

**POWER PURCHASE AGREEMENT
FOR
PROCUREMENT OF MW SOLAR POWER**

ON LONG TERM BASIS

**Between
[Insert Name of Solar Power Developer]
And
NHPC Limited**

..... [Insert month and year]

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

Between

[Insert Name of the SPD], a company incorporated under the Companies Act 1956 or the Companies Act 2013 as applicable, having its registered office at [Insert Registered Office Address] (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 assignees) as a Party of the First Part;

And

NHPC Limited, a company incorporated under the Companies Act 1956, having its registered office at NHPC Office Complex, Sector-33, Faridabad, Haryana-121003 (hereinafter referred to as “NHPC”, 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.

The SPD and . are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

Whereas:

- A. **NHPC** is a Government of India Undertaking and intends to facilitate the development of ISTS connected Solar Power projects in India for sale of Solar Power generated to the Distribution Licensees in the States to enable them to procure Solar Power including for

due fulfillment of the Renewable Purchase Obligations specified under the Electricity Act, 2003;

- B. **NHPC**, as an Intermediary Procurer and in line with the provisions of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects, issued by Ministry of Power, Government of India, vide resolution no.**23/27/2017-R&R dated 03.08.2017 (along with Corrigendum dated 14.06.2018 & 03.01.2019 & 09.07.2019)** has issued the RfS for selection of SPDs for development of MW at thebeing developed by (.....) in district, (herein after referred to as '.....' and generally referred to as Solar PV Project or Project.
- C. [Insert Name of the SPD] (hereinafter referred to as the 'SPD'), has been declared as a successful bidder against the RfS No. [Insert RfS No.] dated [XX.XX.XXXX] issued by **NHPC** for selection of SPDs for development of MW at the NHPC...
- D. **NHPC** has issued the Letter of Award (LOA) [Insert LOA No.] dated... . to the SPD for development of a Solar Power Project of..... MW in the
- E. Pursuant to the issuance of LOA by **NHPC** to the SPD, the SPD has agreed to set up the Solar Power Project based on Photo Voltaic technology of MW capacity in the in the state of
- F. **NHPC** has agreed to purchase such ISTS connected Solar Power from SPD as an Intermediary Procurer and sell the quantum of contracted capacity from the SPD to the State Distribution Licensees in the State of (hereinafter referred to as the 'Discom(s)') on back to back basis as per the Power Sale Agreement to be entered into with Discom(s) as per the provisions of the said guidelines of MoP.
- G. **NHPC**, in pursuance of the Letter of Intent issued to the SPD, has, signed the Power Sale Agreement datedwith the Discom(s) to sell such power as per the provisions of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects, issued by Ministry of Power Government of India, vide resolution no.**23/27/2017-R&R dated 03.08.2017 (along with Corrigendum dated 14.06.2018 & 03.01.2019 & 09.07.2019)**.
- H. **NHPC** agrees to procure power from the SPD and the SPD has agreed to sell power to NHPC up to the contracted capacity @Rs/kWh at levelized Tariff offered by SPD as per the terms of this agreement.

- I. The Parties have agreed to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by SPD to **NHPC**, as per the terms and conditions of this Agreement.
- J. The SPD has submitted the Performance Bank Guarantee to **NHPC** amounting to Rs with a validity of months.
- K. **NHPC** shall be the trading licensee to Act on behalf of to undertake trading on such purchase of Solar Power from SPD and resell the Power to Discom(s) for fulfilling the obligations assumed by **NHPC** in this agreement.

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 Central 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 and where ever the context so requires 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;
“Bulk Consumer”	:	shall have the same meaning as provided in CERC (Indian Electricity Grid Code) Regulations, 2010 as amended from time to time;
“Business Day”	:	shall mean with respect to SPD and NHPC, a day other than Saturday, Sunday or a statutory holiday, on which the banks remain open for business in Delhi and [insert name of State] both;
“Buying Utilities” or “End Procurer”	:	shall mean the distribution utilities of the [name of the State] namely who entered the PSA (s) with NHPC for purchase of Power; unless otherwise intimated in writing separately;
“Capacity Utilization 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.

		However for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity at the "Delivery / Inter- connection / Metering Point";
"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;
"Change in Law"	:	shall have the meaning ascribed thereto in Article 12 of this Agreement;
"Commissioning"	:	shall have the meaning ascribed thereto in Article 5 of this Agreement;
"Commercial Operation Date (COD)"		shall mean the date on which the commissioning certificate is issued by the commissioning committee constituted by [insert name of appropriate agency] upon successful commissioning of the full capacity of the Project or the last part capacity of the Project as the case may be;
"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 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: in the financial year in which the SCD would occur, the Contract Year shall end on the date immediately before the SCD and a new Contract Year shall commence once again from the SCD 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 ISTS connected..... MW (AC) contracted with NHPC for supply by the SPD to NHPC at the Interconnection point/Delivery Point from the Solar Power Project for onward sale to Discom(s) namely (.....) who have signed the PSA (s) with NHPC for purchase of such Power;
"Day"	:	shall mean a day, if not a Business Day, the immediately succeeding Business Day;
"Delivery / Inter-connection / Metering Point"	÷	Shall mean the point at 220 kV or above at the CTU Sub Station where the power from the Solar Power Project is injected into the Inter State Transmission System (ISTS). Any cost of building transmission line from Solar PV Project to/ Inter-connection / Metering Point/ delivery point, Transmission losses/charges up to / Inter-connection / Metering Point/ delivery point shall be borne by SPD. The

		SPDs shall abide by the relevant CERC/SERC Regulations, Grid Code, and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised or substituted from time to time.
“Discom(s)” or power distribution company of the State	:	shall mean the distribution utility of the State namely(.....) who have signed the PSA (s) with NHPC for purchase of Solar Power to be generated and supplied by the SPD as per this Agreement
“Dispute”	:	shall mean any dispute or difference of any kind between NHPC 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 regulation made there under from time to time along with amendments there to 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 or where such regional energy accounts/ state energy accounts are not issued, Joint Meter Reading (JMR) will be considered; NHPC reserves the right to choose for many of the above, i.e. JMR/SEA/REA, based on the acceptance of same by the Discom(s)
“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 subject to that the supply of power shall be limited for a period of 25 years from the Commercial Operation Date unless extended by the Parties as per this Agreement;
“Financing Agreements”	:	shall mean the agreements pursuant to which the SPD has got financing for the Power Project including the loan agreements, 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 NHPC ;
“Force Majeure” or “Force Majeure Event”	:	shall have the meaning ascribed thereto in Article 11 of this Agreement;
“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;
“Intermediary Procurer”	:	shall mean NHPC Limited
“Invoice” or “Bill”	:	shall mean either a Monthly Bill / Supplementary Bill or a

		Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
“Interconnection Facilities”	:	shall mean the facilities on SPD’s side of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;
“Insurances”	:	shall mean the insurance cover to be obtained and maintained by the SPD in accordance with Article 8 of this Agreement;
Implementation Support Agreement"		Shall mean the agreement to be entered into by the SPD as provided in Article. 3.1 (c) of this Agreement
“Indian Governmental Instrumentality”	:	shall mean the Government of India, Governments of [insert name of State] and also any other State Government or Union Territory 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 subdivision of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
“Letter of Credit” or “L/C”	:	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“Law”	:	shall mean in relation to this Agreement, all laws in force in India including Electricity Laws of 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;
“Late Payment Surcharge”	:	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
“MNRE”	:	Shall mean the Ministry of New and Renewable Energy, Government of India;
"Month"	:	shall mean a period of thirty (30) days from (and excluding) the date of the event, where specified, else a calendar month;
“National Solar Mission or NSM”	:	shall mean the National Solar Mission launched by the Government of India vide resolution No.5/14/2008-P&C dated 11 th January 2010, as amended from time to time;
“Operating Period”	:	shall mean the period commencing from the first part commissioning /SCOD (as applicable), 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 CTU/ RLDC of the State wherein the Solar Power Project is located for the grant of Open Access as defined in Electricity Act 2003 and amended time to time;
“Party” and	:	shall have the meaning ascribed thereto in the recital

“Parties”		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 NHPC from a bank mentioned in Schedule 2 of this Agreement in the form attached hereto as Schedule1;
“Pooling Substation / Pooling Point”	:	shall mean a point / substation as identified by the Discom(s) where more than one solar PV project may connect to a common transmission system. The losses in the common transmission system up to the Delivery point shall be apportioned to the individual projects for the purpose of billing, based on generation side meter reading i.e. at the interconnection point of the pooling substation. In such case, it shall be responsibility of the SPD to obtain and furnish the meter reading jointly by the SPD(s), and any competent authority (State Government or Central Government) as applicable.
“Power Project” or “Project”	:	shall mean the solar power generation facility of Contracted Capacity of MW, located in the being developed by the SPD at in State and having a separate boundary, control system, metering and separate points of injection into the grid at Delivery/Interconnection/ metering point at Designated Substation or in case of sharing of transmission lines, by separate injection at pooling point. This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, 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(s) and NHPC (NHPC- Discom(s) PSA) for selling the power as per the provisions of Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects, issued by Ministry of Power, vide resolution no.23/27/2017-R&R dated 03.08.2017 (along with Corrigendum dated 14.06.2018 & 03.01.2019 & 09.07.2019)
“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 Project Developer either by way of commitment of funds by the company from its internal resources and/or tie up of funds through a bank / financial institution by way of sanction of a loan or letter agreeing to finance;
“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: 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;
"RLDC"	:	shall mean the concerned Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"Rebate"	:	shall have the same meaning as ascribed thereto in Article 10.3.5 of this Agreement;
"Rupees", "Rs.", "₹"	:	shall mean Indian rupees, the lawful currency of India;
"Scheduled Commissioning Date" or "SCD"	:	shall mean [Insert a date as on 18 months from the Effective Date;
"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 sun light for conversion into electricity and that is being set up by the SPD to provide Solar Power to NHPC as per the terms and conditions of this Agreement;
"Solar Power"	:	shall mean power generated from the Solar Photovoltaic Power Project;
"State Transmission Utility" or "STU"	:	shall mean the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act i.e.....
"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"	:	Shall mean margin payable towards the services provided by NHPC for sale of solar power to Discom(s) or any other entity, which shall be Rs. 0.07/kWh
"Part Commissioning"	:	shall mean the minimum 50 MW capacity as first and subsequent parts of the Solar PV Capacity (AC MW) to be commissioned as per Article 5;

1.2 Interpretation

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexure;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" / "Lac" 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 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 and Condition Precedent

2.1.1 This Agreement shall come into effect from signing of this PPA by both the parties i.e. and such date shall be the Effective Date for the purpose of this Agreement.

2.1.2. Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that within two (2) months from the Effective Date, the Discom(s) shall duly obtain the order of the Electricity Regulatory Commission (insert name of State Electricity Regulatory commission) adopting the Tariff and the trading margin of NHPC and approving the procurement of the contracted capacity, on the terms and conditions contained in this Agreement read with the terms and conditions contained in the Power Sale Agreement entered into between NHPC and the Discom(s).

2.1.3. The Parties agree that in the event, the order of adoption of Tariff, trading margin and the Agreements for procurement of Power, as mentioned above is not given by the State Electricity Regulatory Commission within the time specified above, this Agreement as well as the Power Sale Agreement shall stand cancelled and terminated with no liability of either party to the other or vis a vis Discom(s), unless the parties mutually agree to extend the time for fulfilling the Conditions Precedent.

2.2 Term of Agreement

2.2.1 Subject to Article 2.1, 2.3 and 2.4, this Agreement shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period at least one hundred eighty (180) days prior to the Expiry Date on agreed terms and conditions between the Solar Power Developer (SPD), NHPC and the Discom(s).

2.2.2 The SPD is free to operate their plants beyond the Expiry Date if other conditions like land lease / Right to Use of Land (as applicable), permits, approvals and clearances etc. allow.

2.3 Early Termination

2.3.1 This Agreement shall terminate before the Expiry Date if either NHPC or SPD terminates the Agreement, pursuant to Article 13 of this Agreement or if the terms of Conditions Precedent mentioned in Article 2.1.2 are not satisfied.

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 damages

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.

2.5 Order of Precedence

2.5.1 In case of mismatch / contradiction between the provisions of different documents issued by NHPC, provisions of PPA shall prevail.

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 **12 months** 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 NHPC:

- a) The SPD shall obtain all Consents, Clearances and Permits required for supply of power to NHPC as per the terms of this Agreement. NHPC shall have 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 Government authorities, if any required for establishing the project. Any steps that may taken by or NHPC in regard to grant of such consents and permits or any other approval to be taken by the SPD shall only be a voluntary endeavor with no intention of being bound by any legal or binding obligation.
- b) The SPD shall make Project Financing Arrangements for its Projects(s) and shall provide necessary documents to NHPC in this regard;
- c) The SPD shall be solely responsible and make arrangements for Land & associated infrastructure for development of the Project and for Connectivity with the CTU System for confirming the evacuation of power by the Scheduled Commissioning date;
- d) The SPD shall furnish the necessary documents to establish possession in the name of the Project Developer of the required land/ Lease Agreement;
- e) The SPD shall fulfill the technical requirements according to criteria mentioned under Annexure II–Technical requirement for Grid Connected Solar PV Power Stations under

Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects, issued by Ministry of Power, vide resolution no. **23/27/2017-R&R dated 03.08.2017 (along with Corrigendum dated 14.06.2018 & 03.01.2019 & 09.07.2019).**

- f) The SPD shall submit to **NHPC** the relevant documents as stated above, complying with the Conditions Subsequent, within _____ days period from the Effective Date.
- g) The SPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point
- h) The SPD shall furnish the location of the projects at the time of financial closure. At this stage, SPD shall also be required to furnish letter from CTU confirming technical feasibility of connectivity of the plant to CTU substation at the indicated location. The change of location of the project shall not be permitted after Financial Closure.

3.2 Consequences of non-fulfillment of conditions subsequent

- 3.2.1 In case of a failure to fulfill the conditions subsequent and/or submit the documents as above, NHPC shall encash the Performance Bank Guarantee submitted by the SPD, terminate this Agreement by giving a prior notice to the SPD in writing of at least seven (7) days unless due to Force Majeure Event. The termination of the Agreement shall take effect upon the expiry of the 7th day of the above notice. Provided that the SPD can seek an extension of time for fulfilling the conditions subsequent without there being any impact on the Scheduled Commissioning Date, by making advance payment of an amount of **Rs. 10,000/- per day per MW** to NHPC. Any such amount paid by the SPD, shall be returned to the SPD without any interest on achievement of successful commissioning within the Scheduled Commissioning Date. In case of any delay in commissioning of the project beyond the Scheduled Commissioning Date, the amount as deposited along with the Performance Guarantee shall be subject to appropriation by NHPC towards liquidated damages for delay under this Agreement.
- 3.2.2 For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.
- 3.2.3 In case of the inability of the SPD to fulfil any one or more of the conditions specified in Article 3.2.1 due to any Force Majeure event the time period for fulfilment of the Conditions Subsequent as mentioned in Article 3.2.1, shall be extended for the period of such Force Majeure event and shall also lead to an equal extension in the Scheduled Commissioning Date.

3.3 Performance Bank Guarantee

- 3.3.1 The Performance Bank Guarantee having validity of [Insert **Twenty Four (24)** months as per RFS], from the Effective Date and of **Rs. Twenty Five (25) Lakh/MW** furnished by

SPD under this Agreement shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity by the Scheduled Commissioning Date.

- 3.3.2 The failure on the part of the SPD to furnish and maintain the Performance Bank Guarantee shall be a material breach of the term of this Agreement on the part of the SPD.
- 3.3.3 If the SPD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement or any further extension thereof in terms of this Agreement, subject to conditions mentioned in Article 4.5, NHPC shall be entitled encash the Performance Bank Guarantee and appropriate the amount together with any amount deposited in terms of Article 3.2.1 towards the liquidated damages payable by SPD, without prejudice to the other rights of NHPC under this Agreement.

3.4 Return of Performance Bank Guarantee

- 3.4.1 Subject to Article 3.3, NHPC shall return / release the Performance Bank Guarantee three (03) months after Commercial Operation Declaration of the Project after adjustment any liquidated damages / penalties due to delays in commissioning as per provisions stipulated in this Agreement
- 3.4.2 The return / release of the Performance Bank Guarantee shall be without prejudice to other rights of NHPC 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) Land & associated infrastructure for development of the Project, Connectivity with the CTU System and all clearances related thereto; and
 - b) obtaining solely at its cost and responsibility 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; and
 - c) 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; and
 - d) the commencement of supply of power up to the Contracted Capacity to NHPC no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement;
 - e) connecting the Power Project switchyard with the ISTS connected Interconnection Facilities at the Interconnection/Delivery/Metering Point;
 - f) owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;

- g) maintaining its controlling shareholding (controlling shareholding shall mean not less than 51% of the voting rights and paid-up share capital) prevalent on the Effective Date of PPA in the Company/Consortium developing the project up to a period of 3 (Three) year after the Commercial Operation Date. However transfer of shareholding within the same Group Companies of SPD may be agreed to by NHPC after the COD if NHPC is satisfied that there is no change in the controlling interest; and
- h) Obtaining Long Term Open Access (LTOA) and executing transmission agreement with CTU for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement. Transmission losses and charges up to Interconnection/ Metering point shall be borne by the SPD.
- i) The SPD shall be responsible to for directly coordinating and dealing with Discom(s), Load Dispatch Centers, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Solar Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the SPD and Discom(s) are the Grid connected entities and NHPC/..... as intermediary procurers/ trading licensee is not a Grid connected entity in respect of the Solar Power contracted under this Agreement; and
- j) 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 from CTU / concerned authority with regard to the ISTS connected Interconnection Facilities necessary to enable it to design, install and operate Plant and all interconnecting apparatus/ equipment on the SPD's side of the Delivery Point to enable delivery of electricity at the Interconnection/ Metering/Delivery Point.
- 4.2.2 The responsibility of getting connectivity with the transmission system up to interconnection /Metering/Delivery point will entirely be of the SPD at its cost and responsibility. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall also be the responsibility of the SPD at his own cost. The maintenance of Transmission system upto the interconnection /Metering/Delivery point shall be the responsibility of the SPD.
- 4.2.3 The entire cost of transmission including cost of construction of line, any other charges, losses etc. from the Project up to the interconnection /Metering/Delivery Point shall be borne by the SPD and the same will not be reimbursed by NHPC or met by the Discom(s). In case of any delay in connectivity to the Project and non- availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the SPD, provisions of Article 4.9 shall be applicable.

- 4.2.4 Penalties, fines and charges imposed by the CTU/ STU under any statute or regulation in relation to delay in commissioning of Project shall be payable by the SPD to the extent the delay is attributable to the SPD.
- 4.2.5 All costs and charges including but not limited to the wheeling charges and losses up to the interconnection /Metering/Delivery Point associated with this arrangement will also be borne by the SPD.
- 4.2.6 In case of Pooling substation, losses in the transmission line shall be apportioned among the SPDs who share such a Pooling arrangement, based on their monthly generation.

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 solar power to NHPC and NHPC 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 NHPC, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the SPD beyond -----Million kWh (MU), i.e. energy generated corresponding to a CUF of [Insert committed CUF] % as committed by the SPD. 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 [.....] % (i.e. 95% of committed CUF), on account of reasons solely attributable to the SPD for the Term of the Agreement, on account of reasons attributable to the SPD, such non-compliance by SPD shall make SPD liable to pay the compensation provided in the PSA as payable to Discom(s) and shall duly pay such compensation to NHPC to enable NHPC to remit the amount to Discom(s). The compensation payable shall be applied to the amount of shortfall in generation during the Contract Year, and shall be 25% (Twenty Five per cent) of the cost of this shortfall in energy terms, calculated at applicable tariff.
- 4.4.2 Any excess generation over and above the quantum specified under Article 4.4.1, may be purchased by NHPC at a tariff as per Article 9.4, only if Discom(s) consents to purchase such power. SPD shall however be entitled to install DC solar field as per its design of required output, including its requirement of auxiliary consumption and to reconfigure and repower the Project from time to time during the term of the PPA on the condition that any excess power beyond the contracted capacity specified under Article 4.4.1 may be sold to any other entity only after a first right to refusal to procure the excess power at the Tariff specified in this Agreement if Discom(s) agree to purchase such additional quantum available.
- 4.4.5. Any energy produced and flowing into the grid before Scheduled Commissioning Date shall not be at the cost to NHPC or Discom(s). NHPC may however agree to buy such power provided the Discom(s) consents for purchase of such power @ Rs...../kWh i.e. 75% of the applicable Tariff.

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 NHPC Event of Default; or
- b) Force Majeure Events affecting NHPC, 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 NHPC through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or NHPC, or till such time such Event of Default is rectified.

4.5.2 Subject to the Article 3.2.1, 4.5.1 and 4.6.2, NHPC can extend the time for Scheduled Commissioning Date up to 3 months, without any financial implications to the SPD.

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, 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 Subject Article 4.5.7 in case of extension occurring due to reasons specified in Article 4.5.1 any of the date specified therein can be extended, subject to the condition that the scheduled commissioning date would not be extended by more than twelve (12) months.

4.5.7 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 the date determined pursuant to Article 4.6.2.

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

4.6.1 If the SPD is unable to commence supply of power to NHPC by the Scheduled Commissioning Date other than for the reasons specified in Article 4.5.1, the SPD shall pay to NHPC, 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:

a) **Delay up to 150 Days beyond the Scheduled Commissioning Date:**
NHPC will encash the Performance BG on per day basis and proportionate to the Capacity not commissioned, with 100% encashment for 150 days delay (corresponding to capacity not commissioned).

b) **Delay beyond 150 Days beyond the Scheduled Commissioning Date:**
In case the commissioning of the Power Project is delayed beyond 150 days beyond the Scheduled Commissioning Date, the pre-fixed tariff given in the Article 9.1 shall be reduced at the rate of half paise (0.50 paise) per kWh per day of delay for the delay in such remaining capacity which is not commissioned

4.6.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and reduction in pre-fixed tariff shall be limited to [insert **Thirty (30) months** (as per RFS) from the Effective Date of this Agreement. In case, the commissioning of the Power Project is delayed beyond [**Insert Thirty (30) months** (as per RFS) from the Effective Date, it shall be considered as an SPD Event of Default and the Contracted Capacity shall stand reduced/amended to the Project Capacity Commissioned within [**Insert Thirty (30) months** (as per RFS)] of the Effective Date and the PPA for the balance Capacity will stand terminated and shall be reduced from the project capacity.

4.6.3 However, if as a consequence of delay in commissioning, the applicable tariff changes, that part of the capacity of the Project for which the commissioning has been delayed shall be accounted for, at the tariff as per Article 9.0 of this Agreement.

4.6.4 The SPD further acknowledge that the amount of the liquidated damages fixed or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by NHPC/ Discom(s) in each case specified under this Agreement”

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 NHPC and a third Party nominated by NHPC/MNRE or any other concerned statutory agency for inspection and verification of the works being carried out, operations/performance by the SPD at the site of the Power Project.

4.8.2 The third party may verify the construction works/operation/performance 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.

4.9 Offtake constraints due to Transmission Infrastructure / Grid Unavailability & Backdown:

4.9.1 Generation Compensation in offtake constraint due to Transmission Infrastructure not being complete/ ready (**Transmission constraint**): After the Scheduled Commissioning Date, subject to the submission of documentary evidences from the Competent Authority, if the plant is ready but the necessary power evacuation/ transmission infrastructure is not ready, for reasons not attributable to the SPD, leading to offtake constraint, the generation compensation shall be restricted to the following and there shall be no other claim, directly or indirectly against NHPC

Transmission Constraint	Provision for Generation Compensation
If the project is ready but the necessary power evacuation/ transmission infrastructure is not ready, leading to offtake constraint	<p>The normative CUF of 19% (nineteen per cent) or committed CUF (as per RfS), whichever is lower, for the period of grid unavailability, shall be taken for the purpose of calculation of generation loss.</p> <p>a. Corresponding to this generation loss, the excess generation by the SPD in the succeeding 3 (three) Contract Years, shall be procured by NHPC at the PPA tariff so as to offset this loss.</p> <p>b. If the transmission delay is directly attributable to the organization building the transmission network and some penalty is imposed on him, then a part of that penalty may be utilized by NHPC for compensating the generation loss.</p>

However, it is clarified that if the project is ready for commissioning prior to the Scheduled Commissioning Date, but the offtake is constrained because of inadequate/incomplete power evacuation infrastructure, no compensation shall be permissible.

4.9.2 Generation Compensation in offtake constraints due to Grid Unavailability during the operation of the Project, generated power cannot be evacuated but due to transmission unavailability, for reasons not attributable in any manner to the SPD, subject to the submission of satisfactory documentary evidence from the competent authorities, the generation compensation shall be restricted to the following and there shall be no other claim, directly or indirectly against NHPC:

Duration of Grid unavailability	Provision for Generation Compensation
Grid unavailability in a contract year as defined in the PPA: (only period from 8 am to 6 pm to be counted):	<p>Generation Loss = [(Average Generation per hour during the contract year) × (number of hours of grid unavailability during the contract year)]</p> <p>Where, Average Generation per hour during the contract year (kWh) = Total generation in the</p>

Duration of Grid unavailability	Provision for Generation Compensation
	$\text{contract year (kWh)} \div \text{Total hours of generation in the contract year}$ <p>The excess generation by the SPD equal to this generation loss shall be procured by the NHPC at the PPA tariff so as to offset this loss in the succeeding 3 (three) Contract Years.</p>

4.9.3 Offtake constraints due to Backdown for reasons not attributable to the SPD: The SPD and NHPC shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. In the eventuality of Backdown, subject to the submission of documentary evidences from the competent authorities, the SPD shall be eligible for a minimum generation compensation, from NHPC, restricted to the following and there shall be no other claim, directly or indirectly against NHPC

Duration of Backdown	Provision for Generation Compensation
Hours of Backdown during a monthly billing cycle.	<p>Minimum Generation Compensation = 50% of [(Average Generation per hour during the month) × (number of back down hours during the month) × PPA Tariff]</p> <p>Where, <i>Average Generation per hour during the month (kWh) = Total generation in the month (kWh) ÷ Total hours of generation in the month</i></p>

The SPD shall not be eligible for any compensation in case the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions. The Generation Compensation shall be paid as part of the energy bill for the successive month after receipt of Regional/State Energy Accounts (REA/SEA). No Trading Margin shall be applicable on the Generation Compensation as provided in Article 4.9.3 only. It is hereby clarified that for the purpose of Article 4.9, “generation” shall mean scheduled energy based on Energy Accounts.

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, NHPC, Discom(s) and 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 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 and all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the

concerned authority as per applicable regulation 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 and all other concerned authorities in accordance with applicable Grid Code under intimation to NHPC and Discom(s). In- Addition the SPD will inject power to grid time to time to carry out operational/ functional test prior to commercial operation subject to applicable laws and regulations at the project site. NHPC shall not be liable to pay any price to SPD for such infirm Power injected.
- 5.1.5 The SPD shall commission the Project within [**Insert 18 (Eighteen) Months** as per RFS] of the Effective Date.
- 5.1.6 There can be part Commissioning of the project. Part Commissioning of the project shall mean that all equipments corresponding to the part capacity have been installed and commissioned and corresponding energy has flown into the grid. The first part commissioning and subsequent part commissioning shall be for a minimum of 50 MW capacity of the Solar PV Capacity (AC MW) of the station.
- 5.1.7 The Parties agree that for the purpose of commencement of the supply of electricity by SPD to NHPC, liquidated damages for delay etc., the Scheduled Commissioning Date as defined in this Agreement shall be the relevant date and not the COD, as defined in the Agreement. The COD is relevant for considering the duration of the Agreement and for the period upto which the Performance Bank Guarantee shall be required to be maintained by the SPD under this Agreement.

6 ARTICLE 6: DISPATCH AND SCHEDULING

6.1 Dispatch and Scheduling

- 6.1.1 The SPD shall be required to Schedule its power as per the applicable regulations / requirements / guidelines of CERC / SERC / RLDC or any other competent agency and same being recognized by the RLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned RLDC from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation/ guidelines/ directions and any financial implication on account of this shall be on the account of the SPD. As stated above the declaration of availability scheduling and dispatch shall be coordinated and implemented between the SPD and the Discom(s), the two Grid connected entities.

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 NHPC 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. The SPD shall be responsible for regular downloading and transmission of metered data to the concerned agencies.
- 7.1.3 In addition to ensuring compliance of the applicable codes, the SPD shall install Main & Check meters as well as Stand-by meter(s) at Delivery Point, as per the applicable regulations of the State where the Project is located.

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 irradiance (including GHI, DHI and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the Project.
- 7.2.2 Online arrangement would have to be made by the solar power developer at its own cost for submission of above data regularly for the entire period of this Power Purchase Agreement to the RLDC, NHPC Limited and the concerned Ministry or concerned agency as per applicable regulation / directions.
- 7.2.3 Reports on above parameters on monthly basis (or as required by regulation / guidelines) shall be submitted by the solar power developer to MNRE and to NHPC 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, Implementation and Support Agreement and under applicable laws.

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, NHPC shall have claim on such proceeds of such Insurance limited to outstanding dues of NHPC against Discom(s) as per PSA entered into and any other dues of Discom(s).

8.3 Effect on liability of NHPC

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 NHPC. It is for the SPD to ensure that appropriate insurance coverage is taken for payment by the insurer for the entire loss and there is no under insurance or short adjustment etc.

9 ARTICLE 9: APPLICABLE TARIFF

9.1 The SPD shall be entitled to receive the levelised Tariff of Rs. [Insert applicable tariff]/ kWh fixed for the entire term of this Agreement, with effect from the actual commissioning date subject to the Article 4.6 of this Agreement. In cases of early part-commissioning, till SCD, subject to the consent for such purchase by the Discom(s) the NHPC may purchase the generation at 75% (Seventy Five per cent) of the Applicable tariff. However, in case the entire Project capacity is commissioned prior to SCD, NHPC may purchase energy supplied till SCD at [Insert PPA Tariff]/kWh, subject to consent of Discom(s) for procurement of such power.

9.2 If the Commissioning of the Unit(s) is delayed beyond 150 days from the Scheduled Commissioning Date, the Applicable Tariff given in Article 9.1, for the Unit(s) not commissioned, shall be reduced at the rate of half paisa (0.50 (half) paisa) per unit per day of such delay and for such Unit(s).

9.3 In the event of change in tariff due to delay in commissioning of Unit(s), the Weighted Average Tariff for the Contracted Capacity shall be applied considering Capacity of Units commissioned before and after the Scheduled Commissioning Date within **[Insert Thirty (30) months per RFS Document]**.

9.4 Subject to adjustment for shortfall in generation provided in Article 4.9.1 in the succeeding three years, the excess generation over and above energy specified in Article 4.4.1 read with Article 4.9.1, may be purchased by NHPC at 75% of the applicable tariff as per Article 9.1, provided Discom(s) consent for purchase of such excess generation. Excess Generation by SPD if any may be procured by NHPC on advance consent of Beneficiary Discom(s), which shall be calculated only on Annual basis over committed CUF, under advanced written intimation of possible excess generation by SPD at 75% of applicable tariff under Clause 4.9. Any energy produced and flowing into the grid before SCD shall not be at the cost of NHPC. NHPC may however agree to purchase such power provided

Discom(s) consent to purchase such energy. SPD will not be entitled to sell energy generated prior to SCD or excess energy during any Contract Year to any other entity without offering such quantum to NHPC and only if Discom(s) desired to purchase such energy NHPC shall have the right to purchase such quantum of excess energy at the same Tariff as applicable to the contracted capacity.

10 ARTICLE 10: BILLING AND PAYMENT

10.1 General

10.1.1 Subject to the funds being made available by Discoms to NHPC under PSA, NHPC shall set up same payment security mechanism in order to ensure timely payment to the developers. This fund will have a corpus to cover 3 months payment.

10.1.2 From the commencement of supply of power, NHPC shall pay to the SPD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with this Article and Article 9. All Tariff Payments by NHPC shall be in Indian Rupees.

10.1.3 For the purpose of payment of the bills raised by the SPD(s), in case Energy Account is published on cumulative basis, payment to the SPD(s) for the energy delivered shall be apportioned based on JMR taken for the SPD's Project at the Pooling substation/metering point.

10.1.4 The SPD shall be required to make arrangements and payments for import of energy (if any) as per applicable regulations of [insert name of the State] separately.

10.2 Delivery and Content of Monthly Bills/Supplementary Bills

10.2.1 The SPD shall issue to NHPC a signed Monthly Bill/Supplementary Bill for the immediately preceding Month between the 5th day & up to the 15th day of the next Month duly supported by REA/SEA/signed JMR. 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 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 NHPC shall pay the amount payable under the Monthly Bill/Supplementary Bill by the thirtieth day from the date of presentation of bill (the Due Date) to such account of the SPD, as shall have been previously notified by the SPD in accordance with Article 10.3.2 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) amount claimed by NHPC, 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 NHPC 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 NHPC to the SPD, and notify NHPC of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. NHPC shall also designate a bank account at [Insert name of place] ("NHPC's Designated Account") for payments to be made by the SPD to NHPC, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. NHPC and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD' Designated Account or NHPC's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

10.3.3 Late Payment Surcharge

In the event of delay in payment of a Monthly Bill by NHPC beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable to the SPD at the rate of 1.5% per month on the outstanding amount calculated on a day to day basis subject to such late payment is duly received by NHPC under the PSA from its Discom(s). The Late Payment Surcharge shall be claimed by the SPD through the Supplementary Bill or adjustments in subsequent Monthly Bill(s)

10.3.4 In the event of early Commissioning of the Project subject to acceptance by NHPC, the payment for the power fed to the grid will be accounted from the date of capacity commissioned, but SPD would be allowed to raise Bills against such power only from the Scheduled Commissioning Date subject to the conditions as stipulated in Article 9.

10.3.5 Rebate

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

- a. A rebate of 2% shall be payable to the NHPC for the payments made within a period of 2 Business days of the presentation of hard copy of Bill along with required supporting documents acceptable to NHPC at NHPC office.
- b. Any payments made beyond a period of 2 business days of the date of presentation of hard copy of Bill along with required supporting documents at NHPC office up to the due date shall be allowed a rebate of 1%.

c. No rebate shall be payable on the Bills raised on account of taxes, duties, cess etc.

**10.4 Payment Security Mechanism
Letter of Credit (LC):**

10.4.1 Subject to opening and maintenance of Letter of Credit by the Discom(s) (as per terms of NHPC- Discom(s) (PSA) in favour of NHPC, NHPC shall extend 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"), which may be drawn upon by the SPD in accordance with this Article.

10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, NHPC through a scheduled bank shall extend 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 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 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, NHPC shall restore such shortfall within seven (7) days.

10.4.5 NHPC 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 NHPC shall ensure that the Letter of Credit shall be renewed not later than ten (10) days prior to its expiry.

10.4.7 All costs relating to opening and maintenance of the Letter of Credit shall be borne by NHPC

10.4.8 If NHPC fails to pay undisputed 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 NHPC, 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 Party does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.

10.5.2 If NHPC 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 (subject to adjustment of applicable rebate for the said 95% payment) 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;
- iii) and 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 NHPC 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 NHPC under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the NHPC 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. Notwithstanding the above in the event, NHPC is of the view that the amount claimed by SPD is excessively high and the payment of 95% of the disputed bill will be onerous, NHPC shall be entitled to raise immediate dispute and take the action for adjudication by CERC as per the Article 16 and further seek interim orders in such proceedings to restrain the enforcement of such disputed bills. The parties agree to be bound by the orders and directions of the CERC.

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 NHPC 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, or and such Supplementary Bill shall be paid by the other Party.
- 10.7.2 NHPC 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 NHPC, Rebate as applicable to Monthly Bills pursuant to Article 10.3.5 shall equally apply, except in the case of payment of Late Payment Surcharges. If any claim is being raised by the Discom(s) pursuant to the Article 4.4.1, NHPC shall make adjustment in the payment made to the SPD.
- 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 NHPC 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 if and only if it is declared / notified by the competent state / central authority / agency (as applicable);
- 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 if and only if it is declared / notified by the competent state / central authority / agency (as applicable); or
- c) radioactive contamination or ionizing 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.

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 and 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 Events

12 ARTICLE 12: CHANGE IN LAW

12.1 Definitions

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

- a. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- b. 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;
- c. the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier;
- d. 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;
- e. any statutory change in tax structure or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power by the SPD after the date of submission of Bid, shall be treated as per the terms of this Agreement. For the purpose of considering the effect of this change in Tax structure due to change in law after the date of submission of Bid under this part, the date of the submission of the bid shall be considered as effective date and not the date of the signing of the PPA as applicable to other changes dealt in other parts of this Article 12.1.
- f. but the above shall not however include
 - (i) any change in taxes on corporate income or 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 Central 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 all the Parties.

13 ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

13.1 SPD Event of Default

13.1.1 The occurrence and / or continuation of any of the events subject to Article 4.1 or / and following events , unless any such event occurs as a result of a Force Majeure Event or a breach by NHPC or Discom(s) of its obligations under this Agreement, shall constitute a SPD Event of Default:

- (i) the failure to commence supply of power to NHPC up to the Contracted Capacity not later than scheduled commissioning date or
- (ii) non continuance of the supply of power throughout the terms of the agreements 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 un contested 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 NHPC in this regard; or
- (v) change in controlling shareholding before the specified time frame as mentioned in Article 4.1.1 of this Agreement; or
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SPD.
- (vii) except where due to any NHPC'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 NHPC.

13.2 NHPC 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 NHPC:

- (i) NHPC 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/,
- (ii) NHPC 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, NHPC is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by NHPC within thirty (30) days of receipt of notice in this regard from the SPD to NHPC; or if
 - a. NHPC 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 NHPC, or
 - c. NHPC 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 NHPC Event of Default, where such dissolution or liquidation of NHPC 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 NHPC and expressly assumes all obligations of NHPC and is in a position to perform them; or;

- (iv) If Discom(s) are subject to any of the above defaults and NHPC does not designate another or other Discom(s) for purchase of Power.
- (v) Occurrence of any other event which is specified in this Agreement to be a material breach or default of NHPC.

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, NHPC shall have the right to {but not an obligation} 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 (NHPC 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 fifteen (15) 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, NHPC shall have the right (but not an obligation) to terminate this Agreement by giving a written Termination Notice 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 in concurrence with the Discom (s) and NHPC, 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. However, in the event the lenders are unable to substitute the defaulting SPD within the stipulated period, the NHPC may terminate the PPA and the Discom(s) may acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets. 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 NHPC.
- 13.3.4 The lenders, in concurrence with the Discom(s) and NHPC, 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 NHPC 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. In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a New Entity, an amount of Rs. 10 Lakh per Project per Transaction as Facilitation Fee (non-refundable) shall be deposited by the developer to NHPC.

13.4 Procedure for cases of NHPC Event of Default

- 13.4.1 Upon the occurrence and continuation of any NHPC Event of Default specified in Article 13.2 the SPD shall have the right to deliver to NHPC, 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 thirty (30) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or NHPC Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied,

NHPC under intimation to the Discom(s) and the SPD shall, subject to the prior consent of the SPD, novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the SPD, or if no offer of novation is made by NHPC within the stipulated period, then the SPD may terminate the PPA and at its discretion require Discom(s) and not NHPC to either

- (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 150% (one hundred and fifty per cent) of the adjusted equity or,
- (ii) pay to the SPD, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the SPD.

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. In the event of termination of PPA, any damages or charges payable to the CTU, for the connectivity of the plant, shall be borne by the Discom(s).

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 NHPC harmless against:

- a) any and all third party claims against NHPC 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 NHPC from third party claims arising by reason of a breach by the SPD of any of its obligations under this Agreement,

14.1.2 NHPC shall cause the Discom(s) 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 Discom(s) 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 Discom(s) of any of its obligations. NHPC shall incorporate appropriate covenants in the PSA for the

above obligations of Discom(s). In so far as indemnity to SPD is concerned, Discom(s) shall be the indemnifying party and not NHPC.

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 seeking adjudication of the Central Commission 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 defense 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 defense, 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 Article14, such event shall constitute a payment default under Article13.

14.4 Limitation on Liability

14.4.1 Except as expressly provided in this Agreement, neither the SPD nor NHPC nor Discom(s) 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, strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 NHPC 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 NHPC or Discom(s), or any affiliate of NHPC or any of its officers, directors or shareholders for such claims excluded under this Article.

14.5 Liability

14.5.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and accept that the NHPC is an Intermediary Company to purchase and re-sell the electricity to Discom(s) to enable them to fulfill the Renewable Purchase Obligations (RPO) and, therefore, the performance of the obligations of the NHPC under this Agreement shall be subject to the ability of NHPC to enforce the corresponding obligations assumed by the Discom(s) on re-sale under the Power Sale Agreement to be entered into by the Discom(s) with NHPC. It is however, specifically agreed that the payment of money becoming due from the NHPC to the SPD under this Agreement for supply of solar Power to the extent of the Contracted Capacity shall not be on a back to back basis. NHPC shall discharge the tariff payment obligation in terms of the provision of this Agreement;

14.5.2 The parties agree that in respect of the obligations other than the tariff payment obligation specifically mentioned herein above, in the event the SPD has any claim against the NHPC in regard to the performance of any obligation of the NHPC under this Agreement or enforcement of any right of the SPD against the NHPC under this Agreement, the same shall be subject to the ability of the NHPC to enforce the corresponding obligations

assumed by the Discom(s) under the Power Sale Agreement to be entered into between the NHPC and the Discom(s) on re-sale on mutatis mutandis basis and not otherwise.

14.6 Duty to Mitigate

14.6.1 The Parties shall endeavor 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. Such assignment shall be agreed to by NHPC subject to the compliance of provisions contained in this Agreement and more specifically to the provisions of Article 4.1.1 of this Agreement. In no case, such assignment shall be permissible prior to the declaration of COD. The enforcement of the rights and obligation between the SPD and Discom(s) provided in this Agreement and in the PPA shall not be treated as an assignment but an enforcement of the terms agreed under this Agreement Provided that, NHPC 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. An amount of Rs. Five Lakh per transaction as Facilitation Fee (non-refundable) shall be deposited by the SPD to NHPC. Provided further that, such consent shall not be withheld by the SPD if NHPC 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.

In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a New Entity, an amount of Rs. 10 Lakh per Transaction as Facilitation Fee (non-refundable) shall be deposited by the SPD to NHPC.

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 defenses, if any, regarding the Dispute; and
 - (b) all written material in support of its defenses 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 defense under Article 16.2.1(ii) or thirty (30) days from the date of furnishing counter claims or defense 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 Central Commission

- (i) 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 Central Commission, or (c) any dispute arising out of or in connection with this agreement not covered in (a) and (b) above, such Dispute shall be submitted to adjudication by the Central Commission.
- (ii) shall be entitled to co-opt Discom(s) and/or the lenders (if any) as a supporting party in such proceedings before the Central Commission.

16.4 Parties to Perform Obligations

- 16.4.1 Notwithstanding the existence of any Dispute and difference referred to the Central Commission as provided in Article 16.3 and save as the Central Commission or the Arbitration Tribunal to which the dispute may be referred by the Central Commission 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, with the approval of the Central Commission, where necessary. Subject to the provisions of RfS Document and Article 3.1(e) of this Agreement and keep this Agreement as principle Agreement, both Parties may execute further Agreement on similar terms and conditions.

17.2 Third Party Beneficiaries

17.2.1 This Agreement is solely for the benefit of the Parties, Discom(s) 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 authorized 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. : _____
Telephone No. : _____

17.6.3 If to NHPC, 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 : _____
Attention : _____
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 NHPC shall be indemnified and held harmless by the SPD against any claims that may be made against NHPC in relation to the matters set out in Article 17.9.1.

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

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.

17.12. The duly executed Power Sale Agreement between NHPC and Discom(s) shall be attached to this Agreement and shall be read along with Agreement as a composite back to back process for Generation and supply of electricity for Discom(s) to fulfill the Renewable Purchase Obligations under the provisions of the Electricity Act, 2003 and the Regulations notified thereunder.

17.13 Breach of Obligations

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

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
[NHPC Ltd]

Name, Designation and Address
(Signature with Seal)

Witness:

1.

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For and on behalf of

[Insert the Name of the SPD]

Name, Designation and Address
(Signature with Seal)

Witness:

1.

1. PSA

1. Illustration of Liquidated Damages (LD) Calculations

Consider a SPD has been selected for the implementation of a Project of capacity of 100 MW @Rs 3.00/kWh

Total Performance Bank Guarantee Amount to be furnished by the SPD: (25 X 100) = Rs.2500 Lakhs.

a) LD Conditions:

In case of delay upto 5 Month : 100% of the PBG amount (i.e. Rs16,667/MW/day) shall be encashed as Liquidated Damages for the first five month of delay, calculated on per day basis and proportionate to the capacity not commissioned.

In case of delay beyond 5th months subject to maximum upto 25th /27th months(as per project capacity) from the effective date of the PPA, the tariff of Rs 3.00 / kWh or the tariff discovered after reverse auction shall be reduced at the rate of 0.50 paisa (half paisa) per unit (kWh) per day for such remaining capacity which is not commissioned.

S No.	Commissioned Capacity (MW)	Capacity remaining Un-commissioned (MW)	Date of Commissioning of the respective part	Delay from the Scheduled Commissioning date (days)
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1	50	50	Before Scheduled Commissioning date	0
After Scheduled Commissioning date				
2	30 (from remaining project Capacity)	20	Scheduled Commissioning date + 40 Days	40
3	20(remaining project capacity)	0	Scheduled Commissioning date + 200 days	200

i) LD Calculation: In case of above commissioning schedule, the LD calculation for encashment of PBG, shall be done as follows:

LD: ((30 MW X 40 days X Rs.16,667/MW/day)+(20MW X 150days X Rs. 16,667/MW/day)

ii) For the remaining 20 MW capacity which is being commissioned after 150 Days from the scheduled Commissioning date, the Tariff gets reduced as explained below:

Tariff Calculation:

Tariff for the (100-20) MW capacity = Rs. 3.00 / kWh

Tariff for the 20 MW capacity which has been commissioned beyond 150 Days from the date of the Scheduled Commissioning date: Rs. 3.00 - Rs (0.005*(200-150) = Rs.

2.75/kWh

As per terms of the PPA, tariff of the Project shall be weighted average tariff of 80 MW and 20 MW. The tariff of the Project shall reduce to (((3.00 X 80) + (2.75 X 20))/100) = Rs. 2.95 / kWh

Based on the above schedule, total LD payable by the SPD shall be Rs. 700 Lakhs and tariff of the Project during tenure of PPA shall stand reduced to Rs. 2.95 / kWh.