

DRAFT

STANDARD

POWER PURCHASE AGREEMENT

FOR

PROCUREMENT OF MW SOLAR POWER

ON LONG TERM BASIS

(UNDER NATIONAL SOLAR MISSION PHASE-II)
(Batch-II Tranche-I - “State Specific Bundling Scheme”)

Between

..... **[Insert Name of Solar Power Developer]**

And

NTPC Ltd.

..... **[Insert Month and Year]**

INDEX

SECTION	CONTENTS	PAGE NO.
1.	ARTICLE 1: DEFINITIONS AND INTERPRETATION.....	5
2.	ARTICLE 2: TERMS OF AGREEMENT	14
3.	ARTICLE 3: CONDITIONS SUBSEQUENT.....	15
4.	ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT.....	17
5.	ARTICLE 5: SYNCHRONISATION, COMMISSIONING & COMMERCIAL OPERATION...	21
6.	ARTICLE-6: DISPATCH.....	22
7.	ARTICLE 7: METERING.....	23
8.	ARTICLE 8: INSURANCES.....	24
9.	ARTICLE 9: APPLICABLE TARIFF.....	25
10.	ARTICLE 10: BILLING AND PAYMENT.....	26
11.	ARTICLE 11: FORCE MAJEURE.....	31
12.	ARTICLE 12: CHANGE IN LAW.....	34
13.	ARTICLE-13: EVENTS OF DEFAULT AND TERMINATION.....	35
14.	ARTICLE 14: LIABILITY AND INDEMNIFICATION.....	39
15.	ARTICLE 15: ASSIGNMENT AND CHARGES.....	42
16.	ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION.....	43
17.	ARTICLE 17: MISCELLANEOUS PROVISIONS.....	45
1	SCHEDULE1: FORMAT OF THE PERFORMANCE BANK GUARANTEE.....	
2	SCHEDULE 2: LIST OF BANKS.....	
3	SCHEDULE 3: POWER SALE AGREEMENT.....	

This Power Purchase Agreement is made on the[Insert date] day of [Insert Month] of [Insert Year] at[Insert Place].

Between

..... [Insert name of the Solar Power Developer] a Company incorporated under the Companies Act 1956/Companies Act 2013, having its registered office at [Insert address of the registered office of Solar Power Developer]..... (Hereinafter referred to as “Solar Power Developer or SPD”, 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

NTPC Ltd., a Company incorporated under the Companies Act 1956, having its registered office at Core-7, SCOPE Complex, 7, Institutional Area, Lodi Road, New Delhi - 110003 (hereinafter referred to as “NTPC”, 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 SPD and NTPC are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

Whereas:

- A. NTPC has been identified by the Government of India as the Implementing Agency for setting up of Grid-connected Solar PV Power Projects under State Specific Bundling Scheme and for facilitating purchase & sale of 33 kV or above Grid-connected Solar PV Power under the National Solar Mission of Government of India (GoI).
- B. After meeting the eligibility requirements, the SPD has been selected by NTPC for development of Solar Power Project, generation and sale of solar power under the above Mission.
- C. Pursuant to the issuance of Letter of Award (LoI) by NTPC to the SPD, the SPD has agreed to set-up Solar PV Power Project based on Photo-voltaic technology of [Insert capacity] MW capacity in the State of [Insert name of the State].

- D. The SPD has agreed to sign this Power Purchase Agreement (PPA) with NTPC to sell Solar Power to NTPC as per the terms and conditions of this Agreement.
- E. NTPC has agreed to purchase such Solar Power from SPD as an intermediary Seller and sell it to Discom after bundling it with the unallocated power procured from the central unallocated quota of Coal based Power Projects of NTPC Limited.
- F. NTPC has agreed to sign a Power Sale Agreement (PSA) with the Discom to sell such bundled power as per the provisions of the National Solar Mission
- G. The SPD has submitted the Performance Bank Guarantee to NTPC as per the format provided in Schedule 1 of this Agreement.
- H. NTPC agrees to procure power from the SPD up to the Contracted Capacity (as defined herein) at Levellised Tariff offered by SPD and finalized through the selection process, if any, as per the terms of this Agreement.
- I. The Parties, hereby, agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by SPD to NTPC.

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:

1. ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

The terms used in this Agreement, 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 modifications, amendments and substitution from time to time;
“Agreement” or "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;
"Appropriate Commission"	shall mean the Central Electricity Regulatory Commission referred to in sub- section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
"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;
“Bundled Power”	Shall mean MW [<i>insert capacity</i>] to be sold by NTPC to the Discom, after bundling Solar Power (.... MW) received from SPD and equivalent power (.... MW) received from NTPC;
“Business Day”	shall mean with respect to SPD and NTPC, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Delhi;
“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, 2009 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;
“Central Empowered Committee”	Shall mean the committee formed as per the provisions of the National Solar Mission for selection of solar power developers;
“Change in Law”	shall have the meaning ascribed thereto in Article 12 of this Agreement;
“Commercial Operation Date” [CoD]	Shall mean the 30 days from the actual commissioning date of respective Unit(s) of the Power Project where upon the SPD starts injecting power from the Power Project to the Delivery Point. CoD is intended to match allocation and availability of thermal power for bundling ;

Commissioning	the Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into grid;
“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 Agreement;
“Consents, Clearances and Permits”	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;
“Consultation Period”	shall mean the period of sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a SPD Preliminary Default Notice or NTPC Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
“Contract Year”	Shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that: <ul style="list-style-type: none">(i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and(ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement
"Contracted Capacity"	shall mean MW contracted with NTPC for supply by the SPD to NTPC at the Delivery Point from the Solar Power Project;
“Day”	Shall mean a day, if not a Business Day, the immediately succeeding Business Day.
“Delivery Point”/ “Metering point”	Shall mean the point at 33 kV or above where the power from the Solar Power Project is injected into the STU/ CTU substation as applicable. The metering shall be done at this interconnection point where the power is injected into the STU/ CTU system i.e., Delivery Point;
“Discoms”	Shall mean the distribution utility or the distribution utilities who have signed the PSA (s) with NTPC for purchase of Bundled Power;

“Dispute”	shall mean any dispute or difference of any kind between NTPC and the SPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
"Due Date"	shall have the same meaning ascribed thereto in Article 10 of this Agreement;
“Effective Date”	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
“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;
" Energy Accounts"	shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
“Event of Default”	shall mean the events as defined in Article 13 of this Agreement;
“Expiry Date”	Shall mean the date occurring twenty five (25) years from the Commercial Operation Date;
“Financing Agreements”	shall mean the agreements pursuant to which the SPD has sought financing for the Power 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 NTPC;
"Force Majeure" or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 11 of this Agreement;
“Guidelines”	shall mean “Guidelines for Selection of Grid Connected Solar PV Projects under “State Specific Bundling Scheme” under Batch-II Tranche I of NSM Phase-II issued by MNRE, GoI;
"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 Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
“Incremental Receivables”	shall have the same meaning as provided in Article 10.4.9 of this PPA.
“Indian Governmental Instrumentality”	shall mean the Government of India, Government of state(s) of <i>[Insert the name of the State(s) in India, where the Power Project, NTPC and SPD are located]</i> 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;
“Infirm Power”	Shall mean electricity injected into the grid prior to Commercial Operation Date of the Project from the Project Capacity commissioned;
“Installed Capacity”	Shall mean the name plate capacity of all the Units of the Power Project or the capacity of the Power Project (reckoned at the generator terminals), approved by the Appropriate Commission from time to time;
“Insurances”	shall mean the insurance cover to be obtained and maintained by the SPD in accordance with Article 0 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on SPD’s side of the Delivery Point for sending and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;
Inter-connection point	Shall mean the point at 33 kV or above where the power from the Solar Power Project is injected into the STU/ CTU substation as applicable (including the dedicated transmission line connecting the power project with the CTU/STU system).The metering shall be done at this interconnection point where the power is injected into the STU/ CTU system i.e., Delivery Point. The developers (SPDs) shall abide by the relevant CERC Regulations, Grid Code and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time;
“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 10.3.3 of this Agreement;
"Law"	shall mean in relation to this Agreement, 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;
“Letter of Credit” or “L/C”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;

"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"National Solar Mission or NSM"	Shall mean the National Solar Mission launched by the Government of India vide MNRE OM No.32/8/2013-14/NSM dated 05 th March 2015 for Phase II, as amended from time to time;
"Operating Period";	shall mean the period commencing from the Commercial Operation Date, until the last day of the Term of this Agreement or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
"Open Access Charges"	shall mean the charges levied by the STU/ SLDC of the State wherein the Solar Power Project is located for the grant of Open Access & for scheduling;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Security Mechanism"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Performance Bank Guarantee"	shall mean the irrevocable unconditional bank guarantee, submitted by the SPD to NTPC from a bank mentioned in Schedule 1 of this Agreement in the form attached hereto as Schedule 1;
"Power Project"	shall mean the solar power generation facility of Installed Capacity of[Insert capacity] MW, located at[Insert name of the place] in[Insert name of the District and State]. Project is defined by separate points of injection into the grid at interconnection point/ delivery point/ metering point at STU/ CTU substation as the case may be. Each project must also have separate boundary, control systems and metering. This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, and all the other assets, buildings/structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement;
"Power Sale Agreement" or "PSA"	Shall mean the Power Sale Agreement entered between the Discom and NTPC (NTPC-Discom PSA) for selling the bundled power as per the provisions of Guidelines for selection of Grid-connected Solar-PV Power Projects under "State Specific Bundling Scheme" under Batch-II, Tranche-I of NSM Phase-II and annexed hereto as Schedule 3 of this Agreement;
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 13 of this Agreement;

“Project Financing Arrangements/Financial Closure”	Shall mean arrangement of necessary funds by the SPD either by way of commitment of funds by the company from internal resources and/or tie up of funds through a bank/financial institution by way of sanction of a loan.
"Prudent Utility Practices"	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: <ul style="list-style-type: none"> a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project; b) the requirements of Indian Law; and the physical conditions at the site of the Power Project;
“RBI”	shall mean the Reserve Bank of India;
“Rebate”	shall have the same meaning as ascribed thereto in Article 10.3.4 of this Agreement;
"RLDC"	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"Rupees", "Rs. “ •”	shall mean Indian rupees, the lawful currency of India;
“Scheduled Commissioning Date”	shall mean[Insert Date i.e. thirteen (13) months from the Effective date];
“SECI”	shall mean Solar Energy Corporation of India;
“SLDC”	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
“Solar Photovoltaic” or “Solar PV”	shall mean the solar photovoltaic power project that uses sunlight for conversion into electricity and that is being set up by the SPD to provide Solar Power to NTPC as per the terms and conditions of this Agreement;
“Solar Power”	shall mean power generated from the Solar Photovoltaic Power Project;
“Solar PV Project”	Shall mean the Solar Photovoltaic Power Project that utilize direct conversion of sunlight into electricity through Photovoltaic technology;
“State Transmission Utility” or “STU”	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;

"Tariff"	shall have the same meaning as provided for in Article 9 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
"Trading Margin"	Trading Margin is the difference between the Weighted Average Purchase Price of Bundled Power by NTPC from SPDs & NTPC and the Sale Price of Bundled Power by NTPC to the State Utilities/ DISCOMs / Bulk Consumers. NTPC shall charge a Trading Margin @ 7 Paisa/ kWh;
"Unit"	Shall mean[Insert capacity of the Plant] MW AC Solar PV Capacity
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

1.2. Interpretation

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

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 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 Agreement;
- 1.2.3 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);
- 1.2.4 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;
- 1.2.5 "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;
- 1.2.6 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;

- 1.2.7 "Rupee", "Rupees" , "Rs" or new rupee symbol “ • ” shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 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;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement 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 Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 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;

2. ARTICLE 2: TERM OF AGREEMENT

2.1. *Effective Date*

- 2.1.1. This Agreement shall come into effect from the date of its execution by both the Parties and as such date shall be referred to as the Effective Date;

2.2. *Term of Agreement*

- 2.2.1. This Agreement subject to Article 2.3 and 2.4 shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date.
- 2.2.2. Further, SPD will be free to sell power to anyone for period beyond 25 years of firm PPA signed with NTPC.

2.3. *Early Termination*

- 2.3.1. This Agreement shall terminate before the Expiry Date if either NTPC or SPD terminates the Agreement, pursuant to Article 13 of this Agreement.

2.4. *Survival*

- 2.4.1. The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 16 (Governing Law and Dispute Resolution), Article 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

3. ARTICLE 3: CONDITIONS SUBSEQUENT

3.1. Satisfaction of conditions subsequent by the SPD

The SPD agrees and undertakes to duly perform and complete all of the following activities including Financial Closure at the SPD's own cost and risk within 210 days from the Effective Date, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by NTPC:

- a) The SPD shall obtain all Consents, Clearances and Permits required for supply of power to NTPC as per the terms of this Agreement. NTPC has no obligation to recommend to any department/agency or the Govt. for the grant/permission for the Solar Power project. The Solar Power Developer shall on his own obtain permissions/sanctions from Govt. authorities, if any required for establishing the project;
 - b) The SPD shall make Project Financing Arrangements and shall provide necessary documents to NTPC in this regard;
 - c) The SPD shall sign a transmission agreement with STU/CTU confirming the evacuation & connectivity of CTU/STU system upto the delivery point of SPD by the Scheduled Commissioning Date;
 - e) The SPD shall furnish the necessary documents to establish possession in the name of the Project Developer of the required land/ Lease Agreement [*minimum 2 Hectare per MW*];
 - f) The SPD shall fulfill the technical requirements according to criteria mentioned under Clause 3.5 (B) of NSM Guidelines for Selection of Grid-connected Solar-PV Power Projects under "State Specific Bundling Scheme" of Batch-II, Tranche-I of NSM Phase-II and produce the documentary evidence of the same.
 - g) The SPD shall submit to NTPC the relevant documents as stated above, complying with the Conditions Subsequent, within 210 days period from the Effective Date.
- 3.2 a) The SPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at the Delivery Point;

3.2. Consequences of non-fulfillment of conditions subsequent

- 3.2.1 In case of a failure to submit the documents as above. NTPC shall have the right to terminate this Agreement by giving a Termination Notice to the SPD in writing of at least seven (7) days. The termination of the Agreement shall take effect upon the expiry of the 7th day of the Notice.
- 3.2.2 NTPC shall be entitled to encash all the Bank Guarantees submitted by the SPD.
- 3.2.3 For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.
- 3.2.4 In case of inability of the SPD to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.
- 3.2.5 Provided that due to the provisions of this Article 3.2, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Commissioning Date.

- 3.2.6 In case of delay in achieving above condition as may be applicable, NTPC shall encash Performance Bank Guarantees and shall remove the project from the list of the selected projects, unless the delay is on account of Force Majeure. An extension can however be considered, on the sole request of SPD, on payment of a penalty of Rs. 25,000/- per day per MW. This amount will go into the Payment Security Fund. This extension will not have any impact on the Scheduled Commercial Operation Date.

3.3. Performance Bank Guarantee

- 3.3.1. The Performance Bank Guarantee @ Rs.30 Lakh/MW to be furnished under this Agreement shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement as per format provided in Schedule 1.
- 3.3.2. The failure on the part of the SPD to furnish and maintain the Performance Bank Guarantee including the Earnest Money Deposit at the time of RFS shall be a material breach of the term of this Agreement on the part of the SPD.
- 3.3.3. The Performance Bank Guarantees shall be valid for a period of Nineteen (19) months from the date of signing of PPA. In case any extension is given to the project, subject to conditions mentioned in Article 4.5, the corresponding extension needs to be made by the SPD.
- 3.3.4. If the SPD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement, subject to conditions mentioned in Article 4.5, NTPC shall have the right to encash the Performance Bank Guarantee without prejudice to the other rights of NTPC under this Agreement.

3.4. Return of Performance Bank Guarantee

- 3.4.1. Subject to Article 3.3, NTPC shall return / release the Performance Bank Guarantee three (3) months after the Commercial Operation Date,
- 3.4.2. The return / release of the Performance Bank Guarantee shall be without prejudice to other rights of NTPC under this Agreement.

4. ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1. SPD's Obligations

4.1.1. The SPD undertakes to be responsible, at SPD's own cost and risk, for:

- a) Obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement;
- b) Designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.
- c) The commencement of supply of power up to the Contracted Capacity to NTPC no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement;
- d) Connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point;
- e) Owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;
- f) Maintaining its controlling shareholding prevalent at the time of signing of PPA up to a period of one (1) year for the selected Solar-PV Power Projects (selected under the "State Specific Bundling Scheme" of Batch-II Tranche-I of NSM Phase-II after commencement of supply of power; and
- g) Fulfilling all obligations undertaken by the SPD under this Agreement.

4.2. Information regarding Interconnection Facilities

- 4.2.1. The SPD shall be required to obtain all information with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the SPD's side of the Delivery Point to enable delivery of electricity at the Delivery Point.
- 4.2.2. The SPD has to bear entire cost of Transmission from the project up to the interconnection point including cost of construction of line, losses etc. and the same will not be reimbursed by NTPC or met by the STU/ CTU/ Discoms;
- 4.2.3. The responsibility of getting Transmission Connectivity and Access to the Transmission system owned by the STU/ CTU will lie with the Project Developer and its cost is to be borne by SPD;
- 4.2.4. The SPD shall not be entitled to any deemed generation in case of any delay in connectivity to the Project. NTPC shall not be liable for any damage or loss due to loss of Grid connectivity or any other event related to Grid for what so ever reasons;

4.3. Purchase and sale of Contracted Capacity

- 4.3.1. Subject to the terms and conditions of this Agreement, the SPD undertakes to sell to NTPC and NTPC undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.

4.4. **Right to Contracted Capacity & Energy**

- 4.4.1. NTPC, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the SPD beyondMillion kWh (MU) [*Insert value of energy generated corresponding to a CUF of 21% (i.e., 19%+2%) for Solar-PV Projects. Provided that in case of Solar Projects using advance technologies, the value of CUF shall be average CUF committed by the SPD at the point of signing the PPA*]. If for any Contract Year, it is found that the SPD has not been able to generate minimum energy of Million kWh (MU) [*corresponding to a CUF of 14% (i.e., 19% - 5%) and further provided that in case of solar Projects using advanced technologies, the value of CUF shall be 5% below the average CUF committed by the SPD at the point of signing the PPA*], on account of reasons solely attributable to the SPD, the non-compliance by SPD shall make SPD liable to pay the compensation provided in the PSA as payable to Discoms and shall duly pay such compensation to NTPC to enable NTPC to remit the amount to Discoms. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of compensation shall be computed at the rate equal to the compensation payable by the Discoms towards non-meeting of RPOs, subject to a minimum of 25% of the applicable tariff.
- 4.4.2. Notwithstanding Article 4.4.1, the SPD is free to sell any capacity which is in excess of the quantum of power agreed to be supplied under this Agreement from Scheduled Commissioning Date either to NTPC or sell in open market. Provided that the SPD shall not be entitled to claim benefit of bundling of power provided in this Agreement in any manner whatsoever on such sale of infirm power or power in excess of the contracted capacity as the case may be. Such excess energy, if accepted by the Discom(s), may be purchased by NTPC at a notional Support Price of Rs. 3/- per kWh.

4.5 **Extensions of Time**

4.5.1 In the event that the SPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

- a) any NTPC Event of Default; or
- b) Force Majeure Events affecting NTPC, or
- c) Force Majeure Events affecting the SPD,

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.5.2, for a reasonable period but not less than 'day for day' basis, to permit the SPD or NTPC through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or NTPC, or till such time such Event of Default is rectified by NTPC.

- 4.5.2 Subject to Article 4.5.6, in case of extension occurring due to reasons specified in Article 4.5.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than twelve (12) months.
- 4.5.3 In case of extension due to reasons specified in Article 4.5.1 (b) and (c) and if such Force Majeure Event continues even after a maximum period of three (3) Months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.
- 4.5.4 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.
- 4.5.5 As a result of such extension, the Scheduled Commissioning Date and the Expiry Date newly determined shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.

- 4.5.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond twenty five (25) months from the date of signing of PPA.

4.6 Liquidated Damages for delay in commencement of supply of power to NTPC

- 4.6.1 If the SPD is unable to commence supply of power to NTPC by the Scheduled Commissioning Date other than for the reasons specified in Article 4.5.1, the SPD shall pay to NTPC, Liquidated Damages for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:
- 4.6.1.1 Delay upto five (5) month: NTPC will encash the Performance Bank Guarantee on per day basis and proportionate to capacity not commissioned, with 100% encashment for 5 months delay.
- 4.6.1.2 Delay beyond five month: In case the commissioning of Project is delayed beyond 5 months, the SPD shall, in addition to encashment of Bank Guarantee, pay to NTPC the Liquidated Damages @ Rs. 1,00,000 per MW per day of delay for the delay in such remaining Capacity which is not commissioned.

The amount of liquidated damages would be recovered from the SPD from the payments due on account of sale of solar power to NTPC in thirty (30) equal monthly instalments from first billing cycle.

- 4.6.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and payment of Liquidated Damages shall be limited to twenty five (25) months from the Effective Date. In case, the commissioning of the Power Project is delayed beyond twenty five (25) months from the Effective Date, it shall be considered as an SPD Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced/amended to the Project Capacity Commissioned within twenty five (25) months of the Effective Date and the PPA for the balance Capacity will stand terminated and shall be reduced from the selected capacity.

4.7 Acceptance/Performance Test

- 4.7.1 Prior to synchronization of the Power Project, the SPD 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 to carry out testing and certification for the solar power projects.

4.8 Third Party Verification

- 4.8.1 The SPD shall be further required to provide entry to the site of the Power Project free of all encumbrances at all times during the Term of the Agreement to NTPC and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the SPD at the site of the Power Project.
- 4.8.2 The third party may verify the construction works/operation of the Power Project being carried out by the SPD and if it is found that the construction works/operation of the Power Project is not as per the Prudent Utility Practices, it may seek clarifications from SPD or require the works to be stopped or to comply with the instructions of such third party.
- 4.8.3 The third party may carry out checks for testing the CUF of the Power Project. During a Contract Year, if the CUF of the Power Project is found to be below ... [*insert value i.e., 5% less than CUF*] or if it is found that the SPD has not been able to maintain a CUF of [*Insert value i.e., 3% less than CUF*] for a consecutive period of three (3) months during a Contract Year on account of reasons solely attributable to SPD, the SPD shall be liable for non-fulfillment of its obligation. The liability shall be equal to the amount levied by the Discom on NTPC for non-supply of power by NTPC which in turn shall have the right to assign such liability to the SPD under this Agreement.

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

5.1 Synchronization, Commissioning and Commercial Operation

- 5.1.1 The SPD shall give the concerned RLDC/SLDC and NTPC at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice, of the date on which it intends to synchronize the respective units of Power Project to the Grid System.
- 5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the SPD to the Grid System 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 System.
- 5.1.3 The synchronization equipment shall be installed by the SPD at its generation facility of the Power Project at its own cost. The SPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned sub-station/Grid System and checking/verification is made by the concerned authorities of the Grid System.
- 5.1.4 The SPD shall immediately after each synchronization / tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code.
- 5.1.5 The SPD shall commission the Project within thirteen (13) Months from the Effective Date.
- 5.1.6 The project commissioned during a month shall be entitled for payment of energy @ Rs. 3.00 per kWh as infirm power till Commercial Operation Date (CoD). The Project CoD shall be considered 30 days from the actual date of commissioning/part commissioning. CoD is intended to match allocation and availability of thermal power for bundling.
- 5.1.7 The 25 year tenure of PPA shall commence from Commercial Operation Date.

6 ARTICLE 6: DISPATCH

6.1 Dispatch

- 6.1.1 The Power 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.

7 ARTICLE 7: METERING

7.1 Meters

- 7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the SPD and NTPC shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.
- 7.1.2 The SPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at SPD's side of Delivery Point.

7.2 Reporting of Metered Data and Parameters

- 7.2.1 The grid connected solar PV power plants will install necessary equipment for regular monitoring of solar radiation, ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power generated from the plant.
- 7.2.2 Online arrangement would have to be made by the solar power developer for submission of above data regularly for the entire period of this Power Purchase Agreement to the concerned Ministry.
- 7.2.3 Reports on above parameters on monthly basis shall be submitted by the Solar Power Developer to MNRE/MOP through NTPC for entire period of PPA.

8 ARTICLE 8: INSURANCES

8.1 Insurance

- 8.1.1 The SPD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

8.2 Application of Insurance Proceeds

- 8.2.1 Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.
- 8.2.2 If a Force Majeure Event renders the Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, NTPC shall have no claim on such proceeds of such Insurance.

8.3 Effect on liability of NTPC

- 8.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the SPD can claim compensation, under any Insurance shall not be charged to or payable by NTPC.

9 ARTICLE 9: APPLICABLE TARIFF

- 9.1 The SPD shall be entitled to receive the Tariff of Rs..... /kWh [*Insert the Levellised Tariff*] with effect from the Commercial Operation Date. The tariff shall be applicable for the entire life of station irrespective of date of commissioning of different modules.
- 9.2 The Selected Project Developers will be required to submit a copy of the audited annual accounts along with tax audit report supplemented with calculation of Depreciation and a copy of Income Tax return for the first 05 years from Commercial Operation Date (CoD).

10 ARTICLE 10: BILLING AND PAYMENT

10.1 General

10.1.1 From the commencement of supply of power, NTPC shall pay to the SPD the monthly Tariff Payments, in accordance with this Article and Article 9. All Payments by NTPC shall be in Indian Rupees.

10.2 Delivery and Content of Monthly Bills/Supplementary Bills

10.2.1 The SPD shall issue to NTPC a signed Monthly Bill/Supplementary Bill for the immediately preceding Month between the 5th day upto the 15th day of the next Month. In case the Monthly Bill/Supplementary Bill for the immediately preceding Month is issued after the 15th day of the next Month, the Due Date for payment of such Monthly Bill/ Supplementary Bill shall be as detailed at Article 10.3.1 below.

Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RLDC/SLDC or any other competent authority which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy metered and the applicable tariff.

10.3 Payment of Monthly Bills

10.3.1 NTPC shall pay the amount payable under the Monthly Bill/Supplementary Bill by the (fifth) 5th day of the immediately succeeding Month (the Due Date) in which the Monthly Bill/ Supplementary Bill is issued by the SPD to the NTPC to such account of the SPD, as shall have been previously notified by the SPD in accordance with Article 10.3.2 (iii) below. In case the Monthly Bill or any other bill, including a Supplementary Bill is issued after the (fifteenth) 15th day of the next month, the Due Date for payment would be (fifth) 5th day of the next month to the succeeding Month.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

- i) deductions required by the Law; and
- ii) amounts claimed by NTPC, if any, from the SPD, through an invoice to be payable by the SPD, and not disputed by the SPD within fifteen (15) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that NTPC shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.
- iii) The SPD shall open a bank account at[Insert name of place] (the "SPD's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by NTPC to the SPD, and notify NTPC of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. NTPC shall also designate a bank account at ... [Insert name of place] ("NVVN's / NTPC's Designated Account") for payments to be made by the SPD to NTPC, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. NTPC and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD' Designated Account or NVVN's / NTPC's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.
- iv) **Performance Guarantee Deposit (PGD)** @Rs 10 lakh/MW shall be raised in two years by deducting from payments to SPDs in 24 equal instalments. It will stay with NTPC for 25 years. PGD shall be refunded to SPDs without interest within three (3) months after expiry of 25 year term of PPA subject to satisfactory performance of the project. In case the SPD winds up his project or terminates PPA prior to completion of 25 year term of PPA the PGD shall be forfeited.

10.3.3 Late Payment Surcharge

In the event of delay in payment of a Monthly Bill by NTPC within thirty (30) days beyond its Due Date, a Late Payment Surcharge shall be payable to the SPD at the rate of 1.25% per month on the outstanding

amount calculated on a day to day basis subject to such late payment is duly received by NTPC under the PSA. The Late Payment Surcharge shall be claimed by the SPD through the Supplementary Bill.

10.3.4 Rebate

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the SPD to NTPC in the following manner.

- a) A Rebate of 2% shall be payable to the NTPC for the payments made on the 5th Business Day of the Month.
- b) Any payments made beyond the 5th Business Day of the month upto the Due Date shall be allowed a rebate of 1%.
- c) Provided that, any payment made by NTPC on date of presentation of Bill, a Rebate of 2% shall be payable, if bill is raised beyond 5th but by the 15th Business Day of the Month.
- d) For the above purpose, the date of presentation of bill shall be same day in case it is delivered on or before 12:00 noon, else it would be the next Business Day.
- e) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess.

10.4 Payment Security Mechanism

Letter of Credit (LC):

- 10.4.1 NTPC shall provide to the SPD, 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 SPD in accordance with this Article.
- 10.4.2 Not later than one (1) Month before the start of supply, NTPC through a scheduled bank at New Delhi open a Letter of Credit in favour of the SPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:
 - i) for the first Contract Year, equal to the estimated average monthly billing;
 - ii) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year.
- 10.4.3 Provided that the SPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.
- 10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, NTPC shall restore such shortfall within seven (7) days.
- 10.4.5 NTPC shall cause the scheduled bank issuing the Letter of Credit to intimate the SPD, in writing regarding establishing of such irrevocable Letter of Credit.
- 10.4.6 NTPC shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to its expiry.
- 10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by NTPC.
- 10.4.8 If NTPC fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 10.4.6, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from NTPC, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, if applicable, in accordance with Article 10.3.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

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

10.5 Disputed Bill

- 10.5.1 If the NTPC does not dispute a Monthly Bill or a Supplementary Bill raised by the SPD by the Due Date, such Bill shall be taken as conclusive.
- 10.5.2 If the NTPC disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 95% of the disputed amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:
- i) the details of the disputed amount;
 - ii) its estimate of what the correct amount should be; and
 - iii) all written material in support of its claim.
- 10.5.3 If the SPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the SPD shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.
- 10.5.4 If the SPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the NTPC providing:
- i) reasons for its disagreement;
 - ii) its estimate of what the correct amount should be; and
 - iii) all written material in support of its counter-claim.
- 10.5.5 Upon receipt of the Bill Disagreement Notice by the NTPC under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the NTPC and SPD shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- 10.5.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.5.4, the matter shall be referred to Dispute resolution in accordance with Article 16.
- 10.5.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, NTPC shall, without prejudice to its right to Dispute, be under an obligation to make payment of 95% of the Disputed Amount in the Monthly Bill.

10.6 Quarterly and Annual Reconciliation

- 10.6.1 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 at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.
- 10.6.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the SPD and NTPC shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the SPD 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 invoicing Party 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.

10.7 *Payment of Supplementary Bill*

10.7.1 SPD may raise a "Supplementary Bill" for payment on account of:

- i) Adjustments required by the Energy Accounts (if applicable); or
- ii) Change in Law as provided in Article 12,

and such Supplementary Bill shall be paid by the other Party.

10.7.2 NTPC shall remit all amounts due under a Supplementary Bill raised by the SPD to the SPD's Designated Account by the Due Date. For such payments by NTPC, Rebate as applicable to Monthly Bills pursuant to Article 10.3.4 shall equally apply.

10.7.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 10.3.3.

11 .ARTICLE 11: FORCE MAJEURE

11.1 Definitions

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

11.2 Affected Party

11.2.1 An affected Party means NTPC or the SPD whose performance has been affected by an event of Force Majeure.

11.3 Force Majeure

11.3.1 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 Agreement, 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 or complied with Prudent Utility Practices:

- 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
- b) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or
- c) radio active 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 Power Project by the Affected Party or those employed or engaged by the Affected Party.
- d) An event of Force Majeure identified under NTPC-Discom PSA, thereby affecting delivery of power from SPD to Discom.

11.4 Force Majeure Exclusions

11.4.1 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. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
- b. Delay in the performance of any contractor, sub-contractor or their agents ;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. 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 Agreement.

11.5 *Notification of Force Majeure Event*

11.5.1 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 one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. 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 (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

11.5.2 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 Agreement, as soon as practicable after becoming aware of each of these cessations.

11.6 *Duty to Perform and Duty to Mitigate*

11.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 11.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.7 *Available Relief for a Force Majeure Event*

11.7.1 Subject to this Article 11:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement 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 4.5;
- (c) For avoidance of doubt, neither Party's obligation to make payments of money due nor payable prior to occurrence of Force Majeure events under this Agreement 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.

12. ARTICLE 12: CHANGE IN LAW

12.1 Definitions

In this Article 12, the following terms shall have the following meanings:

12.1.1 "Change in Law" means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/ non-recurring expenditure by the SPD or any income to the SPD:

- 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;
- a 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;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPD;
- any change in tax or introduction of any tax made applicable for supply of power by the SPD as per the terms of this Agreement.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD, or (ii) any change on account of regulatory measures by the Appropriate Commission.

12.2 Relief for Change in Law

12.2.1 The aggrieved Party shall be required to approach the Central Commission for seeking approval of Change in Law.

12.2.2 The decision of the Central Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.

13 ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

13.1 SPD Event of Default

13.1.1 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 NTPC or Discoms of its obligations under this Agreement, shall constitute a SPD Event of Default:

- (i) the failure to commence supply of power to NTPC up to the Contracted Capacity not later than the Scheduled Commissioning date or [insert date 13 months from effective date]; and
- (ii) non-continuance of the supply of power throughout the terms of the Agreement by the end of the period specified in Article 4, or

if

a) the SPD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Project in contravention of the provisions of this Agreement; or

b) the SPD transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer

- 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 Agreement or

- is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;

- (iii) if (a) the SPD 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 (b) any winding up or bankruptcy or insolvency order is passed against the SPD, or (c) the SPD 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,

Provided that a dissolution or liquidation of the SPD will not be a SPD 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 to the SPD and expressly assumes all obligations of the SPD under this Agreement and is in a position to perform them; or

- (iv) the SPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from NTPC in this regard; or
- (v) except where due to any NVVN's / NTPC's failure to comply with its material obligations, the SPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPD within thirty (30) days of receipt of first notice in this regard given by NTPC.
- (vi) change in controlling share holding before the specified time frame as mentioned in Article 4.1.1 of this Agreement; or
- (vii) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SPD.

13.2 NTPC Event of Default

13.2.1 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 SPD of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting NTPC:

- (i) NTPC fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the SPD is unable to recover the amount outstanding to the SPD through the Letter of Credit, or
- (ii) NTPC repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the SPD in this regard; or
- (iii) except where due to any SPD's failure to comply with its obligations, NTPC is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by NTPC within thirty (30) days of receipt of notice in this regard from the SPD to NTPC; or
- (iv) if
 - NTPC 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
 - any winding up or bankruptcy or insolvency order is passed against NTPC, or
 - NTPC 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,

Provided that it shall not constitute a NTPC Event of Default, where such dissolution or liquidation of NTPC is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to NTPC and expressly assumes all obligations of NTPC and is in a position to perform them; or
- (v) If Discoms are subject to any of the above defaults and NTPC does not designate another or other Discoms for purchase of Bundled Power.
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach or default of NTPC.

13.3 Procedure for cases of SPD Event of Default

13.3.1 Upon the occurrence and continuation of any SPD Event of Default under Article 13.1, NTPC shall have the right to deliver to the SPD, with a copy to the representative of the lenders to the SPD with whom the SPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (NTPC Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

13.3.2 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 SPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, NTPC may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the SPD.

13.3.3 Subject to the terms of this Agreement, upon occurrence of a SPD Event of Default under this Agreement, the lenders may exercise their rights, if any, under Financing Agreements, to seek substitution of the SPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the SPD and performing the obligations of the SPD.

Provided that any substitution under this Agreement can only be made with the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by NTPC.

- 13.3.4 The lenders may seek to exercise right of substitution under Article 13.3.3 by an amendment or novation of the PPA in favour of the selectee. The SPD shall cooperate with the Lenders to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized.

13.4 Procedure for cases of NTPC Event of Default

- 13.4.1 Upon the occurrence and continuation of any NTPC Event of Default specified in Article 13.2 the SPD shall have the right to deliver to NTPC, a SPD Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 13.4.2 Following the issue of a SPD 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.
- 13.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 13.4.4 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 NTPC Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the SPD shall be free to sell the Contracted Capacity to any third party of the SPD's choice.

Provided further that at the end of three (3) months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the SPD.

13.5 Termination due to Force Majeure

- 13.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.5.3, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

14 ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1 Indemnity

14.1.1 The SPD shall indemnify, defend and hold NTPC harmless against:

- a) any and all third party claims against NTPC 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 SPD of any of its obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by NTPC from third party claims arising by reason of a breach by the SPD of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the SPD, for which specific remedies have been provided for under this Agreement)

14.1.2 NTPC shall cause the Discoms to indemnify, defend and hold the SPD harmless against:

- a) any and all third party claims against the SPD, 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 Discoms of any of their obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the SPD from third party claims arising by reason of a breach by Discoms of any of its obligations. NTPC shall incorporate appropriate covenants in the PSA for the above obligations of Discoms. In so far as indemnity to SPD is concerned, Discoms shall be the indemnifying party and not NTPC.

14.2 Procedure for claiming Indemnity

14.2.1 Third party claims

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or 14.1.2(a) 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. Provided however that, if:
 - i) the Parties choose to refer the dispute before the Arbitrator in accordance with Article 16.3.2; and
 - ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

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 Indemnified Party.

- b. The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 14.1.1(a) or 14.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

14.3 Indemnifiable Losses

- 14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), 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 14, such event shall constitute a payment default under Article 13.

14.4 Limitation on Liability

- 14.4.1 Except as expressly provided in this Agreement, neither the SPD nor Discoms 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 Agreement, 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 Agreement), 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, whether of Discoms, the SPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.
- 14.4.2 NTPC shall have no recourse against any officer, director or shareholder of the SPD or any Affiliate of the SPD or any of its officers, directors or shareholders for such claims excluded under this Article. The SPD shall have no recourse against any officer, director or shareholder of NTPC or Discoms, or any affiliate of NTPC or any of its officers, directors or shareholders for such claims excluded under this Article.

14.5 Limitation of NTPC Liability:

- 14.5.1 Notwithstanding anything to the contrary contained elsewhere in this Agreement, the parties agree that NTPC is an intermediary nodal agency to facilitate the sale of Solar Power by providing significant competitive pricing by building equivalent cheaper conventional power and thereby giving benefit to SPD on the sale of power and NTPC can only assume payment and other financial and related obligations including on opening of letter of credit or escrow, hypothecation etc. to the SPD limited to extent of the corresponding obligations being performed by Discoms and not otherwise. While, NTPC will take steps to enforce such obligations on the part of Discoms. NTPC shall have no financial exposure or liability to SPD independent of the above, the liability of NTPC being limited of that can be enforced and recovered from the Discoms.

Provided that in the event of the sale of Power by NTPC to third parties, upon default on the part of Discom, the sale proceeds thereof shall be utilized by NTPC, after adjusting NTPC costs and margins for payment to SPD and NTPC whose powers are sold to such third parties in the proportion of their respective dues. NTPC shall not utilize such sale proceeds for any other purpose.

Provided further that to the extent NTPC is provided financial support for payment of the amount becoming due to SPDs as a promotion of Solar Power Development, NTPC shall duly use the same for discharge of the obligation to the SPDs.

14.6 Duty to Mitigate

- 14.6.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 14.

15 ARTICLE 15: ASSIGNMENTS AND CHARGES

15.1 Assignments

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing.

Provided that, NTPC shall permit assignment of any of SPDs rights and obligations under this Agreement in favour of the lenders to the SPD, if required under the Financing Agreements.

Provided that, such consent shall not be withheld by the SPD if NTPC seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

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

15.2 Permitted Charges

- 15.2.1 SPD shall not create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement, other than as set forth in Article 15.1.

16 ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION

16.1 Governing Law

16.1.1 This Agreement 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 Agreement shall be under the jurisdiction of appropriate courts in Delhi.

16.2 Amicable Settlement and Dispute Resolution

16.2.1 Amicable Settlement

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("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.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article (i), furnish:
 - (a) counter-claim and defences, if any, regarding the Dispute; and
 - (b) all written material in support of its defences and counter-claim.
- iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 16.2.1(i) if the other Party does not furnish any counter claim or defence under Article 16.2.1(ii) 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 to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 16.2.1 (iii), the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

16.3 Dispute Resolution

16.3.1 Dispute Resolution by the Appropriate Commission

- iv. Where any Dispute (a) arises from a claim made by any Party for any change in or determination of the Tariff or 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 (b) relates to any matter agreed to be referred to the Appropriate Commission, such Dispute shall be submitted to adjudication by the Central Commission.
- v. NTPC shall be entitled to co-opt the Discoms as a supporting party in such proceedings before the Central Commission.

16.3.2 Dispute Resolution through Arbitration

If the Dispute arises out of or in connection with any claims not covered in Article 16.3.1(i), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as under provided not settled amicably as per Article 16.2.1:

- i) 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
- ii) The place of arbitration shall be Delhi. The language of the arbitration shall be English.
 - iii) 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.
 - iv) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.
 - v) The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.
- vi) NTPC shall be entitled to co-opt Discoms 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 Appropriate Commission or the Arbitration Tribunal as provided in Article 16.3 and save as the Central Commission or 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 Agreement.

17 ARTICLE 17: MISCELLANEOUS PROVISIONS

17.1 Amendment

17.1.1 This Agreement may only be amended or supplemented by a written agreement between the Parties.

17.2 Third Party Beneficiaries

17.2.1 This Agreement 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 Agreement.

17.3 Waiver

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

17.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement 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 Agreement, which shall remain in full force and effect.

17.4 Confidentiality

17.4.1 The Parties undertake to hold in confidence this Agreement 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.

without the prior written consent of the other Party.

17.5 Severability

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

17.6 Notices

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

17.6.2 If to the SPD, 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 addresses below:

Address :

Attention :

Email :
Fax No : Extn. :
Telephone No :

17.6.3 If to NTPC, 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 : NTPC Ltd
Core-6, 6th Floor, SCOPE Complex,
7, Institutional Area, Lodi Road, New Delhi 110003
Attention : AGM (Commercial)
Email :
Fax. No. :
Telephone No. :

17.6.4 All notices or communications given by 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.

17.6.5 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.

17.7 Language

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

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

17.8 Restriction of Shareholders / Owners' Liability

17.8.1 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 Agreement.

17.9 Taxes and Duties

17.9.1 The SPD shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the SPD, contractors or their employees that are required to be paid by the SPD as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.

17.9.2 NTPC shall be indemnified and held harmless by the SPD against any claims that may be made against NTPC in relation to the matters set out in Article 17.9.1.

17.9.3 NTPC shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the SPD by NTPC on behalf of SPD.

17.10 Independent Entity

17.10.1 The SPD shall be an independent entity performing its obligations pursuant to the Agreement.

17.10.2 Subject to the provisions of the Agreement, the SPD shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the SPD or contractors engaged by the SPD in connection with the performance of the Agreement shall be under the complete control of the SPD and shall not be deemed to be employees, representatives, contractors of NTPC and nothing contained in the Agreement or in any agreement or contract awarded by the SPD shall be construed to create any contractual relationship between any such employees, representatives or contractors and NTPC.

17.11 Compliance with Law

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement 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 Agreement 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 Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of
[NTPC]
Name, Designation and Address

For and on behalf of
[SPD]
Name, Designation and Address

(Signature with Seal)
.....
.....
Core-3, 7th Floor, SCOPE Complex,
7, Institutional Area, Lodi Road,
New Delhi 110003

(Signature with Seal)
.....
.....
.....
.....

Witness:
1.

2.

Witness:
1.

2.