

PUNJAB STATE POWER CORPORATION LTD.

Regd. Office: PSEB Head Office, The Mall, Patiala-147001
Corporate Identification Number (CIN): U40109PB2010SGC033813
Website: www.pspcl.in



Power Purchase Agreement (PPA)

Between

Punjab State Power Corporation Ltd.

And

(Insert Name of Solar Project Developer)

for

**Procurement ofMW Solar Power on Long Term Basis
from Grid Connected Solar PV Power Projects**

.....[Insert Month and Year]

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THIS POWER PURCHASE AGREEMENT [the “Agreement”] is made on the day.....of..... 20.... at Patiala.

BETWEEN

Punjab State Power Corporation Ltd, a company incorporated under the Companies Act 1956, having its registered office at The Mall, PSEB Head Office, Patiala, Punjab-147001 (hereinafter referred to as “**PSPCL or Procurer**”, as the case may be, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) as a Party of the ‘**FIRST PART**’.

AND

M/s....., a company incorporated under the Companies Act 1956/2013, having its registered office at(herein after referred to as “**SPD**” or “**Solar Power Developer or SPG**”, as the case may be, 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 ‘**SECOND PART**’;

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

WHEREAS:

- A) Punjab State Electricity Regulatory Commission (PSERC) as per Notification No. **PSERC/Secy./Reg./55**, dated **03.06.2011**, has issued the Punjab State Electricity Regulatory Commission (Renewable Purchase Obligation and its compliance) Regulations, 2011 and thereafter amendments thereto, for the promoting the Solar Energy in the state of Punjab,
- B) The Ministry of Power vide Resolution no. 23/27/2017-R&R dated 03.08.2017 (read with Corrigendum dated 14.06.2018 & 03.01.2019, 09.07.2019, 22.10.2019 & 25.09.2020) has notified the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from grid connected Solar PV Power Projects.
- C) In terms of the above Guidelines PSPCL had approached the PSERC and obtained the approval to initiate a competitive bid process for purchase of power with deviations from the Guidelines as per the order dated passed by the PSERC.
- D) PSPCL vide RfS No. 33/PSPCL/IPC/SOLAR/1000MW/2022/ET-3 dated 19.04.2022 has floated tender for purchase of power through Competitive Bidding Process (followed by reverse e-auction) from 1000 MW grid connected Solar Photovoltaic Power Projects,
- E) [**Insert Name of the Selected Bidder**], has been declared as a successful bidder under the RfS No. 33/PSPCL/IPC/SOLAR/1000MW/2022/ET-3 dated 19.04.2022 issued by PSPCL for selection of SPDs for development ofMW Solar Photovoltaic Power Project(s);
- F) PSPCL has issued the Letter of Intent (LOI) [LOI No.....] dated..... to the Selected Bidder for development of a Solar PV Power Project of..... MW or which is setting up or has an existing project at..... for..... MW from where the Selected Bidder has agreed for sale of electrical energy, so produced, to PSPCL[***Strike out whichever is not applicable**];

- G) The Selected Bidder or the Special Purpose Vehicle, established by the Selected Bidder, as the case may be (hereinafter referred to as ‘SPD’) has agreed to set up/is already setting up/has already set up [**Strike out whichever is not applicable*] the Solar Power Project based on Photo Voltaic technology of MW capacity at the location details specified as per Schedule 2;
- H) M/s (SPD) has provided to PSPCL, Performance Guarantee for Rs..... with a validity of months.
- I) The SPD has agreed to sign this Power Purchase Agreement with PSPCL for sale of Solar PV Power by the SPD to PSPCL, for 25 years as per the terms and conditions of this Power Purchase Agreement;
- J) PSPCL has agreed to file a petition under Section 63 read with Section 86(1)(b) of the Electricity Act, 2003 before the Punjab Electricity Regulatory Commission for approval and adoption of tariff discovered through the Competitive Bidding Process (followed by e-Reverse Auction) conducted by PSPCL through RfS no. 33/PSPCL/IPC/SOLAR/1000MW/2022/ET-3 dated 19.04.2022 and Addendums thereto.
- K) The parties have agreed that this Power Purchase Agreement shall be subject to the approval and adoption of tariff by the PSERC and that any delay in adoption of tariff by PSERC, beyond 60 (sixty) days from date of filing of petition by PSPCL, shall entail a corresponding extension in the time lines for financial closure and scheduled commissioning date, for an equal number of days for which the PSERC order has been delayed beyond such 60 days period.
- L) PSPCL agrees to procure power from the SPD and the SPD has agreed to sell power to PSPCL up to the contracted capacity @Rs/kWh at fixed levelled Tariff offered by SPD as per the terms and conditions of this Power Purchase Agreement.
- M) The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the purchase of power by PSPCL from the SPD;

NOW THEREFORE IN VIEW OF THE FOREGOING PREMISES AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREINAFTER SET FORTH, PSPCL AND THE SPD, EACH A PARTY AND COLLECTIVELY THE PARTIES, HEREBY AGREE AS FOLLOWS:

ARTICLE 1: DEFINITIONS

1.1 Definitions.

For the purposes of this Agreement, unless the context otherwise requires, the following words and expressions shall have the respective meanings set forth herein:

“Adjusted Equity” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “Reference Date”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date;

- i. On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the

month of Appointed Date and Reference Date;

- ii. An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”);
- iii. After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three three three percent) thereof at the commencement of each month following the COD [reduction of 1% (one percent) per quarter of an year] and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date; For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date;

Provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the PPA period is extended, but the revision on account of WPI shall continue to be made.

“*Affiliate*” in relation to a Company shall mean a person who controls, is controlled by, or is under the common control with such Company.

“*Agreement or “Power Purchase Agreement” or “PPA”*” shall mean this Power Purchase Agreement executed hereof, including its recitals and schedules, amended or modified from time to time in accordance with the terms hereof;

“*Appropriate Commission*” shall mean the Punjab State Electricity Regulatory Commission and where ever the context so requires Central Electricity Regulatory Commission referred to in sub-section (1) of section 76, other 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;

“*Approvals*” means the permits, clearances, licenses and consents as are listed in Schedule 1 hereto and any other statutory approvals;

“*Billing Date*” shall be the first Business Day after the Metering Date of each Billing Period.

“*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;

“*Billing Period*” shall be the calendar month ending with the Metering Date of that month. The first Billing Period shall commence from the Commercial Operation Date and end with the Metering date corresponding to the month in which the Commercial Operation Date occurs. The last billing period shall commence from the 1st day of the last month of the PPA period till the expiry of the PPA.

“*Business Day*” shall mean a Day on which banks and offices of PSPCL remain open for business in Punjab, other than Saturday, Sunday or a statutory holiday,

“*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 and 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*” means Central Electricity Regulatory Commission.

“*Change in Law*” shall have the meaning ascribed thereto in Article 9 of this Agreement.

“*Commissioning*” with respect to project or part thereof shall mean when all equipments as per

rated capacity have been installed, commissioned and energy has flown into the grid and recorded at the Metering Point of the Grid System interconnected with the Project, as certified by the authority/agency designated by PSPCL for this purpose.

"Commercial Operation Date (COD)" shall be the date certified by the authority/agency designated by PSPCL for this purpose 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 Procurer Preliminary Default Notice as provided in Article 10 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances.

"Contracted Capacity" shall mean [*Insert capacity*] MW AC contracted with PSPCL for supply by the SPD at the Inter-connection/Delivery Point from the Solar Power Project.

"Contracted CUF" shall mean the % capacity utilization factor of the project mentioned in Schedule 2 of the PPA and which shall be allowed to be modified until 1 year from Commercial Operation Date and thereafter it shall remain unchanged for the balance term of the PPA.

"Contract Year" shall mean, with respect to the initial Contract Year, the period beginning on the Commercial Operation Date and ending at 12.00 midnight on 31st March of that Fiscal Year. Each successive Contract Year shall coincide with the succeeding Fiscal Year, i.e., a period of twelve months commencing on April 1 and ending on following March 31, except that the final Contract Year shall end on the date of expiry of the Term or on Termination of this Agreement, whichever is earlier.

"Control" shall mean the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such Company or right to appoint majority Directors.

"CTU or Central Transmission Utility" shall mean the Central Transmission Utility of India Limited or any other company as may be designated by Central Government under Section 38 of the Electricity Act, 2003 for the purpose.

"Day": shall mean a day, if not a Business Day, the immediately succeeding Business Day.

"Debt Due" means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- i. The principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the 'Principal') but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;
- ii. All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (i) above until the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, (iii) any pre-payment charges in relation to accelerated repayment

of debt except where such charges have arisen due to Utility Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost.

Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken.

Provided further that the Debt Due, on or after COD, shall in no case exceed 80% (eighty percent) of the Total Project Cost.”

"Delivery Point / Interconnection Point" shall mean the point /points at Sub-station owned by PSTCL (for intra-state projects) or CTU /Inter State Transmission Licensee (for inter-state projects) to which the solar power project is connected through a dedicated transmission line to deliver the energy into the grid system. Metering shall be done at low voltage bus bar of such substation. For interconnection with grid and metering, the SPD shall abide by the relevant and applicable regulations/ Grid Code notified by PSERC, CERC, Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time, or orders passed there under by the appropriate commission or CEA. All charges and losses relating to transmission of power from the project up to Delivery Point (including but not limited to open access, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, RLDC /SLDC charges etc.) as notified by the competent authority/Appropriate commission/ Regulator shall be borne by the SPD. Further ISTS charges beyond the Delivery Point through the ISTS up to Punjab periphery are exempted for all projects achieving CoD till 30.06.2025 for a period of 25 years from CoD to the extent specified in the Ministry of Power, Government of India Notification No. 23/12/2016-R&R Dated 15.01.2021 and 21.06.2021. However, in case the waiver is not applicable for any reason whatsoever, including the cases where commissioning of the Project gets delayed beyond the applicable date of ISTS waiver, the liability of transmission charges up to Punjab periphery would be of the SPD. Further, the liability of transmission losses up to Punjab periphery would also be of the developer. Further no change in charges/losses of ISTS shall be covered under Change in Law provision for any increase in tariff under this agreement.

"Discom(s)" shall mean Punjab State Power Corporation Ltd. (PSPCL) or the distribution utility of the state where the project is located.

"Dispute" shall mean any dispute or difference of any kind between PSPCL 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 11 of this Agreement;

"Due Date of Payment" in respect of a Invoice/Bill means the date, which is 30 (thirty) days from the date of receipt of such invoices at the designated office of the PSPCL. If such day is not a business day, the immediately succeeding day shall be the due date.

"Effective Date" shall mean the date of execution of Power Purchase Agreement (PPA) by both the parties;

"Electricity" shall mean the Electrical Energy in kilowatt-hours.

"Electricity Laws" shall mean the Electricity Act, 2003 and the rules and regulation made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission.

“Energy Accounts” shall mean the Regional Energy Accounts/State Energy Accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof or where such regional energy accounts /state energy accounts are not issued, Joint Meter Reading (JMR) will be considered; PSPCL reserves the right to choose for any of the above, i.e. JMR/SEA/REA.

“Event of Default” shall mean the events as defined in Article 10 of this Agreement;

“Expiry Date” shall mean the date occurring twenty five (25) years from the Scheduled Commercial Operation Date of the project.

"Financing Agreements" mean the agreements and documents (including asset leasing arrangements) entered/to be entered into between the SPD and the Financing Parties relating to the financing of the Project.

“Financial Closure” or “Project Financing Arrangements” means arrangement of necessary funds by the SPD 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;

"Force Majeure” or “Force Majeure Event" shall have the meaning set forth in Article 8.

"GoI" shall mean the Government of the Republic of India and any agency, legislative body, department, political subdivision, authority or instrumentality thereof.

"GoP" shall mean the Government of the State of Punjab and any agency, legislative body, department, political subdivision, authority or instrumentality thereof.

"Government Instrumentality" shall mean the GoI, GoP and any other State Government or Union Territory, in whose territory the Project is located and any ministry, inspectorate, department, agency, body, authority, legislative body under the direct or indirect control of such Government.

"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 PSERC, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as amended from time to time;

“Installed Capacity” shall mean the AC capacity of the Project measured at the generating terminal(s).

“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;

“Invoice or Bill” shall mean a Monthly Invoice/Monthly bill or a Supplementary Invoice /Supplementary Bill raised by any of the Parties.

“ISTS Licensee” shall mean Power Grid Corporation of India Limited or an Inter State Transmission Licensee under the Electricity Act, 2003.

“KV” shall mean Kilovolts;

“kWh” shall mean Kilowatt-hour;

"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 pursuant to or under any of them and shall include without limitation all applicable rules, regulations and orders of the Appropriate commission.

“Letter of Intent (LoI)” shall mean the letter issued by Punjab State Power Corp. Ltd. (PSPCL) to the Selected Bidder for selection of the Project.

“Metering Date” for a Billing Period, shall mean the midnight (24:00 hrs.) of the last day of the calendar month or the first day of each calendar month at scheduled time mutually agreed between the parties. However the metering date of the financial year ends at 24:00 hrs on 31st March of financial year and for the last billing period, it shall mean 24.00 hours on the expiry date of the PPA.

“Metering Point” shall mean the point at which energy supplied to PSPCL shall be measured and shall be the Interconnection Point.

“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.

“MW” means Megawatts.

“Part Commissioning” shall mean a part of the Solar PV Capacity (AC MW) commissioned and corresponding energy flown into the grid as per provisions of the Part Commissioning in this Agreement.

“Performance Guarantee” or “Performance Bank Guarantee” shall mean the irrevocable unconditional Performance Bank Guarantee submitted by the SPD as per provisions of the RfS.

“Pooling Substation / Pooling Point” shall mean a point where more than one Solar PV Project may connect to a common Transmission System. Multiple Projects can be connected to a pooling substation from where common transmission system shall be constructed and maintained by the SPD(s) to get connected to the ISTS/Intra-STS substation. The metering of the pooled power shall be done at the injection point, i.e. the ISTS/Intra-STS substation owned by ISTS Licensee/CTU/PSTCL. 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. Sub-meters shall be installed at the pooling substation for metering, forecasting and scheduling of individual Projects. 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.

“Preliminary Default Notice” shall have the meaning ascribed thereto in Article 10 of this Agreement.

“Project” shall mean a Solar Photovoltaic Grid Interactive Power generation facility to be established by the SPD comprising of number of units at single/multiple locations, and shall include land, buildings, plant, machinery, ancillary equipment, material, switch-gear, transformers, protection equipment and the materials necessary to deliver the Electricity generated by the Project to PSPCL as per this agreement.

“Project Site” means any and all parcels of real property, rights-of-way, easements and access roads, upon which the Project and its related infrastructure will be located.

“Project Capacity” means the AC capacity of the project at the Generating Terminal(s) and to be contracted with PSPCL for power supply from the Solar Power Project.

"Prudent Utility Practices" shall mean those practices, methods, techniques and standards, that are generally accepted for use in electric utility industries taking into account conditions in India, and commonly used in prudent electric utility engineering and operations to design, engineer, construct, test, operate and maintain equipment lawfully, safely, efficiently and economically as applicable to power stations of the size, service and type of the Project, and that generally conform to the manufacturers' operation and maintenance guidelines, the requirements of Indian Law and physical conditions at Project Site.

"PSERC" means "Punjab Electricity Regulatory Commission".

"REA" means the Regional Energy Accounts issued by concerned Regional Power Committee and amendment thereto.

"RLDC" shall mean the concerned Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003.

"Rupees", "Rs." shall mean Indian rupees, the lawful currency of India.

"SCOD" or "Scheduled Commercial Operation Date" or "Scheduled Commissioning Date" shall mean the date..... [Insert a date within 18 (eighteen) months from the date of execution of the PPA]

"SEA" means the State Energy Account issued by State Load Dispatch Centre, Punjab and amendment thereto.

"Selected Bidder or Successful Bidder" shall mean the Bidder selected pursuant to RfS no. 33/PSPCL/IPC/SOLAR/1000MW/2022/ET-3 dated 19.04.2022 and to whom LOI is issued by PSPCL for the Project and to supply electrical energy as per the terms of PPA.

"Solar Power Developer/ Solar Power Generator/ Generator (SPD)": The Successful Bidder(s), or Special Purpose Vehicle, as the case may be, who submits the Performance Guarantee and other RfS Documents and executes the PPA with PSPCL and who shall be responsible for supplying power from grid connected solar PV power projects to PSPCL for the term of the PPA as per the terms and conditions specified therein.

"SLDC" means the State Load Dispatch Centre as notified by the Punjab State or 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 direct conversion into electricity.

"STU or State Transmission Utility or "PSTCL" shall mean the Punjab State Transmission Corporation Limited (PSTCL).

"Tariff" or "PPA Tariff" shall have the meaning set forth in Article 5.

"Tariff Payment" shall mean the payments to be made under Monthly Bills as referred to in Article 6 and the relevant Supplementary Bills;

"Term" means the term of the Agreement as defined in Article 2.

"Termination Notice" shall mean the notice given by either Parties for termination of this agreement in accordance with Article 10 of this Agreement;

Words and expression used in this Agreement and not defined shall have the same meaning if defined under the Electricity Act, 2003 or any Rules or Regulations notified thereunder.

1.2 Interpretation:

- a) "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexure;
- b) 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;
- c) 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);
- d) 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;
- e) "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;
- f) 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; a reference to any Party includes that Party's successors and permitted assigns.
- g) "Rupee", "Rupees", "Rs." shall denote Indian Rupees, the lawful currency of India;
- h) 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;
- i) Words importing the singular shall include the plural and vice versa;
- j) 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;
- k) A Law shall be construed as a reference to such Law including its amendments or reenactments from time to time;
- l) A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- m) 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;
- n) 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;
- o) 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;

- p) The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- q) The terms “include”, “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

ARTICLE 2: EFFECTIVE DATE AND DURATION

2.1 Duration of the Agreement:

This Agreement shall become effective upon the execution and delivery thereof by the Parties hereto and unless terminated pursuant to other provisions of the Agreement, shall continue to be in force for such time until the completion of a period of 25 years (Twenty Five) from the Scheduled Commercial Operation Date of the Project. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date subject to approval of PSERC.

2.2 Survival

The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 8 (Force Majeure), Article 10 (Termination and Default), Article 11 (Governing Law & Dispute Resolution), Article 12 (Indemnity), Article 14 (Assignment and Charges) and Article 15 (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.

ARTICLE 3: OBLIGATIONS

3.1 Obligations of the SPD:

3.1.1 Construction & Development of the Project:

- (i) The SPD shall, entirely at its costs and expense, obtain and duly maintain in full force and effect during the Term of this Agreement, all statutory approvals, licences, consents, clearances and permits and other permissions/sanctions from Government authorities necessary and required for the Project, for supply of power or otherwise to enable the SPD to perform its obligations under the Agreement, including but not limited to the Approvals as listed in Schedule 1. PSPCL shall have no obligation to recommend to any department/agency or the Government for the grant/permission for the Solar Power project. Any steps that may be taken by PSPCL in regard to grant of such consents and permits or any other approval to be taken by the SPD shall only be a voluntary endeavour with no intention of being bound by any legal or binding obligation.
- (ii) The SPD shall duly perform and complete all of the following activities including Financial Closure at the SPD’s 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 PSPCL.
- a) The SPD shall make Project Financing Arrangements for its Projects(s) and shall provide

necessary documents to PSPCL in this regard.

- b) The SPD shall fulfil 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 amendments thereto or in accordance with MNRE’s Approved Models and Manufacturers of Solar PV Modules (Requirements for Compulsory Registration) Order, 2019 as amended from time to time, whichever is applicable. The SPD shall provide evidence that the requisite technical criteria has been fulfilled and would provide un-priced copies of orders placed / agreements entered into, for supply of plants and equipment for the project.
- c) The SPD shall furnish the location of the projects at the time of financial closure. The change of location of the project shall not be permitted after Financial Closure.
- d) The SPD shall also be required to furnish letter from ISTS Licensee/CTU/PSTCL confirming technical feasibility of connectivity of the plant to ISTS Licensee/CTU/PSTCL substation at the indicated location.

In case of a failure on the part of SPD to fulfil the conditions and/or submit the documents as above, except due to force majeure event, PSPCL shall be entitled to encash the Performance Bank Guarantee submitted by the SPD and terminate this Agreement by giving a prior notice to the SPD in writing of at least seven (7) days. The termination of the Agreement shall take effect upon the expiry of the 7th day of the above notice. Provided however in the event of delays in the approval and adoption of tariff by the PSERC within 60 (sixty) days of submission before PSERC by PSPCL, there shall be a corresponding extension of time for achieving Financial Closure i.e. for an equal number of days for which the PSERC order has been delayed beyond such 60 days period.

An extension for the attainment of the financial closure and other conditions as mentioned above, may however be considered by PSPCL, on the sole request of the SPD, on advance payment of extension charges of Rs.1000/- per day per MW plus applicable GST. In case of any delay in depositing this extension charge, SPD shall pay an interest on this extension charge for the days lapsed beyond due date of Financial Closure @ SBI MCLR (1Year). The extension for the above purpose shall not result in any extension of or otherwise have any impact on the SCOD. However any extension charges paid so by the SPD, shall be returned to the SPD without any interest (i) fully on the SPD achieving successful commissioning by the SCOD or (ii) on a pro-rata basis, based on the Project Capacity commissioned by SCOD. However, in case of any delay in commissioning of the project beyond the SCOD, PSPCL shall be entitled to appropriate the amount as deposited above by the SPD which shall be in addition to and without prejudice to the other rights of PSPCL including to encash the Performance Guarantee towards liquidated damages and other claims for delays on the part of the SPD under this Agreement.

- (iii) The SPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point.
- (iv) The SPD shall be solely responsible and make arrangements for Land and associated infrastructure for development of the Project and for Connectivity with the ISTS Licensee/CTU/PSTCL System for confirming the evacuation of power by the SCOD. The SPD shall furnish the necessary documents to establish possession in the name of the Project Developer of the required land/ Lease Agreement for a period not less than the

complete term of PPA on or before the SCOD.

- (v) The SPD shall construct, operate and maintain the Project during the term of PPA at its cost and risk including the required Interconnection Facilities and in close co-ordination with ISTS Licensee/CTU/PSTCL feasibility.
- (vi) The SPD shall be solely responsible for designing, constructing, erecting, commissioning, completing and testing as well as operating and maintaining the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.
- (vii) The SPD shall ensure commencement of supply of power up to the Contracted Capacity to PSPCL no later than the SCOD as well as continuance of the supply of power throughout the term of the Agreement.
- (viii) The SPD shall sell all available capacity from identified Solar Photovoltaic Grid-Interactive Power Plants to the extent of contracted capacity on first priority basis to PSPCL as per the provisions of this Agreement.
- (ix) The SPD shall be responsible, at its own cost, to procure start up power required for the plant from the concerned Discom of the area where the project is located.
- (x) The SPD shall be responsible for all payments on account of any taxes, cesses, duties or levies imposed by the Governmental Instrumentality or its competent statutory authority on the land, equipment, material or works of the Project or on the Electricity generated or consumed by the Project or by itself or on the income or assets owned by it. All expenses including wheeling / transmission charges and losses, UI / DSM, SLDC/RLDC Charges as notified by the competent authority/Regulator up to Punjab Periphery shall be paid by SPD without any reimbursement by PSPCL.
- (xi) The successful bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the PPA shall not fall below 51% (fifty-one per cent) at any time prior to 1 (one) year from the COD, except with the prior approval of the PSPCL. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV /project company executing the PPA, shall not fall below 51 % at any time prior to 1 (one) year from the COD, except with the prior approval of PSPCL. Further, the Successful bidder shall ensure that its promoters shall not transfer the Controlling Shareholding and interest or cede control of the bidding company/consortium till 1 (one) year from the COD, except with the prior approval of PSPCL. After expiry of 1 year from COD, any change can be undertaken under intimation to PSPCL.
- (xii) The SPD shall be responsible for obtaining Long Term Open Access (LTOA) and executing transmission agreement with Inter State Transmission Licensee/PSTCL for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement.
- (xiii) The SPD shall own the Power Project throughout the Term of Agreement, free and clear of encumbrances, except those expressly permitted under Article 14.
- (xiv) The SPD shall be fulfil all other obligations to be undertaken by the SPD under this Agreement.

3.1.2 CUF Limits:

- (i) **Criteria for Generation:** The SPD shall maintain generation so as to achieve annual CUF within +10% and -15% of the contracted CUF till the end of 10 years from COD and

within +10% and -20% of the contracted annual CUF thereafter till the end of the PPA duration of 25 years, subject to condition that the annual CUF during the entire term of PPA shall remain minimum of 17%. PSPCL, in any Contract Year except for the first year of operation, shall not be obliged to purchase any additional energy from the SPD beyond Million kWh (MU). For the first year of operation, the above limit shall be considered on pro-rata basis. In case of part commissioning of the Project, the above limit shall be considered on pro-rata basis till the commissioning of full capacity of the Project. The annual CUF will be calculated every year from 1st April of the year to 31st March next year.

- (ii) **Shortfall in Generation:** If for any Contract Year, it is found that the SPD has not been able to generate and supply minimum energy, namely (i)Million kWh (MU) till the end of 10 years from the COD and (ii) Million kWh (MU) for the rest of the Term of the Agreement, for any reason except as mentioned below, the non-compliance by SPD shall make the SPD liable to pay the compensation to PSPCL. The amount of such compensation shall be as determined by Punjab State Electricity Regulatory Commission and such compensation shall ensure that PSPCL is offset for all potential costs associated with low generation and supply of power under the PPA. However, the minimum compensation payable to PSPCL by the SPD shall be 75% (seventy-five percent) of the cost of this shortfall in energy terms, calculated at PPA tariff. The compensation shall be computed and applied to the amount of shortfall in generation with regard to each Contract Year separately. For the first year of operation, the above limits shall be considered on pro-rata basis. In case of part commissioning of the Project, the above limits shall be considered on pro-rata basis till the commissioning of full capacity of the Project. The lower limit shall, however, be relaxable by PSPCL to the extent of grid non-availability for evacuation (beyond the Delivery Point) which is beyond the control of the SPD (as certified by the SLDC/RLDC). The compensation shall not be applicable in the events of Force Majeure identified under the PPA, affecting supply of solar power by the SPD.
- (iii) **Excess Generation:** In case the generation in any contract year is over and above the quantum specified under Article 3.1.2 (i), the SPD will be free to sell it to any other entity after prior notification to PSPCL and PSPCL shall have the first right of refusal to opt for purchase of the excess generation at 75% (seventy-five per cent) of the PPA tariff. The Solar Power Developer shall ascertain, well in advance, the availability of such excess generation, and shall intimate the same to PSPCL at least 30 days prior to the proposed date of commencement of excess generation. PSPCL shall thereafter, within a period of 15 days of receiving the above offer from the SPD, intimate its decision on the purchase of such excess energy. In the event the offer of the SPD is not accepted by PSPCL within the said period of 15 days, such right shall cease to exist and the SPD, at its sole discretion, may sell such excess power to any third party.

However, in case at any point of time, the peak of capacity reached is higher than the contracted capacity and causes disturbance in the system at the point where power is injected, the SPD will have to forego the excess generation and reduce the output to the rated capacity and shall also have to pay the penalty/charges (if applicable) as per applicable regulations / requirements / guidelines of CERC / PSERC /RLDC/SLDC or any other competent agency.

3.1.3 Grid Connectivity:

- (i) The SPD shall be required to obtain all information/approvals from PSTCL/CTU/ ISTS Licensee and concerned authority with regard to the 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.

- (ii) The SPD shall be responsible for getting the grid connectivity and long term access (LTA) from PSTCL/ CTU/ISTS Licensee, as applicable, at its own cost. For interconnection with the grid and metering, the SPD shall abide by the applicable Grid Code, Grid Connectivity Standards, Regulations on Communication System for transmission of electric power and other regulations (as amended from time to time) issued by Appropriate Commission and Central Electricity Authority (CEA).
- (iii) The responsibility of getting connectivity with the transmission system up to interconnection /Metering/Delivery point shall be entirely of the SPD to be obtained at its cost. 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 its own cost. The maintenance of Transmission system upto the interconnection /Metering/Delivery point including interconnection facilities shall be the responsibility of the SPD at its own cost.
- (iv) The entire cost of transmission including cost of construction of line, interconnection facilities, 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 PSPCL. In case of any delay in connectivity of the Project and non- availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the SPD, the provisions of Article 3.4, 3.5 & 3.6 shall be applicable.
- (v) The SPD shall be responsible for complying with the PSERC / CERC regulations on Forecasting, Scheduling and Deviation Settlement, as applicable and for all liabilities related to Connectivity.
- (vi) Penalties, fines and charges imposed by the CTU/ STU/ISTS Licensee under any statute or regulation in relation to delay in commissioning of Project shall be payable by the SPD and the same will not be reimbursed by PSPCL.
- (vii) All expenses including wheeling charges and losses between the Project and the Delivery Point shall be paid by the SPD without any reimbursement by PSPCL.

SPD acknowledges and accepts that ISTS charges in relation to the transmission and distribution beyond the Delivery Point up to Punjab periphery are presently exempted for all solar projects achieving CoD till 30.06.2025 for a period of 25 years from CoD.

- (viii) If the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver due to Force Majeure event, the Ministry of Power, Government of India Notification No. 23/12/2016-R&R Dated 15.01.2021 provides for extension of the waiver. However, in case the waiver is not applicable for any reason, including in cases where the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver, the liability of transmission charges up to Punjab periphery would be that of the SPD. Further, the liability of transmission losses up to Punjab periphery would also be of the developer. Further no change in charges/losses of CTU/ISTS Licensee shall be covered under Change in Law provision for any increase in tariff under this Agreement.
- (ix) 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.
- (x) The SPD shall be responsible to for directly coordinating and dealing with PSPCL, 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 PSPCL are the Grid connected entities in respect of the Solar Power contracted under this Agreement.

3.2 Obligations of PSPCL:

PSPCL shall allow the SPD to re-power their plants from time to time during the PPA duration without any liability to PSPCL. However, PSPCL will be obliged to buy power only corresponding to Contracted Capacity and only within the limits prescribed in Article 3.1.2.

3.3 Extensions of Time

(i) In the event that the SPD is prevented from performing its obligations under Article 3.1 by the Scheduled Commissioning Date due to:

- a) Any PSPCL Event of Default; or
- b) Force Majeure Events affecting PSPCL, 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 3.3 (iii), for a reasonable period but not less than 'day for day' basis, to permit the SPD or PSPCL, through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or PSPCL, or till such time such Event of Default is rectified.

(ii) Long Term Access (LTA), as applicable, shall be required to be submitted by the Successful Bidder prior to commissioning of the Project. Subsequent to grant of connectivity, in case there is a delay in grant/operationalization of LTA by the STU/CTU/ISTS Licensee and/or there is a delay in readiness of the ISTS substation/ substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network (at and beyond Delivery Point, disabling transmission and evacuation of power from Project) until SCoD of the Project, and it is established that:

- a) The SPD has complied with the complete application formalities with STU/CTU/ISTS Licensee.
- b) The SPD has adhered to the applicable Procedure in this regard as notified by the CERC/CTU/ISTS Licensee or PSERC/STU, and
- c) The delay in grant of connectivity/LTA by the PSTCL/CTU/ISTS Licensee and/or delay in readiness of the ISTS substation/ substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network/PSTCL network, is a factor attributable to the PSTCL/CTU/ISTS Licensee and is beyond the control of the SPD;

The above shall be treated as delays beyond the control of the SPD and SCOD shall be extended for such Projects up to 30 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or operationalization of LTA. Decision on requisite extension on account of the above factor shall be taken by PSPCL.

(iii) Subject to Article 3.3(vii), in case of extension occurring due to reasons specified in Article 3.3 (i) (a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than six (6) Months.

(iv) In case of extension due to reasons specified in Article 3.3 (i) (b) and (c), and if such Force Majeure Event continues even after a maximum period of 6 months, any of the Parties may

choose to terminate the Agreement as per the provisions of Article 10.5.

- (v) As a result of such extension on account of Article 3.3 (i) or Article 3.3 (ii), 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.
- (vi) 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 11.
- (vii) 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 4.1.10.
- (viii) The Performance Guarantee would be extended upto a period of six (6) months (with a claim period upto seven (7) months) after the newly determined Scheduled Commissioning Date.

3.4 Generation Compensation in Offtake Constraint Due to Transmission Infrastructure Not Complete/ Ready Beyond Delivery Point (Transmission Constraint)

After the Scheduled Commissioning Date, if the plant is ready but the necessary power evacuation / transmission infrastructure beyond Delivery Point is not ready, for reasons not attributable to the Solar Power Developer, leading to offtake constraint, the provision for generation compensation are as follows:

Transmission Constraint beyond Delivery Point	Provision for Generation Compensation
If the plant is ready but the necessary power evacuation/ transmission infrastructure beyond Delivery Point is not ready, leading to offtake constraint	<p>a) The normative CUF of 19% (nineteen per cent) or committed CUF, whichever is lower, for the period of grid unavailability beyond Delivery Point, shall be taken for the purpose of calculation of generation loss. Corresponding to this generation loss, the excess generation by the SPD in the succeeding 3 (three) Contract Years, shall be procured by PSPCL 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 it, then a part of that penalty may be utilized by PSPCL for compensating the generation loss.</p>

However, it is clarified that if the plant is ready before Scheduled Commissioning Date, but the offtake is constrained because of inadequate/ incomplete power evacuation infrastructure beyond Delivery Point, no compensation shall be permissible.

3.5 Generation Compensation in Offtake Constraints Due to Grid Unavailability Beyond Delivery Point

During the operation of the plant, there can be some periods where the plant can generate power but due to temporary transmission unavailability beyond Delivery Point the power is not evacuated, for reasons not attributable to the SPD. In such cases the generation compensation shall be addressed by PSPCL in following manner:

Duration of Grid Unavailability beyond Delivery Point	Provision for Generation Compensation

Grid unavailability beyond Delivery Point 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) X (number of hours of grid unavailability beyond Delivery Point during the contract year)]</p> <p>Where, Average Generation per hour during the contract year (kWh) = Total generation in the contract year (kWh) ÷ Total hours of generation in the contract year</p> <p>The excess generation by the SPD equal to this generation loss shall be procured by PSPCL at the PPA tariff so as to offset this loss in the succeeding 3 (three) Contract Years.</p>
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3.6 Offtake Constraints Due to Backdown

- (a) SPD and PSPCL shall follow the forecasting and scheduling process as per the regulations in this regard by the PSERC. In case of backing down of supply of power by the SPD for reasons solely attributable to PSPCL excluding where the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions, the SPD shall be eligible for a Generation Compensation, from PSPCL, limited in the manner detailed below.

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

- (b) The Generation Compensation is to be paid as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA) /State Energy Accounts (SEA), as applicable.
- (c) No back-down / curtailment to be ordered without giving formal/ written instruction for the same.
- (d) The details of back-down /curtailment, including justifications for such curtailment, to be made public by the concerned Load Dispatch Centre.”

ARTICLE 4: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

4.1 Synchronization, Commissioning and Commercial Operation

- 4.1.1** The SPD shall give the concerned RLDC, Punjab SLDC and PSPCL 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.
- 4.1.2** Subject to Article 4.1.1, the Power Project may be synchronized by the SPD to the Grid System when it meets all the inter-connection conditions prescribed in the Grid Code and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 4.1.3** The synchronization equipment and all necessary arrangements/equipment including

Remote Terminal Unit (RTU) for scheduling of power generated from the Project and online transmission of telemetry 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 for synchronization scheme is granted by the head of the concerned substation/grid system and checking/verification is made by the concerned authority of the grid system. Communications with all the concerned authorities shall be the responsibility of the SPD.

4.1.4 The SPD shall immediately after each synchronization/tripping of plant, inform the substation of the Grid System to which the Power Project is electrically connected and all other concerned authorities including SLDC/RLDC in accordance with applicable Grid Code.

4.1.5 The SPD shall commission the Project within SCOD i.e. within 18 (Eighteen) Months of the Effective Date. Further, the SPD shall submit necessary documents/Lease Agreement duly registered, to establish possession/right to use 100% of the required land in the name of developer for a period not less than the complete term of PPA on or before SCOD along with arrangement for Connectivity of project with ISTS Licensee/CTU/ PSTCL. A sworn affidavit from the authorized person listing the details of the land and certifying total land required for the project under clear possession of the solar power developer shall also be submitted.

4.1.6 The SPD shall be required to submit the Key Plan drawing to PSPCL prior to mounting of the solar panels and actual commissioning of the Project.

SPD shall ensure that the technology to be adopted shall be commercially established and operational technology to minimize the technology risk Further, SPD shall also substantiate the technology adopted as per Annexure A of RfS or in accordance with MNRE's Approved Models and Manufacturers of Solar PV Modules (Requirements for Compulsory Registration) Order, 2019 as amended from time to time, whichever is applicable, by submitting the copy of EPC Contract specifying this requirement or other related documents before financial closure.

4.1.7 Part Commissioning: Part commissioning of the Project shall be accepted by PSPCL subject to the condition that the Minimum Capacity for acceptance of first and subsequent part(s) commissioning shall be 50 MW for all projects (interstate or intrastate), without prejudice to the imposition of penalty, in terms of the PPA on the part which is not commissioned. However, the SCOD (Schedule Commercial Operation Date) will not get altered due to part-commissioning. Irrespective of dates of part commissioning or full commissioning, the PPA will remain in force for a period of 25 (twenty-five) years from the SCOD.

4.1.8 Early Commissioning: The SPD shall be permitted for full commissioning as well as part commissioning of the Project even prior to the SCOD. In cases of early part-commissioning, till SCOD, PSPCL shall reserve the right to purchase the generation till SCOD, at 75% (seventy-five per cent) of the PPA tariff. However, in case the entire capacity is commissioned prior to SCOD, PSPCL may purchase the generation at PPA Tariff.

4.1.9 Penalty for Delay in Commissioning: The Project shall be commissioned by the SCOD. In case of failure to achieve this milestone, except due to reasons specified under Article 3.3 (i), PSPCL shall encash the Performance Guarantee (PG) in the following

manner.

- a) **Delay upto six (6) months from SCOD:** PSPCL will encash total Performance Guarantee on per day basis and proportionate to the balance Capacity not commissioned.
- b) **In case the commissioning of the project is delayed beyond Six (6) months from SCOD,** the SPD's Event of Default as per Article 10.2.1 shall be considered to have occurred and the contracted capacity shall stand reduced to the project capacity commissioned up to SCOD plus 6 (six) months. The PPA for balance capacity not commissioned shall be terminated.

The SPD acknowledges that the amount of Liquidated Damages fixed is genuine and reasonable pre-estimate of the damages that may be suffered by PSPCL, as specified under this Agreement.

4.1.10 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Guarantee shall be limited to **24 (Twenty four) months** from the effective date of PPA and no further extension, under any circumstances, shall be granted beyond 24 months.

4.2 Performance Guarantee

4.2.1 The Performance Guarantee (in the form of irrevocable unconditional Performance Bank Guarantee) having **validity of 24 months from the Effective Date** (claim period up to 25 months) and of Rs. 11.80 Lakhs / MW (Eleven Lakh Eighty Thousand/MW) furnished by SPD to PSPCL shall be for guaranteeing the commissioning/commercial operation of the project up to the Contracted Capacity within SCOD.

4.2.2 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 3.3, PSPCL shall be entitled to encash the Performance Bank Guarantee and appropriate the amount together with any amount deposited in terms of Article 3.1.1 towards the liquidated damages payable by SPD, without prejudice to the other rights of PSPCL under this Agreement.

4.2.3 PSPCL shall release the Performance Guarantee within 45 days upon successful commissioning of full contracted capacity after adjusting Penalty (if any) as per Article 4.1.9. The return / release of the Performance Bank Guarantee shall be without prejudice to other rights of PSPCL under this Agreement.

4.2.4 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.

4.3 Dispatch and Scheduling

4.3.1 The SPD shall be required to schedule its power as per the applicable Regulations/ Requirements/Guidelines of CERC/PSERC/SLDC/RLDC or any other competent agency and same being recognized by the SLDC or any other competent authority/agency as per applicable regulation/law/direction and maintain compliance to the Grid Code requirements and directions, as specified by concerned SLDC/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 to the account of the SPD and there will be no reimbursement by PSPCL. The SPD shall be required to maintain compliance to the applicable Grid Code requirements and directions, if any, as specified by SLDC /PSERC/CERC from time to time.

4.3.2 The SPD shall be responsible for directly coordinating and dealing with the concerned Load Dispatch Centre's, 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 PSPCL are the Grid connected entities.

4.4 Reactive Power Requirement

The SPD shall comply with the provisions in the CEA (Technical Standards for Connectivity to Grid) Amendment Regulations, 2019. SPD not complying with the provisions of CEA Regulations shall be liable to pay reactive power compensation, at the rate to be approved by the Appropriate Commission, if the situation warrants. There will be no reimbursement by PSPCL of any such charges.

4.5 Acceptance / Performance Test

Prior to synchronization of the Power Project, the SPD may be required to get the Project certified for the requisite acceptance / performance test as may be laid down by an agency, in consultation with PSPCL to carry out testing and certification for the solar power projects.

4.6 Quality of Service

The Tolerances & Electrical characteristics variations and Basic Insulation level will be as per relevant grid code and CEA standards. The Power Producer shall provide suitable protection devices, so that the Electric Generators could be isolated automatically when grid supply fails. Connectivity criteria like short circuit level (for switchgear), neutral Grounding, fault clearance time, current unbalance (including negative and zero sequence currents), limit of harmonics etc. shall be as per relevant Grid Code.

The SPD shall be responsible for the delivery of energy conforming to Performance Standards for Transmission and Bulk Supply as approved by Appropriate Commission. The quality of power and its parameters and waveform distortion shall be in accordance with the limits prescribed under prevailing and applicable standards/regulations as amended from time to time.

ARTICLE 5: TARIFF

5.1 PSPCL shall pay a fixed tariff of Rs. /kWh, as discovered under the Competitive Bidding (followed by e-reverse auction) and as agreed by the Parties, for the entire term of this agreement, from the Commercial Operation Date for the energy supplied at the Metering Point, subject to Article 3.1.2 (iii) and 4.1.8.

5.2 In cases of early part-commissioning of the project prior to SCOD, PSPCL shall reserve the right to purchase the generation at 75% (seventy-five per cent) of the PPA tariff till SCOD. However, in case the entire capacity is commissioned prior to SCOD, PSPCL may purchase the generation at PPA Tariff. SPD will not be entitled to sell energy generated prior to SCOD or excess energy during any Contract Year to any other entity without offering such quantum to PSPCL. PSPCL shall have the right to purchase such quantum of excess energy at the Tariff as per Article 3.1.2 (iii) and 4.1.8.

5.3 In case of delay in commissioning of the Project or part thereof beyond SCOD, the provisions as per Article 4.1.9 shall be applicable.

ARTICLE 6: BILLING AND PAYMENT

6.1 Billing Provision

- (i) PSPCL shall pay to the SPD, the monthly Tariff Payments, from the commencement of supply of power, on or before the Due Date, in accordance with Tariff as specified in Article 5. All Tariff Payments by PSPCL shall be in Indian Rupees and in accordance with the following provisions:
- (ii) The SPD shall issue a signed monthly bill for the previous month for the electricity supplied to PSPCL from the Solar PV Power Plant. For power plants outside the State of Punjab, the monthly bill shall be based on the energy as indicated in Regional Energy Account issued by NRPC and for power plants within the state of Punjab, the monthly bill shall be based on the Joint Meter Reading (JMR) certified by authorized representatives of PSPCL and SPD or the energy reflected in the Energy Accounts issued by SLDC. Any change in the methodology of energy accounting shall be done only as per the decisions taken in the appropriate forum and both the parties agree to abide by the methodology so finalized.
- (iii) The Monthly Bill/Supplementary Bill for the immediately preceding Month shall be issued 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 5th day of the next month to the succeeding Month.
- (iv) 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.
- (v) The SPD shall be required to make arrangements and payments for import of energy (if any) as per applicable regulations of the concerned State/Discom separately. In case of net import of energy during a month for Projects set up in Punjab, if any, under this agreement, SPD shall be required to make payment to PSPCL at the prevailing tariff for the particular category which is applicable to Solar Power Projects, as determined by PSERC from time to time. In case of net export of energy during a month, SPD shall be eligible for the receiving agreed tariff from PSPCL for such net delivered energy.

6.2 Payment

PSPCL shall pay the amount payable under the Monthly Bill/Supplementary Bill by the thirtieth day (the Due Date) from the date of presentation of bill to the designated office of PSPCL, to designated account of the SPD. 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.

- 6.2.1 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 PSPCL, 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 PSPCL shall be entitled to claim any set off or deduction under this Article,

after expiry of the said fifteen (15) Days period.

- 6.2.2 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 PSPCL to the SPD, and notify PSPCL of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. PSPCL shall also designate a bank account at[*Insert name of place*] ("PSPCL's Designated Account") for payments to be made by the SPD to PSPCL, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date.

6.3 Late Payment

In the event of delay in payment of a Monthly Bill by PSPCL beyond 45 days from the date of presentation of hard copy of Bill along with required supporting documents acceptable to PSPCL at PSPCL designated office, a Late Payment Surcharge shall be payable to the SPD at the rate of 1.25% per month simple interest or the rate as per Electricity (Late Payment Surcharge) Rules, 2021, whichever is lower, on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by the SPD through the Supplementary Bill or adjustments in subsequent Monthly Bill(s).

6.4 Rebate

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

- a. A rebate of 1.5% shall be payable to the PSPCL for the payments made within a period of five (5) days from the date of presentation of hard copy of Bill along with required supporting documents acceptable to PSPCL at PSPCL designated office.

In case of computation of '5 days', the number of days shall be counted consecutively without considering any holiday. However, in case the last day or 5th day is official holiday, the 5th day for the purpose of rebate shall be construed as the immediate succeeding working day.

- b. Any payments made beyond a period of five (5) days of the date of presentation of hard copy of Bill along with required supporting documents at PSPCL designated 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.

6.5 Payment Security

6.5.1 Revolving Letter of Credit (LC): PSPCL shall provide to the SPD, in respect of payment of its Monthly Bills, an unconditional, revolving and irrevocable Letter of Credit (LC), opened and maintained by PSPCL, which may be drawn upon by the SPD, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement.

6.5.2 The Letter of Credit shall have a term of twelve (12) months and shall be renewed every year. The amount of LC shall be equal to:

- i. the estimated average monthly billing for the first Contract Year, and
- ii. the average of the monthly tariff payments of the previous Contract Year for each subsequent Contract Year.

Provided that the SPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one

drawal in a month.

- 6.5.3** PSPCL shall cause the scheduled bank issuing the Letter of Credit to intimate the SPD, in writing regarding establishing of such Letter of Credit.
- 6.5.4** If at any time, such Letter of Credit amount falls short of the amount specified in Article 6.5.2 due to any reason whatsoever, PSPCL shall restore such shortfall within seven (7) days. PSPCL shall also ensure that the Letter of Credit shall be renewed prior to its expiry.
- 6.5.5** All the cost incurred by PSPCL for opening, maintenance and other cost related to establishment of Letter of Credit shall be borne by the PSPCL.
- 6.5.6** If, PSPCL fails to pay a Monthly Bill or part thereof within the Due Date, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from PSPCL an amount equal to such Monthly Bill or part thereof, 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 by PSPCL 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.
- 6.5.7 Payment Security Fund:** In addition to provisions of Letter of Credit, PSPCL shall provide Payment Security Fund, which shall be suitable to support payment of at least 3 (three) months' billing, of all the Projects tied up with such fund. It is hereby clarified that Payment Security Fund shall be drawn only after the SPD has been unable to recover its dues under the PPA by means of the Letter of Credit.

6.6 Annual Reconciliation:

The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to annual reconciliation at the end of each Contract Year within 30 days thereof to take into account the Energy Accounts, Tariff adjustment payments, Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

The Parties, therefore, agree that as soon as all such data in respect of Contract Year has been finally verified and adjusted, the SPD and PSPCL shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, SPD or PSPCL, as the case may be, shall raise a Supplementary Bill for the appropriate payment adjustments for the relevant contract year and shall make payment of such Supplementary Bill. Late Payment Surcharge/ interest equal to late payment surcharge 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 11.

6.7 Payment of Supplementary Bill

- a) Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of Adjustments required by the Energy Accounts (if applicable) or Change in Law as provided in Article 9, and such Supplementary Bill shall be paid by the other Party.
- b) PSPCL shall remit all amounts due under a Supplementary Bill raised by the SPD to the SPD's Designated Account by the Due Date. Similarly, the SPD shall pay all amounts due under a Supplementary Bill raised by PSPCL, if any, by the Due Date to the designated bank account of PSPCL.

- c) For such payments by PSPCL, Rebate as applicable to Monthly Bills pursuant to Article 6.4 shall equally apply, except in the case of payment of Late Payment Surcharges.
- d) 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 6.3.

6.8 Disputed Bill:

- 1) If PSPCL does not dispute a Monthly Bill raised by the other Party within thirty (30) Days of receipt, such Bill shall be taken as conclusive.
- 2) If PSPCL disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, 75% of the total bill amount shall be paid (subject to adjustment of applicable rebate for the said 75% payment) and a Written Objection (the "Bill Dispute Notice") shall be issued to invoicing party/SPD within 30 days of presentation of the bill, giving following particulars:
 - a) Item disputed, with full details and reasons of dispute;
 - b) Amount disputed against each item.
- 3) If the SPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.8 (2), it shall, within 15 (fifteen) days of receiving such notice, by a written Disagreement Notice, present any information, estimate of the correct amount and reasons or evidence as may reasonably be required for establishing its counter claim or its disagreement on the findings of PSPCL.
- 4) If no response is received within 15 (fifteen) days as mentioned in Article 6.8 (3) above, it shall be concluded that the SPD agrees to the claim raised in the Written Objection as per Article 6.8 (2) and PSPCL shall make appropriate adjustment in the next Monthly Bill. In such a case if any excess payment has been made to the SPD by PSPCL, such 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 PSPCL to the SPD and up to and including the date on which such payment has been received as refund.
- 5) Upon receipt of the Disagreement Notice as per Article 6.8 (3) by PSPCL, the authorized representative of PSPCL and the SPD shall meet and make best endeavours to amicably resolve such dispute within thirty (30) days of receipt of the Disagreement Notice.
- 6) If the Parties do not amicably resolve the Dispute within thirty (30) days of receipt of Disagreement Notice, either party shall have the right to approach PSERC to effect a higher or lesser payment on the disputed amount.
- 7) If the SPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.8 (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 PSPCL to the SPD and up to and including the date on which such payment has been received as refund.
- 8) Adjustments, if any, on account of any additional claims or errors in the billing for a month shall be paid through Supplementary bills or shall be paid/adjusted with the next month's bill.
- 9) Notwithstanding the above in the event, if PSPCL is of the view that the amount claimed by SPD is excessively high and the payment of 75% of the disputed bill will be onerous, PSPCL

shall be entitled to raise immediate dispute and take the action for adjudication by PSERC 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 PSERC.

ARTICLE 7: METERING AND COMMUNICATION

7.1 Metering

- 7.1.1** Metering shall be as per CEA (Installation and Operation of Meters, Regulations, 2006) and amendments thereon / IEGC as applicable. The SPD shall procure and install Main meter, Check meter and Standby meter at the interconnection point based on the above regulations/ IEGC/applicable regulations of concerned state. All meters (main, check & standby) and the associated equipment (CT & PT) shall be of 0.2 S class accuracy, or as amended from time to time, having import-export registering facility. The Metering shall be on ABT platform. The SPD may install any further meters for its own comfort at its own cost.
- 7.1.2** For installation of Meters, Meter testing, Meter calibration, Meter reading and recording and Meter sealing and all matters incidental thereto, the SPD 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.
- 7.1.3** The SPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at SPD's side of Delivery Point. SPD shall provide Data Acquisition System facility for transfer of information/telemetry of data to Punjab State Load Dispatch Centre (SLDC) and Regional Load Dispatch Centre concerned as per section 4.9 of Punjab State Electricity Grid Code and Regulation 5.2(u) of IEGC. Data shall be downloaded from the meters at regular intervals as decided by State Load Dispatch Centre (SLDC) for preparation of the Energy Account.
- 7.1.4** In case of pooling of multiple Projects, power from multiple Projects can be pooled at a Pooling Substation prior to the Delivery point and the combined power can be fed at Delivery point through a common transmission line from the Pooling Substation. In such cases, ABT compliant sub-meters (two meters, each with separate CT, PT) are also to be set up at pooling substation for individual projects in addition to the meters at Delivery Point as described in clause 7.1.1.
- 7.1.5** Regular cross checking and analysis of meter readings and meter failure or discrepancies shall be reckoned as per CEA (Installation and Operation of Meters) Regulations, 2006 as amended from time to time. If the Main Meter or Check Meter is found to be not working at the time of meter readings or at any other time, SPD shall inform the same to concerned RLDC and PSPCL.
- 7.1.6** In case both Main meter and Check meter fail, at least one of the meters shall be immediately replaced by a correct meter by the SPD at its own cost. In case of failure of main meter, readings of check meter shall be used for accounting and billing purposes.
- 7.1.7** In case of failure of meters, energy accounting for the period shall be as per procedure stipulated in CEA (Installation and Operation of Meters) agreed procedure. In case of dispute, the decision of PSERC would be final and binding. If meter(s) fail to record or if any of the PT fuses is blown out, energy shall be computed based on standby meters. In case of dispute, resolution shall be as per provision of Article 11.
- 7.1.8** Periodic testing of Main, Check and Standby Meters of Solar Projects within Punjab shall be carried out in the presence of representatives of SPD and PSPCL as per procedure laid out in

CEA (Installation and Operation of Meters) Regulations, 2006 or its amendments. For any testing / replacement, notice of seven days will be given.

- 7.1.9** The Main and Check Meter of Solar Projects within Punjab shall be checked on a quarterly basis by comparison of the readings between these two meters and in case the readings of the two Meters differ by more than 0.4%, both the Meters will be checked separately with respect to another reference meter and defective meter shall be replaced. The energy metered during the period of defect would be revised by applying a correction factor on the energy metered by the defective Meter.
- 7.1.10** All Meters shall be tested for accuracy bi-annually for Solar Projects within Punjab at the expense of the SPD and in the presence of the representative of PSPCL and shall be treated as working satisfactorily so long as the errors are within the limits prescribed for meters of the relevant class.

7.2 Reporting of Metered Data and Parameters

- 7.2.1** The SPD will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI and DNI), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power generated from the project.
- 7.2.2** Online arrangement shall be made by the solar power developer at its own cost for transmission/submission of above data regularly for the entire period of this Power Purchase Agreement to the SLDC 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 PSPCL/SLDC for entire period of PPA.

ARTICLE 8: FORCE MAJEURE

8.1 Force Majeure Events:

- 8.1.1 A 'Force Majeure' means any event or circumstance or combination of events and circumstances or the consequence thereof as 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 in performing its obligations:

Categorization of Force Majeure Events:

A. Natural Force Majeure Event

1. 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 it is declared/notified by the competent state /central authority/agency (as applicable), or verified to the satisfaction of Procurer;
2. Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party;

3. The discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land; or
4. Any event or circumstances of a nature analogous to any of the foregoing.

B. Non-Natural Force Majeure Event

1. 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;
2. Nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its contractors;
3. Nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the SPD, as a result of which the SPD or its shareholders are deprived (wholly or partly) of their rights or entitlements under this Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the SPD or the SPD related parties;
4. Action of a Government Authority having Material Adverse Effect including but not limited to change in law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 9 of this Agreement; any unlawful or unauthorised or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the SPD or any of the clearance, licence, authorization to be obtained by the Contractors to perform their respective obligations under the PPA and/or the Project Documents; provided that such delay, modification, denial, refusal or revocation did not result from the SPD's or any Contractors inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, licence, authorization, as the case may be. Provided further that an appropriate court of law declares the delay, modification, denial, refusal or revocation to be unlawful, unreasonable or discriminatory and strikes the same down;

8.1.2 Force Majeure Exclusions: Force Majeure shall not include:

- A. Any event or circumstance which is within the reasonable control of the Parties.
- B. The following conditions, except to the extent that they are consequences of an event of Force Majeure:
 1. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
 2. Delay in the performance of any contractor, sub-contractor or their agents;
 3. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
 4. Strikes or labour unrest/disturbances at the facilities of the Affected Party;
 5. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
 6. 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.

8.2 Notification of Force Majeure Event

- 8.2.1 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.
- 8.2.2 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 weekly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.
- 8.2.3 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under the PPA, as soon as practicable after becoming aware of each of these cessations.

8.3 Performance Excused

- 8.3.1 The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the PPA as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) days from the date of issuance of the Force Majeure Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.
- 8.3.2 For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the SPD shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the PPA period, as the case may be.
- 8.3.3 Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.
- 8.3.4 Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

8.4 No Liability for Losses

Save as otherwise provided in this Agreement, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any Loss relating to or arising out of the occurrence or existence of any Force Majeure Event.

8.5 Resumption of Performance

During the period that a Force Majeure Event is subsisting, the Affected Party shall, in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under the PPA. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

8.6 Termination due to Force Majeure

8.6.1 If the Force Majeure Event or its effects continue to be present beyond a period of 180 days, either Party shall have the right to cause termination of the Agreement by issuance of Termination Notice in accordance with Article 10.5 of this Agreement.

ARTICLE 9: CHANGE IN LAW

9.1 Definition

9.1.1 "Change in Law" shall refer to the occurrence of any of the following events after the last date of bid submission.

- (1) The enactment, coming into effect, adoption, promulgation, amendment, modification, notification or repeal (without re-enactment or consolidation) in India, of any Indian Law, including rules and regulations framed pursuant to such Law;
- (2) A change in the interpretation or application of any Indian Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- (3) The imposition of a requirement for obtaining a new Consent, Permit or License which was not required earlier;
- (4) A change in prevailing terms and conditions prescribed for obtaining any Consents, Permit or License or the inclusion of any new terms and conditions for obtaining such Consents, Permit or License; except due to any default of the SPD;
- (5) Any change in tax, duties and cess or introduction of any tax, duties and cess including any change in the rates of any taxes, duties and cess;

The sub-clauses (1) to (5) made applicable for setting up of the Power Project or supply of power from the Power Project by the SPD as per the terms of this Agreement, which have a direct effect on the Project or supply of power but shall not include (i) any change in taxes on corporate income or any change in any withholding tax on income or dividends distributed to the shareholders of the SPD, or (ii) any change in taxes, cess or levies etc. imposed on SPD's net revenue from the business of sale of power; and (iii) any change on account of regulatory measures by the PSERC.

Notwithstanding the above, the Parties have agreed that the implications of the Office Memorandum No. No. 283/3/2018-GRID SOLAR dated 09.03.2021 issued by Ministry of New and Renewable Energy (MNRE), on the imposition of Basic Customs Duty (BCD) on Solar PV Cells and Modules/Panels and any further notifications that may be issued by Government of India providing for BCD to be at 40% (Solar Module) and 25% (Solar Cell)

with effect 01.04.2022 shall not be construed as Change in Law for the purpose of this Agreement. The SPD alongwith other participating Bidders were duly informed to take note of the above trajectory of change in BCD in the submission of the Bid.

- 9.1.2 In the event of occurrence of any of the events under Article 9.1.1, which results in any increase/decrease in the Project Cost (i.e. cost incurred by the SPD towards supply and services only for the Project concerned, upto Scheduled Commissioning Date), the SPD/PSPCL shall be entitled for compensation from the other party, as the case may be, subject to the condition that such Change in Law is decided by the PSERC. The quantum and mechanism of compensation payment on account of such Change in Law shall be determined and shall be effective from such date as may be decided by the PSERC.

9.2 Relief for Change in Law

- 9.2.1 The SPD shall be required to approach the PSERC for seeking approval of Change in Law. The SPD shall also be obliged to approach the PSERC if the change in law is beneficial. However, in case SPD does not approach PSERC for a beneficial Change in Law, PSPCL may also approach the PSERC.
- 9.2.2 The decision of the PSERC 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 SPD and PSPCL.
- 9.2.3 In case of Change in Law as approved by PSERC, the SPD/ PSPCL (as the case may be) shall be entitled for relief as follows:

Every net increase/decrease of Rs. 1 lakh per MW in the Project Cost (i.e cost incurred by the SPD for the supply and services in the Project concerned, upto Schedule Commissioning Date or extended Schedule Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges, as the case may be), shall be liable for corresponding increase/decrease of an amount equal to Rs 0.005 /kWh.

Any such change, shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.

For e.g. in case the change in tariff payable is calculated as Rs. 0.14678/kWh, it shall be modified as Rs. 0.146/kWh.

- 9.2.4 In case Change in Law results in delay in commissioning or supply of power, where cause and effect between these two can be clearly established, PSPCL may provide suitable time-extension in Scheduled Commissioning Date.
- 9.2.5 In the event of any decrease in the project cost by the SPD or any income to the SPD on account of any of the events as indicated above, SPD shall pass on the benefit of such reduction at a rate as provided in Article 9.2.3 to PSPCL. In the event of the SPD failing to comply with the above requirement, PSPCL shall make such deductions in the monthly tariff payments on immediate basis. Further, at the time of raising of 1st Monthly Tariff Payment Bill, SPD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 9.

9.3 Notification of Change in Law

- 9.3.1 If the SPD is affected by Change in Law in accordance with Article 9, it shall give notice to PSPCL of such Change in Law as soon as reasonably practicable (but no later than 60 days from the date of occurrence of such Change in Law).
- 9.3.2 Any notice service pursuant to this Article 9.3.1, shall provide, amongst other things, precise details of the Change in Law and its effect on the Project Cost, supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.

ARTICLE 10: EVENTS OF DEFAULT AND TERMINATION

10.1 The events of default of the provisions of or performance of the obligations under this Power Purchase Agreement by the respective parties and the consequences thereof, including termination as well as Termination of this Agreement for Force Majeure events are set out in Article 10.2 to 10.5.

10.2 Events of Default

10.2.1 SPD's Default

The occurrence and/or continuation of any of the following events, unless any such event occurs as a result of Force Majeure Event, shall constitute a SPD's Event of Default:

- (i) The failure to commission the Project within stipulated time period; or the failure to commence supply of power to PSPCL up to the Contracted Capacity by the end of period specified in Article 4 or
- (ii) The failure to supply power in terms of PPA; or the failure to continue supply of Contracted Capacity to PSPCL after Commercial Operation Date throughout the term of this Agreement, or
- (iii) 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
- (iv) If
 - a) The SPD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
 - b) Any winding up or bankruptcy or insolvency order is passed against the SPD, or
 - c) The SPD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the SPD will not be a SPD Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the SPD and expressly assumes all obligations of the SPD under this Agreement and is in a position to perform them; or

- (v) The SPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from PSPCL in this regard; or
- (vi) Change in controlling shareholding before the specified time frame as mentioned in Article 3.1.1 (xi) of this Agreement; or
- (vii) If the SPD conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement, in any manner whatsoever.
- (viii) The SPD is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be, as per applicable Regulations/Laws/Acts;
- (ix) The SPD has failed to make any payment to the PSPCL within the period specified in this Agreement;
- (x) The SPD creates any encumbrance in breach of this Agreement;
- (xi) The SPD schedules electricity, produced from Contracted Capacity, for sale to other buyers in breach of this Agreement and fails to pay Damages equal to the entire sale revenue accrued from Buyers.
- (xii) Occurrence of any other event which is specified in this Agreement to be a material breach/default of the SPD.
- (xiii) Except where due to any PSPCL'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 PSPCL.

10.2.2 PSPCL's Default:

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 PSPCL:

- (i) PSPCL fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 6.8, for a period of ninety (90) days after the Due Date and the SPD is unable to recover the amount outstanding to the SPD through the Letter of Credit, or
- (ii) PSPCL 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, PSPCL is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by PSPCL within thirty (30) days of receipt of notice in this regard from the SPD to PSPCL; or
- (iv) if

- a. PSPCL 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 PSPCL, or
- c. PSPCL 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 PSPCL Event of Default, where such dissolution or liquidation of PSPCL 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 PSPCL and expressly assumes all obligations of PSPCL and is in a position to perform them; or;

- (v) Occurrence of any other event which is specified in this Agreement to be a material breach or default of PSPCL.

10.3 Procedure for cases of SPD Event of Default:

- 10.3.1 Upon the occurrence and continuation of any SPD Event of Default under Article 10.2.1, PSPCL 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 or stating SPD's liability to pay damages (PSPCL Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 10.3.2 Following the issue of PSPCL 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 have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 10.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 10.3.4 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, PSPCL shall have the right (but not an obligation) to terminate this Agreement by giving a written Termination Notice to the SPD and require the defaulting SPD to pay damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its Contracted Capacity. The PSPCL shall have the right to recover the said damages by way of forfeiture of Performance Guarantee, if any, without prejudice to resorting to any other legal course or remedy.
- 10.3.5 Subject to the terms of this Agreement, upon occurrence of a SPD Event of Default under this Agreement, the lenders in concurrence with the PSPCL, under Financing Agreements, can 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 of 60 days after the Consultation Period, PSPCL

may terminate the PPA with a right to liquidated damages as stipulated in Clause 10.3.4. PSPCL may also, at its discretion (but with no obligation) acquire the Project assets for an amount equivalent to 90% of the Debt Due. 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 PSPCL and accepts the terms and conditions of this Agreement.

- 10.3.6 The lenders, in concurrence with PSPCL, may seek to exercise right of substitution under Article 10.3.5 by an amendment or novation of the PPA in favour of the selectee. The SPD shall cooperate with the PSPCL 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) plus GST shall be deposited by the SPD to PSPCL.
- 10.3.7 Upon being in default, the SPD shall be liable to pay PSPCL, damages, as provided as per clause 4.1.9 of the PPA for failure to commission within stipulated time and Clause 3.1.2 (ii) for failure to supply power in terms of the PPA. For other cases, PSPCL shall be paid, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its Contracted Capacity. The PSPCL shall have the right to recover the said damages by way of forfeiture of performance guarantee, if any, without prejudice to resorting to any other legal course or remedy.

10.4 Procedure for cases of PSPCL Event of Default:

- 10.4.1 Upon the occurrence and continuation of any PSPCL Event of Default specified in Article 10.2.2, the SPD shall have the right to deliver to PSPCL, a SPD “Preliminary Default Notice”, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 10.4.2 Following the issue of a SPD Preliminary Default Notice, the Consultation Period of ninety (90) 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.
- 10.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 10.4.4 After a period of ninety (90) days following the expiry of the Consultation Period and unless the Parties shall have otherwise mutually agreed to the contrary or PSPCL Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, PSPCL shall, subject to the prior consent of the SPD, novate its part of the PPA to any third party, including but not limited to its Affiliates within the stipulated period of 90 days. In the event the aforesaid novation is not acceptable to the SPD, or if no offer of novation is made by PSPCL within the stipulated period, then the SPD may terminate the PPA and the PSPCL at its discretion may either:
- (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 110% (one hundred and ten percent) of the Adjusted Equity less Insurance cover, if any 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.

10.4.5 Provided further that at the end of three (3) months period from the period mentioned in this Article 10.4.4, this Agreement may be terminated by the SPD.

10.4.6 In the event of termination of PPA due to Procurer Event of Default, any damages or charges payable to the STU/CTU, for the connectivity of the plant, shall be borne by PSPCL

10.5 Termination:

10.5.1 Termination due to Force Majeure Event:

- a) If, prior to the completion of the 180 (one hundred and eighty) day period (or any extended period) for a Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, both the Parties are of the reasonable view that a Force Majeure Event is likely to continue beyond such 180 (one hundred and eighty) Day period or any extended period agreed in pursuance of Article 8.3 (Performance Excused); or that it is uneconomical or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the PPA, and the termination shall take effect from the date on which such decision is taken.
- b) Without prejudice to the provisions of Article 10.5.1(a) above, either party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the PPA in its sole discretion by issuing a notice to that effect.
- c) On termination of the PPA pursuant to Article 10.5.1(b):
 - (i) No Termination Compensation shall be payable to the SPD, except that the termination shall not affect the accrued rights and liabilities under this Agreement.
 - (ii) The SPD or PSPCL, as the case may be, shall be eligible for undisputed payments under outstanding Bill(s), before the occurrence of Force Majeure Event.

ARTICLE 11: GOVERNING LAW AND DISPUTE RESOLUTION

11.1 Governing Law

11.1.1 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 Punjab.

11.2 Amicable Settlement and Dispute Resolution

11.2.1 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 11.2.1(i) if the other Party does not furnish any counter claim or defense under Article 11.2.1(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, the Dispute shall be referred for dispute resolution in accordance with Article 11.3.

11.3 Dispute Resolution

All disputes relating to any matter relating to this Agreement shall be adjudicated by the PSERC or shall be referred to PSERC under section 86 (1) of the Electricity Act, 2003. The Parties agree that in terms of section 64(5), the jurisdiction in regard to all matters under this Agreement shall be of PSERC, notwithstanding the PPA coming within the scope of Section 79 of the Act in any manner. Appeal against the decisions of the PSERC shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

11.4 Parties to Perform Obligations

Notwithstanding the existence of any Dispute and difference referred to the PSERC or the Arbitration Tribunal as provided in Article 11.3 and save as the PSERC or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

ARTICLE 12: INDEMNITY

12.1 Indemnity

12.1.1 The SPD shall indemnify, defend and hold PSPCL harmless against:

- a) any and all third party claims against PSPCL 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 ('Indemnifiable Losses') actually suffered or incurred by PSPCL from third party claims arising by reason of a breach by the SPD of any of its obligations under this Agreement, or any of the representations or warranties of SPD, if any made under this Agreement, being found to be inaccurate or untrue.

12.1.2 PSPCL shall 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 PSPCL 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 PSPCL of any of its obligations under this

Agreement or any of the representations or warranties of PSPCL, if any made under this Agreement, being found to be inaccurate or untrue.

Provided that this Article 12 shall not apply to such breaches by PSPCL/SPD, for which specific remedies have been provided for under this Agreement.

12.2 Procedure for claiming Indemnity

12.2.1 Third party claims

- a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 12.1.1(a) or 12.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 12.1.1(a) or 12.1.2(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 11.3; 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 PSERC for which it is entitled to be Indemnified under Article 12.1.1(a) or 12.1.2(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.
- c) 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.

12.3 Indemnifiable Losses

Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 12.1.1(b) or 12.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non-payment of such losses after a valid notice under this Article 12, such event shall constitute a payment default under Article 10.

12.4 Limitation on Liability

- a) Except as expressly provided in this Agreement, neither the SPD nor PSPCL nor its/ their respective officers, directors, agents, employees or Affiliates (or their officers, directors,

agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of PSPCL, the SPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

- b) PSPCL 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 PSPCL, or any Affiliate of PSPCL or any of its officers, directors or shareholders for such claims excluded under this Article.

12.5 Duty to Mitigate:

The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 12.

ARTICLE 13: INSURANCES

13.1 Insurance

13.1.1 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 and under applicable laws.

13.2 Application of Insurance Proceeds

13.2.1 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.

13.2.2 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, PSPCL shall have claim on such proceeds of such Insurance limited to outstanding dues of PSPCL.

13.3 Effect on liability of PSPCL

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 PSPCL. 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.

ARTICLE 14: ASSIGNMENTS AND CHARGES

14.1 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. In no case, such assignment shall be permissible prior to the declaration of COD. Such assignment shall be agreed to by PSPCL subject to the compliance of provisions contained in this Agreement. The enforcement of the rights and obligation between the SPD and Discom(s) provided in this Agreement shall not be treated as an assignment but an enforcement of the terms agreed under this Agreement.

- (a) Provided that, PSPCL 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 PSPCL.
- (b) Provided further that, such consent shall not be withheld by the SPD if PSPCL seeks to transfer to any affiliate all of its rights and obligations under this Agreement.
- (c) 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.
- (d) 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 PSPCL. However, the new entity should be of the same financial strength as the Successful Bidder.

14.2 Permitted charges

- 14.2.1 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 14.1.

ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 Amendment

This Agreement may only be amended or supplemented by a written agreement between the Parties on mutually agreed terms subject to approval of PSERC.

15.2 Third Party Beneficiaries

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

15.3 Waiver

- 15.3.1 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:
- 15.3.2 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.

15.4 Confidentiality

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.

15.5 Severability and implications of other documents

15.5.1 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.

15.5.2 The RfS, its Annexures, Clarifications, Addenda, Corrigenda etc, LOI and all other correspondences relevant to finalization of the LOI/PPA etc. executed by the PSPCL and the SPD before or simultaneously or after with the signing of this Agreement shall also be read as a part of this Agreement provided that in case of any contradictions between any of the above documents the order of priority as detailed below will operate:

1. PPA - the top priority
2. Letter of Intent (LOI)
3. Any other correspondences relevant to finalization of LOI/PPA
4. Corrigenda
5. Addenda
6. Clarifications
7. RfS.

15.6 Notices

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

15.6.2 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:

Name: _____

Designation: _____

Address: _____

Ph. Nos.: _____ Fax No.: _____

E-mail: _____

15.6.3 If to PSPCL, 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:

Before commissioning of the Project:

Chief Engineer/ Thermal Design,

O/o. SE/ Investment Promotion Cell,

T-8, Thermal Design Complex, PSPCL, Patiala – 147001.

Ph: 0175-2921547; E-mail : se.ipc.ppr@gmail.com

or

Any other office that is assigned the similar duties by PSPCL subsequently.

After commissioning of the Project

Chief Engineer/ Power Purchase & Regulations,
O/o. SE/Inter State Billing, T-1, Thermal Design Complex,
PSPCL, Shakti Vihar, Patiala.

Phone: 0175-2300534, Email: seisb2pspcl@gmail.com

or

Any other office that is assigned the similar duties by PSPCL subsequently.

15.6.4 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.

15.6.5 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.

15.7 Language

15.7.1 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.

15.7.2 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.

15.8 Restriction of Shareholders/ Owners' Liability

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.

15.9 Taxes and duties

15.9.1 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.

15.9.2 PSPCL shall be indemnified and held harmless by the SPD against any claims that may be made against PSPCL in relation to the matters set out in Article 15.9.1.

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

15.10 Independent Entity

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

15.10.2 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 PSPCL 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 PSPCL.

15.11 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.

15.12 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.

15.13 Non Consequential or Indirect Losses

The liability of the PSPCL and the SPD shall be limited to that explicitly provided in this Agreement. Provided that notwithstanding anything contained in this Agreement, under no event shall the SPD or PSPCL, claim from each other any indirect or consequential losses or damages.

15.14 Further Acts and Assurances:

Each of the Parties after convincing itself agrees to execute and deliver all such further agreements, documents and instruments, and to do and perform all such further acts and things, as shall be necessary or convenient to carry out the provisions of this Agreement and to consummate the transactions contemplated hereby.

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
[Insert the Name of the SPD]

Name, Designation and Address

(Signature with Seal)

Witness:

1.

For and on behalf of
[PSPCL]

Name, Designation and Address

(Signature with Seal)

Witness:

1.

SCHEDULE 1: APPROVALS

1. Consent from the PSTCL/CTU/Interstate Transmission Licensee, as applicable, for the evacuation scheme for evacuation of the power generated by the ___ MW Solar Photovoltaic Grid Interactive Power Projects.
2. Approval of the concerned Electrical Inspectorate for commissioning of the transmission line and the ___ MW solar project installed at the Project Site.
3. Certificate of Commissioning of the Solar Photovoltaic Grid Interactive Power Project at the Project Site.
4. Permission from all other statutory and non-statutory bodies required for the Project
5. Clearance from Department of Forest, Ecology and Environment, if required
6. Certificate by the concerned and competent revenue / registration authority for acquisition / ownership / right to use / vesting of land in the name of Solar Project Developer.
7. Approval for Water from the concerned authority (if applicable) required for the Project.

SCHEDULE 2: PROJECT LOCATION DETAILS

CAPACITY (MW)	LOCATION DETAILS	CUF %	SUBSTATION

Note:

- (i) The declared location/sub-station details at the time of signing of PPA shall be allowed to change up to financial closure.
- (ii) The SPD shall be solely responsible for getting the connectivity of their project as well as Long Term Access on or before SCOD.