applicable.
- b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Power Producer to Procurer under and in accordance with the PPA and also payment of the Total Debt Amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;
- c) the Selectee shall have not been in breach of any PPA between the Selectee and any Bank or any Lender or between the Selectee and Procurer, involving sums greater than Rupees fifty (50) lakhs at any time in the last two (2) Operational Years as on the date of the substitution of the Power Producer.
- d) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained and the security in favour of the Lenders under the Financing agreements is preserved.

Modalities:

The following modalities shall be applicable to any substitution of the Power Producer by the Selectee pursuant to this PPA:

17.6.2 The Lenders' Representative shall on behalf of the Lenders propose to Procurer (the "Proposal") pursuant to Article 17.6.3 below, the name of the Selectee for acceptance, seeking:

- a) grant of all the rights and obligations under the PPA and the other Project Documents executed between Procurer and the Power Producer, to the Selectee (as substitute for the Power Producer);
- b) amendment of the PPA and the other Project Documents executed between Procurer and the Power Producer, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Power Producer under the original PPA and the other Project Documents executed between Procurer and the Power Producer; and

- c) the execution of new PPAs as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this PPA.

17.6.3 The Proposal shall contain the particulars and information in respect of the Selectee the data and information as any of Procurer may reasonably require. Procurer may intimate any additional requirement within thirty (30) Days of the date of receipt of the Proposal.

17.6.4 The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by Procurer of the Proposal:

- a) observe, comply, perform and fulfil the terms, conditions and covenants of the PPA and all Project Documents executed between Power Producer and Procurer or a new power purchase PPA or respective Project Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Power Producer, as if such Selectee was the Power Producer originally named under the PPA; or the respective Project Document; and
- b) be liable for and shall assume, discharge and pay the Total Debt Amount or then outstanding dues to the Lenders under and in accordance with the Financing agreements or in any other manner agreed to by the Lenders and Procurer as if such Selectee was the Power Producer originally named under such Financing agreements.

17.6.5 At any time prior to taking a decision in respect of the Proposal received under Article 17.6, Procurer may require the Lender / Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of Procurer as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.

17.6.6 Procurer shall convey its approval or disapproval of such Proposal to the Lender / Lender's Representative. Such decision shall be made by Procurer at their reasonably exercised discretion within twenty one (21) Days of:

- a) the date of receipt of the Proposal by the Procurers; or
- b) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by any of Procurer under Article 17.6 above is received; whichever is later.

If there is no decision is made within twenty one (21) Days, it shall be considered as deemed approval.

17.6.7 Notwithstanding anything to the contrary mentioned in this PPA, the approval of the Procurer for the Selectee shall not be withheld in case the Selectee meets the criteria mentioned in Article 17.6.

- 17.6.8 Upon approval of the Proposal and the Selectee by Procurer, the Selectee mentioned in the Proposal shall become the Selectee hereunder.
- 17.6.9 Following the rejection of a Proposal, the Lenders and/or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) Days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this Article shall apply mutatis mutandis to such fresh Proposal.
- 17.6.10 The substitution of the Power Producer by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Power Producer, Procurer and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and Procurer and upon transfer of ownership and complete possession of the Project by Procurer or the Power Producer, as the case may be, to the Selectee. Procurer shall novate all the Project Documents, which they had entered in to with the Power Producer in order to make the substitution of the Power Producer by the Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Power Producer towards purchase of the Project and assumption of all the rights and obligations of the Power Producer under the PPA and the Project Documents as mentioned in this PPA shall be entirely between the Power Producer, Selectee and the Lenders and Procurer shall in no way be responsible to bear the same.
- 17.6.11 Upon the substitution becoming effective pursuant to Article 17.6.10 above, all the rights of the Power Producer under the PPA shall cease to exist:  
Provided that, nothing contained in this Article shall prejudice any pending / subsisting claims of the Power Producer against a Procurer or any claim of Procurer against the erstwhile Power Producer or the Selectee.
- 17.6.12 The Selectee shall, subject to the terms and conditions of the substitution, have a period of ninety (90) Days to rectify any breach and / or default of the Power Producer subsisting on the date of substitution and required to be rectified and shall incur the liability or consequence on account of any previous breach and / or default of the Power Producer.
- 17.6.13 The decision of the Lenders and Procurer in the selection of the Selectee shall be final and binding on the Power Producer and shall be deemed to have been made with the concurrence of the Power Producer. The Power Producer expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

17.6.14 The Lenders shall be solely and exclusively responsible for obtaining any and all consents/approvals or cooperation, which may be required to be obtained from the Power Producer under this PPA and Procurer shall not be liable for the same.

17.6.15 All actions of the Lenders' Representative hereunder shall be deemed to be on behalf of the Lenders and shall be binding upon them. The Lenders' Representative shall be authorised to receive payment of compensation and any other payments, including the consideration for transfer, if any, in accordance with the Proposal and the Financing agreements and shall be bound to give valid discharge on behalf of all the Lenders.

### **17.7 Power Producer's Waiver**

17.7.1 The Power Producer irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Lenders, the Lender's Representative and Procurer or exercise of their rights under and in accordance with these terms.

17.7.2 The Power Producer irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in Article 17.6, it shall cease to have any rights under the PPA or the Financing agreements other than those expressly stated therein.

17.7.3 The Power Producer warrants and covenants that any PPA entered into by it, in relation to the Project, shall include a legally enforceable clause providing for automatic novation of such PPA in favour of the Selectee, at the option of the Lenders or Procurer. The Power Producer further warrants and covenants that, in respect of any PPAs which have already been executed in relation to the Project and which lack a legally enforceable clause providing for automatic novation of such PPA, the Power Producer shall procure an amendment in the concluded PPA to incorporate such clause.

### **17.8 Interim Protection of Service and Preservation of Security**

#### **Appointment of a Receiver**

17.8.1 In every case of the Lenders issuing a Substitution Notice and Procurer refusing to take over the Project and the Power Producer failing to operate the Project in accordance with Article 17.4 above and Procurer not electing to act as Receiver as per Article 17.8 below, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing agreements.

17.8.2 Provided that in event of Procurer refusing to take over the Project and the Power Producer failing to operate the Project in accordance with Article 17.4 above, and if the assets of the Project are, in the opinion of Procurer, necessary and required for the operation and

maintenance of the Project, Procurer shall be entitled to elect to act as the Receiver for the purposes of this Article and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and Power Producer hereby consent and agree to the same. Upon Procurer so intimating the Power Producer and the Lender's representative their desire to act as Receiver, the Power Producer and the Lender's representative shall co-operate with Procurer to facilitate the same.

17.8.3 Upon appointment of the Court appointed Receiver or Procurer acting as Receiver, all the Receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by PROCURER and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the lenders in accordance with the terms of its appointment.

17.8.4 When acting as a Receiver or operator in accordance with this Article 17.8 or Article 17.4, Procurer shall be entitled to be remunerated for such services as may be determined by Central Electricity Regulatory Commission. Furthermore, when acting as a Receiver, Procurer shall not be liable to the Lenders, the Lenders' Representative, Power Producer or any third party for any default under the PPA, damage or loss to the Power Station or for any other reason whatsoever, except for wilful default of Procurer.

#### **17.9 Substitution Consideration**

17.9.1 The Lenders and Procurer shall be entitled to appropriate any consideration received for the substitution of the Power Producer as hereinabove provided, from the Selectee towards the payment of Lenders' and Procurer's respective dues, to the exclusion of the Power Producer.

17.9.2 The Power Producer shall be deemed to have nominated, constituted and appoints the Lenders' Representative as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Power Producer by the Selectee pursuant to these terms.

#### **17.10 Change in Lenders**

17.10.1 The Parties hereto acknowledge that during the subsistence of the PPA, it is possible that any Lender may cease to remain as a Lender by reason of repayment of the debt or otherwise. Further it may possible that any Lender may be substituted or a new Lender may be added. In the event of any Lender ceasing to be a party to the PPA or Financing agreement respectively, the term and conditions as prescribed in this Article shall cease to automatically apply to such Lender as the case may be. Further, upon any entity being added as a Lender and in the event such entity is given the right to substitute the Power Producer under the Financing agreement and then the contents of this Article shall be applicable to the exercise of such right by the said new entity.

## **ARTICLE 18: REPRESENTATIONS & WARRANTIES**

### **18.1 Representations and Warranties of Procurer**

18.1.1 Procurer hereby represents and warrants to and agrees with the Power Producer as follows and acknowledges and confirms that the Power Producer is relying on such representations and warranties in connection with the transactions described in this PPA:

18.1.2 Procurer has all requisite powers authorising and has been duly authorised to execute and consummate this PPA;

18.1.3 This PPA is enforceable against Procurer in accordance with its terms;

18.1.4 The consummation of the transactions contemplated by this PPA on the part of Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, PPA, license, permit, evidence of indebtedness, restriction, or other contract to which Procurer is a party or to which Procurer is bound, which violation, default or power has not been waived;

18.1.5 Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against Procurer;

18.1.6 There are no actions, suits, claims, proceedings or investigations pending or, to the best of Procurer's knowledge, threatened in writing against Procurer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this PPA.

18.1.7 Procurer makes all the representations and warranties above to be valid as on the date of this PPA.

### **18.2 Representations and Warranties of the Power Producer**

18.2.1 The Power Producer hereby represents and warrants to and agrees with Procurer as follows and acknowledges and confirms that Procurer is relying on such representations and warranties in connection with the transactions described in this PPA.

18.2.2 The Power Producer has all requisite power authorising and has been duly authorised to execute and consummate this PPA;

18.2.3 This PPA is enforceable against the Power Producer in accordance with its terms;

- 18.2.4 The consummation of the transactions contemplated by this PPA on the part of the Power Producer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, PPA, license, permit, evidence of indebtedness, restriction, or other contract to which the Power Producer is a party or to which the Power Producer is bound which violation, default or power has not been waived;
- 18.2.5 The Power Producer is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Power Producer;
- 18.2.6 There are no actions, suits, claims, proceedings or investigations pending or, to the best of Power Producer's knowledge, threatened in writing against the Power Producer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgements, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to execute the Project or to comply with its obligations under this PPA.
- 18.2.7 The Power Producer makes all the representations and warranties above to be valid as on the date of this PPA.



## **ARTICLE 19: MISCELLANEOUS PROVISIONS**

### **19.1 Amendment**

19.1.1 This PPA may only be amended or supplemented by a written PPA between the Parties or their successor and permitted assign and after duly obtaining the approval of the appropriate authority, if necessary and relevant.

### **19.2 Third Party Beneficiaries**

19.2.1 This PPA is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this PPA.

### **19.3 Industry Standard**

19.3.1 Except as otherwise set forth herein, for the purpose of the PPA the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonably and timely. Unless expressly defined herein, words having well-known technical or trade meaning or under popular market practice at the time of execution of PPA or meaning under Law shall be so construed.

### **19.4 Waiver**

19.4.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this PPA shall be effective unless in writing duly executed by an authorised representative of such Party.

19.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this PPA nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this PPA, which shall remain in full force and effect.

### **19.5 Entirety**

19.5.1 This PPA and the Schedules/ Annexures are intended by the Parties as the final expression of their PPA and are intended also as a complete and exclusive statement of the terms of

their PPA.

19.5.2 Except as provided in this PPA, all prior written or oral understandings, offers or other communications of every kind pertaining to this PPA or the sale or purchase of solar energy under this PPA to Procurer by the Power Producer shall stand superseded and abrogated.

#### **19.6 Confidentiality**

19.6.1 The Parties undertake to hold in confidence this PPA and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- a) to their professional advisors;
- b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities;  
or
- c) disclosures required under Law.
- d) without the prior written consent of the other Party.

19.6.2 Provided that the Power Producer agrees and acknowledges that Procurer may at any time, disclose the terms and conditions of the PPA and the Project Documents to any person, to the extent stipulated under the Law.

#### **19.7 Affirmation**

19.7.1 **The Power Producer and Procurer, each affirm that:**

- a) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
- b) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this PPA, and the Power Producer and Procurer hereby undertake not to engage in any similar acts during the Term of PPA.

#### **19.8 Severability**

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

#### **19.9 No Partnership**

19.9.1 None of the provisions of this PPA shall constitute a partnership or agency or any such similar relationship between the Power Producer and Procurer.

**19.10 Notices**

19.10.1 All notices or other communications which are required to be given under this PPA shall be in writing and in the English language.

19.10.2 If to the Power Producer, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the address(es) below:

Address : 309, Rectangle One, Behind Sheraton Hotel, Saket, New Delhi 110017

Attention : Shubham Chhabra

Email : schhabra@amp.energy

Fax. No. : +91 \_\_\_\_\_

Telephone No. : +91 11 4388890

19.10.3 If to Procurer, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address (es) below:

Address : Dumma Airport Road, Dumma, Dist. Jabalpur - 482005

Attention : \_\_\_\_\_

Email : \_\_\_\_\_

Fax. No. : +91 \_\_\_\_\_

Telephone No. : +91 \_\_\_\_\_

19.10.4 All notices or communications given by e-mail or facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

19.10.5 Any Party may by notice of at least fifteen (15) Days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

**19.11 Language**

19.11.1 All correspondence and communications between the Parties relating to this PPA and all other documentation to be prepared and supplied under the PPA shall be written in English, and the PPA shall be construed and interpreted in accordance with English language convention and practice.

19.11.2 If any of the correspondence, communications or documents is prepared in any language other than English, the English translation of such correspondence, communications or documents shall prevail in matters of interpretation.

**19.12 Breach of Obligations**

19.12.1 The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries as per Law. The Parties further acknowledge that the amount of the Liquidated Damages or the method of calculating the Liquidated Damages specified in this PPA is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this PPA.

**19.13 Nomination Restriction**

19.13.1 Notwithstanding anything contained to the contrary in this PPA, wherever a reference is made to the right of a Procurer to nominate a third Party to receive benefits under this PPA, such third party shall have a financial standing comparable to that of Procurer.

**19.14 Commercial Acts**

19.14.1 Procurer and Power Producer unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this PPA to which it is a Party constitute private and commercial acts rather than public or governmental acts.

**19.15 Restriction of Shareholders / Owners' Liability**

19.15.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this PPA. Further, the financial liabilities of the shareholder/s of each Party to this PPA, in such Party, shall be restricted to the extent provided in Section 426 of the Indian Companies Act, 1956 as amended or replaced.

19.15.2 The provisions of this Article 19.15 shall supersede any other prior PPA or understanding, whether oral or written, that may be existing between Procurer, Power Producer, shareholders/ owners of the Power Producer or shareholders/ owners of Procurer before the date of this PPA, regarding the subject matter of this PPA.

**19.16 No Consequential or Indirect Losses**

19.16.1 The liability of the Power Producer and Procurer shall be limited to that explicitly provided in this PPA. Provided that notwithstanding anything contained in this PPA, under no event shall Procurer or the Power Producer claim from one another any indirect or consequential losses or damages.

**19.17 Independent Entity**

19.17.1 The Power Producer shall be an independent entity performing its obligations pursuant to the PPA or/ and RFP.

19.17.2 Subject to the provisions of the PPA or/ and RFP, the Power Producer shall be solely responsible for the manner in which its obligations under this PPA or/ and RFP are to be performed. All employees and representatives of the Power Producer or contractors engaged by the Power Producer in connection with the performance of the PPA or/ and RFP shall be under the complete control of the Power Producer and shall not be deemed to be employees, representatives, contractors of Procurer and nothing contained in the PPA or/ and RFP or in any PPA or contract awarded by the Power Producer shall be construed to create any contractual relationship between any such employees, representatives or contractors and Procurer.

**19.18 Taxes and Duties**

19.18.1 The Power Producer shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Power Producer, contractors or their employees, which are required to be paid by the Power Producer as per the Law in relation to the execution of the PPA or/ and RFP and for generation/ supply/ sale of solar energy as per the terms of this PPA or/ and RFP.

19.18.2 Procurer shall be indemnified and held harmless by the Power Producer against any claims that may be made against Procurer in relation to the matters set out in Article 19.18.1. Procurer shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Power Producer by Procurer on behalf of Power Producer.

19.18.3 The tariff specified in this PPA is inclusive of all taxes and duties etc., if any. Power Producer shall be entirely responsible for all taxes, duties, license fees, etc. All taxes

payable shall be payable by the Power Producer. However, if any new change in tax/duty and cess is effected in the period after the Financial Bid Submission Deadline, and any time during the period of Agreement, the same will be passed on by the Power Producer to the Procurer as determined by the Competent Authority. To evaluate impact of any change of laws in future, the rates applicable for each component shall be considered in the ratio of:-

- Material Component in the Capital Cost- 80% of the Benchmark capital cost as notified by MNRE vide notification no. 318/38/2018-GCRT dated June 15, 2018. This will include the cost of Solar Cells as 26% of the above referred benchmark capital cost
- Erection, Installation and Commissioning (I&C) component- 20% of the Benchmark Capital Cost and
- Yearly operational cost will be considered as 3% of the Benchmark Capital cost

The Quoted Tariff would be adjusted as below based on the variations in the capital cost and operational cost on account of change in taxes. Adjustment shall be allowed only if the extent of variation in taxes is beyond the deviations specified in table below:

	Variation due to change in taxes	Proportionate adjustments to the tariff	Effective Timeline
Capital Cost (Adjustments will be considered only if the change is more than 2.5%)	± X%	± 0.8 X%	If the relevant change is notified after Financial Bid Submission Deadline till 3 months prior to the Scheduled Completion Date as per the terms of PPA
Operational Cost (Adjustments will be made only if change is more than 5%)	± Y%	± 0.1 Y%	If the relevant change is notified after Financial Bid Submission Deadline, adjustment in tariff shall be provided till the time such change is in force.

**19.19 Compliance with Law**

19.19.1 Despite anything contained in this PPA but without prejudice to this Article, if any provision of this PPA shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this PPA shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

IN WITNESS WHEREOF the Parties have caused the PPA to be executed through their duly authorized representatives as of the date and place set forth above.

**For and on behalf of**

**PDPM Indian Institute of Information  
Technology, Design & Manufacturing,  
Jabalpur**

**For and on behalf of**

**AMPSolar Renewable Energy Private  
Limited**

**Name:** \_\_\_\_\_

**Name:** Shubham Chhabra

**Designation:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

**Address:** Dumma Airport Road, Dumma,  
Dist. Jabalpur - 482005

**Address:** 309, Rectangle One, Behind  
Sheraton Hotel, Saket, New Delhi 110017

\_\_\_\_\_  
**Signature with seal**

\_\_\_\_\_  
**Signature with seal**

**Witness:**

**Witness:**

1.

1.

2.

2.

**TECHNICAL SPECIFICATIONS**

S. No.	Description	Unit	Particulars
Grid Conditions at Interconnection Point			
i)	Voltage: Nominal	Hz	
	Variation	%	
ii)	Frequency: Nominal	Hz	
	Variation	%	
iii)	Combined Voltage and Frequency variation for PPA Capacity	%	
iv)	Power Factor: Nominal		Lag
	Variation		To Lag/lead
v)	Basic Input Level (Peak)	kV	
Fault Levels			
i)	3 Phase – Maximum	kA	
ii)	Clearance time – Maximum	Ms	
Ramp Rates			
All Projects shall be capable of increasing or decreasing their output (generation level) by not less than one percent (2%) <sup>1</sup> per minute. Such capability shall be demonstrated during the Project load of more than 50%.			

<sup>1</sup> Such ramp rate can be modified in view of the Governing System and Excitation System to be deployed for the proposed Solar Thermal Plant.



### FULFILLMENT CERTIFICATE

This is to certify that, Power Producer has installed a \_\_\_\_\_ kWp Part Capacity/ PPA Capacity of Project on the Premise of the Procurer in accordance with RFP No. MPUVN/GCRT-RESCO 2017-18/1692 and executed PPA dated \_\_\_\_\_. The key features of the Part Capacity/ PPA Capacity is as follows:

S. No	Parameter	Description
1.	System Size Installed	_____ kWp
2.	Expected Annual Energy Generation	
3.	Module Type	No. of Module installed: Module Supplier Name: Capacity (kWp):
4.	Inverter Type & Rating	No. of Inverter: Supplier Name: Capacity (kW or kVA)
5.	Combiner Box	Number: Supplier:
6.	Electrical Parameter for interconnection	
7.	Mounting type	
8.	Surface Azimuth Angle	
9.	Tilt Angle	
10.	Wind Resistance	
11.	Remote Monitoring System	
12.	Net Metering, if required for that part of capacity	
13.	Sign Board	
14.	Danger Board	
15.	Internal wiring upto use points, if required	
16.	Any additional work done, please specify	

The Power Producer shall provide a Remote Monitoring System (RMS) to Nodal Agency/ Procurer as prescribed in RFP and/or PPA.

**COD SCHEDULE**

COD Schedule from the Date of Signing of PPA

S. No.	Milestone (Activity to be Performed)	Day
1.	PPA Signing	T
2.		T + [1 Month]
3.		T + [2 Month]
4.		T + [3 Month]
5.		T + [4 Month]
6.		T + [5 Month]
7.		T + [6 Month]
8.		T + [7 Month]
9.		T + [8 Month]
10.	COD	T + [9 Month]

**ANNEXURE I: TARIFF SCHEDULE**

Operational Year	Financial Bid for Project (INR/kWh)
1.	T1 = Rs. 1.6700 per kWh (Quoted Tariff)

1. Quoted Tariff must be applicable for sale of Solar Power to Procurer from Initial Part Commissioning to the end of first Operational Year. Bidder to provide the Quoted Tariff up to 4 decimal places.
2. Quoted Tariff shall be escalated by 3% at the start of each Operational Year (second Operational Year onward) till the Expiry Date;
3. All measurement and calculation of tariff after escalation for each Operational Year shall be done up to four (4) decimal places, with the fifth digit of five (5) or above being rounded up and below five (5) being rounded down;
4. The above Quoted Tariff is inclusive of any applicable taxes. However, if any new change in tax/duty is effected in the period after the Bid Deadline and any time during the period of Agreement, the same will be passed on by the Power Producer to the Procurer.
5. Further, for clarification, PPA shall be signed for individual Projects under Project Group but Quoted Tariff shall remain the same for all Projects under Project Group. However, it shall be applicable in accordance with respective COD dates.

The Tariff Schedule applicable for 25 Operational Years from the date of COD of the Project is given in below table.

Operational Year	Tariff Schedule- I Quoted Tariff (Rs./kWh)	Tariff Schedule- II for Project Completion on/before 29 <sup>th</sup> Oct-2019 (Rs./kWh)	Tariff Schedule- III for Project Completion after 29 <sup>th</sup> Oct-2019 and on/before 29 <sup>th</sup> Apr-2020 (Rs./kWh)	Tariff Schedule- IV for Project Completion after 29 <sup>th</sup> Apr-2020 and on/before 29 <sup>th</sup> Oct-2020 (Rs./kWh)	Tariff Schedule- I for Project Completion after 29 <sup>th</sup> Oct-2020 (Rs./kWh)
1	1.6700	1.7568	1.7395	1.7221	1.6700
2	1.7201	1.8095	1.7917	1.7738	1.7201
3	1.7717	1.8638	1.8454	1.8270	1.7717
4	1.8249	1.9197	1.9008	1.8818	1.8249
5	1.8796	1.9773	1.9578	1.9382	1.8796
6	1.9360	2.0367	2.0165	1.9964	1.9360
7	1.9941	2.0978	2.0770	2.0563	1.9941
8	2.0539	2.1607	2.1393	2.1180	2.0539
9	2.1155	2.2255	2.2035	2.1815	2.1155
10	2.1790	2.2923	2.2696	2.2470	2.1790
11	2.2443	2.3610	2.3377	2.3144	2.2443
12	2.3117	2.4319	2.4078	2.3838	2.3117
13	2.3810	2.5048	2.4801	2.4553	2.3810
14	2.4525	2.5800	2.5545	2.5290	2.4525
15	2.5260	2.6574	2.6311	2.6048	2.5260

RESCO-I Power Purchase Agreement

Operational Year	Tariff Schedule- I Quoted Tariff (Rs./kWh)	Tariff Schedule- II for Project Completion on/before 29 <sup>th</sup> Oct-2019 (Rs./kWh)	Tariff Schedule- III for Project Completion after 29 <sup>th</sup> Oct-2019 and on/before 29 <sup>th</sup> Apr-2020 (Rs./kWh)	Tariff Schedule- IV for Project Completion after 29 <sup>th</sup> Apr-2020 and on/before 29 <sup>th</sup> Oct-2020 (Rs./kWh)	Tariff Schedule- I for Project Completion after 29 <sup>th</sup> Oct-2020 (Rs./kWh)
16	2.6018	2.7371	2.7100	2.6830	2.6018
17	2.6799	2.8192	2.7913	2.7635	2.6799
18	2.7603	2.9038	2.8751	2.8464	2.7603
19	2.8431	2.9909	2.9613	2.9318	2.8431
20	2.9284	3.0806	3.0502	3.0197	2.9284
21	3.0162	3.1730	3.1417	3.1103	3.0162
22	3.1067	3.2682	3.2359	3.2036	3.1067
23	3.1999	3.3663	3.3330	3.2997	3.1999
24	3.2959	3.4673	3.4330	3.3987	3.2959
25	3.3948	3.5713	3.5360	3.5007	3.3948

**ANNEXURE II: COPY OF LETTER RECEIVED FROM NODAL AGENCY CONFIRMING  
PPA CAPACITY AND SUBSIDY**