

**POWER PURCHASE AGREEMENT FOR**

PROCUREMENT OF ..... MW SOLAR POWER

Between

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

And

**Prayagraj Power Generation Company Limited**

..... **[Insert month and year]**

This Power Purchase Agreement is made on the ..... [Insert date] day of.....[Insert month] of ..... [Insert year] at ..... [Insert place]

Between

..... [Insert name of the Solar Power Developer], a Company incorporated under the Companies Act 1956 or Companies Act 2013, having its registered office at..... [Insert address of the registered office of Solar Power Developer] (hereinafter referred to as “**Solar Power Developer or SPD**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **First Part;**

And

**PPGCL**, a company incorporated under the Companies Act 1956, having its registered office at 12 & 13, Shatabdi Bhavan, Sector-4 Gautam Buddha Nagar,(U.P.), 201301 (hereinafter referred to as “**PPGCL**” or “**Procurer**” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the **Second Part;**

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

WHEREAS:

- A. Ministry of Power, Government of India vide its Gazette Notification dated 27.08.2022 has notified the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects for utilization under scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power.
- B. PPGCL has appointed REC Power Development and Consultancy Limited (RECPDCL) as Bid Process Coordinator (BPC) for selection of solar power developers for setting up of 290 MW connected Solar PV Power projects in India under tariff-based competitive bidding with additional green shoe option of 290 MW under scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power.
- C. RECPDCL had initiated a Tariff Based Competitive Bid Process for procurement of 290 MW of the power generated from the Grid connected Solar Power Project with additional green shoe option of 290 MW on the terms and conditions contained in the Request for Selection (herein after referred to as ‘RfS’ issued by RECPDCL vide RfS No..... dated.....
- D. RECPDCL has issued the letter of award No..... dated..... on behalf of PPGCL in favour of the [Insert name of the Bidding Company] for development and establishment of the .... MW Solar Power Project as per the terms and conditions contained in the RfS and Power Purchase Agreement (PPA) circulated at the time of the bidding and other bidding documents as well as the conditions contained in the letter of

award.

- E. **[Insert Name of the Bidding Company/ Consortium]** has been selected in the competitive bidding process {in case Bidding Company is executing the Project through SPV}, has constituted a Special Purpose Vehicle ..... **[Insert Name of the SPV]** (hereinafter referred to as 'SPD'), for development, generation and supply of electricity from the .....MW Solar Power Project to be established by SPD anywhere in India and for supply of such electricity to PPGCL.
- F. PPGCL has agreed to purchase such Solar Power from the SPD for replacement of thermal energy under Ministry of Power (MoP), Govt. of India scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power. The solar power shall be used for replacement of thermal energy of Thermal power station whenever it is feasible and, in the circumstances, whenever it is not feasible to replace under flexibility, such solar power shall be sold by PPGCL to third party/power exchange as per the provisions of the scheme.
- G. In terms of the RfS and the Bidding Documents, the SPD has furnished the Performance Bank Guarantee (PBG)/ Payment on Order Instrument (POI) in the sum of Rs.....in favour of PPGCL as per the format provided as a part of the Bidding Documents and a copy of the Bank Guarantee/ Payment on Order Instrument is also attached along with this Agreement.
- H. The SPD has fulfilled the terms of the bidding and the terms of the Letter of Award for signing this Power Purchase Agreement as a definitive agreement for establishing the Solar Power Project of .....MW for generation and sale of electricity by the SPD to PPGCL;
- I. The parties have agreed to execute this Power Purchase Agreement in terms of the provisions of the RfS, the bidding documents and the Letter of Award in regard to the terms and conditions for establishment of the Solar Power Project and for generation and supply of electricity by the SPD to PPGCL.
- J. The solar power shall be used for replacement of thermal energy of Prayagraj Thermal Power Station Bara, Prayagraj (U.P.).

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

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

#### *1.1 Definitions*

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

"Act" or "Electricity Act, 2003"	shall mean the Electricity Act, 2003 and shall include any modifications, amendments and substitution thereof from time to time;
"Adjusted Equity"	<p>shall mean 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 <b>Wholesale Price Index (WPI)</b>, 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;</p> <ul style="list-style-type: none"><li>i. On or before <b>Commercial Operation Date (COD)</b>, 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;</li><li>ii. An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "Base Adjusted Equity");</li><li>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 a 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;</li></ul> <p>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.</p>
"Agreement" or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	Unless otherwise stated, Appropriate Commission shall mean Central Electricity Regulatory Commission or Uttar Pradesh

	Electricity Regulatory Commission (UPERC) as the case may be
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to SPD and PPGCL, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Gautam Budh Nagar (UP);
"Capacity Utilization Factor" or "CUF"	shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time; However, for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity;  In any Contract Year, if 'X' MWh of energy has been metered out at the Metering Point for 'Y' MW Project Capacity, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) * 100\%$ ;
"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
"CTU" or "Central Transmission Utility"	shall mean the government company notified by the Central Government under Sub-Section (1) of Section 38 of the Electricity Act, 2003.
"Change in Law"	shall have the meaning ascribed thereto in Article 12 of this Agreement;
"Commissioning"	The Project will be considered as commissioned if all equipments as per rated Project Capacity have been installed and energy has flown into grid, in line with the Commissioning procedures defined in the PPA.
"Commercial Operation Date (COD)"	shall mean the date on which the commissioning certificate is issued upon successful commissioning (as per provisions of this Agreement) 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 ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of an SPD Preliminary Default Notice or PPGCL Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

<p>“Contract Year”</p>	<p>shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that:</p> <p>(i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and</p> <p>(ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement</p>
<p>“Contracted Capacity”</p>	<p>shall mean ..... [Insert the capacity] MW, which is the AC capacity contracted with PPGCL for supply by the SPD to PPGCL at the Delivery Point from the Solar Power Project. It shall be equal to the Project Capacity as defined.</p>
<p>“Day”</p>	<p>shall mean a day, if not a Business Day, the immediately succeeding Business Day.</p>
<p>“Debt Due”</p>	<p>shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:</p> <p>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;</p> <p>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.</p> <p>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.</p> <p>Provided further that the Debt Due, on or after COD, shall in no case exceed 80% (eighty percent) of the Total Project Cost.</p>

<b>“Delivery Point/Metering Point”</b>	shall mean LV side of State Transmission Utility of Uttar Pradesh where the power from the selected project will be measured and accounted for.	
	For projects located outside Uttar Pradesh (whether connected to CTU or to STU of their home States)	Delivery Point/Metering Point shall be Uttar Pradesh Periphery i.e., the point at which the CTU network is connected to the Intra-State Transmission network of Uttar Pradesh. Accordingly, all charges & losses, including the STU transmission charges & losses of the SPD’s home State, usage of ISTS systems including connectivity charges/ GNA Access Charges towards additional GNA or any other charges incidental to transmission of such power till Delivery Point as may be applicable from time to time, POC, scheduling / SLDC/ RLDC charges etc. as applicable shall be borne by the Bidder/ Solar Power Developer.
	For projects located in Uttar Pradesh and connected to Uttar Pradesh -STU	Delivery point/ Metering Point shall be where Interconnection point of SPD is connected to the low voltage bus bar
	For projects located inside Uttar Pradesh, but connected to CTU	Delivery Point/ Metering Point shall be Uttar Pradesh Periphery i.e., the point at which the CTU network is connected to the Intra-State Transmission network of Uttar Pradesh. Accordingly, all charges & losses, , usage of ISTS systems including connectivity charges/ GNA Access Charges towards additional GNA or any other charges incidental to transmission of such power till Delivery Point as may be applicable from time to time, POC, scheduling/ SLDC/ RLDC charges etc. as applicable shall be borne by the Bidder/ Solar Power Developer.
<b>“Dispute”</b>	shall mean any dispute or difference of any kind between PPGCL and the SPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;	
<b>“Due Date”</b>	shall mean the forty-fifth (45 <sup>th</sup> ) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in soft copy in designated e-mail account of PPGCL or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the PPGCL.	

“Effective Date”	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
“Electricity Laws”	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
“Energy Accounts”	shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof or where such regional energy accounts/ state energy accounts are not issued, Joint Meter Reading (JMR) will be considered; PPGCL reserves the right to choose from any of the above, i.e. JMR/SEA/REA.
“Event of Default”	shall mean the events as defined in Article 13 of this Agreement;
“Expiry Date”	Shall mean the date occurring as on twenty-five (25) years from the Scheduled Commissioning Date subject to that the supply of power shall be limited for a period of 25 years from the Scheduled Commissioning Date unless extended by the Parties as per this Agreement;
“Financial Closure”	shall mean compliance with the requirements under Article 3.1 of this Agreement;
“Financing Agreements”	shall mean the agreements pursuant to which the SPD has sought financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of PPGCL;
“Force Majeure” or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 11 of this Agreement;
“Guidelines” or “Scheme”	shall mean the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects under the scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage power” issued by the Ministry of Power vide Gazette Notification dated 27.08.2022, including subsequent amendments and clarifications, issued until last date of bid submission as referred in RfS.
“Grid Code” / “IEGC” or “State Grid Code”	shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
ISTS	shall mean the Inter-State Transmission System;

“Indian Governmental Instrumentality”	shall mean the Government of India, Government of any State in India and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any state Government(s) or both, any political sub-division of any of them; including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
“Insurances”	shall mean the insurance cover to be obtained and maintained by the SPD in accordance with Article 8 of this Agreement;
“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 either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
“Joint Control”	shall mean a situation where none of the promoter shareholders has at least 51 % shareholding in the paid-up share capital and voting rights in the SPD, and the control is exercised jointly;
“Late Payment Surcharge”	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
“Law”	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
“Letter of Credit” or “L/C”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“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 applicable, else a calendar month;
“Party” and “Parties”	shall have the meaning ascribed thereto in the recital to this Agreement;
“Payment on Order Instrument” or “POI”	Shall mean the irrevocable unconditional letter of undertaking issued by either of the three institutions, viz., (i) Indian Renewable Energy Development Agency Limited (IREDA) or (ii) Power Finance Corporation Limited or (iii) REC Limited., as an alternative to submission of Performance Bank Guarantee by the SPD to PPGCL, issued in the form attached hereto as Schedule 2;

“Payment Security Mechanism”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“Performance Bank Guarantee” or “PBG”	shall mean the irrevocable unconditional bank guarantee, submitted by the SPD to PPGCL in the form attached hereto as Schedule 1;
Pooling Substation/ Pooling Point”	means a point where more than one Power projects 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 STU/CTU and/or Delivery Point.
“Power Project” or “Project”	shall mean the solar power generation facility to be established by the Successful Bidder anywhere in India comprising all units/ modules and auxiliaries and associated facilities, bay(s) for transmission system in the switchyard, dedicated transmission line up to the Pooling Substation/ Pooling Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility, whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power to PPGCL
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 13 of this Agreement;
“Project Capacity”	shall mean the Contracted Capacity of the Project at the point of delivery/metering on which the Power Purchase Agreement has been signed.
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project; b) the requirements of Indian Law; and the physical conditions at the site of the Power Project
“RBI”	shall mean the Reserve Bank of India;
“Rebate”	shall have the same meaning as ascribed thereto in Article 10.3.5 of this Agreement;
"RLDC"	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003
“RPC”	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Rupees", "Rs.", “₹”	shall mean Indian rupees, the lawful currency of India;

“Scheduled Commissioning Date” or “SCD” of the Project	shall mean 18 months from Effective Date of PPA.
“SERC”	shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Subsection (1) of Section 83 of the Electricity Act 2003; In the context of PPGCL, Uttar Pradesh Regulatory Commission (UPERC) is the SERC.
“SLDC”	shall mean the center established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located; ; In the context of PPGCL, Uttar Pradesh Load Despatch Centre (UPLDC) is the SLDC.
“Solar Photovoltaic Project” or “Solar PV Project” or “Solar Power Project”	shall mean the solar photovoltaic power project that uses sunlight for conversion into electricity and that is being set up by the SPD to provide Solar Power to PPGCL as per the terms and conditions of this Agreement;
“Solar Power”	shall mean power generated from the Solar Photovoltaic Power Project;
“State Transmission Utility” or “UPPTCL” or “STU”	shall mean the Board or the Government company notified by the U.P State Government under Sub-section (1) of Section 39 of the Act 2003 ; i.e UPPTCL
"Tariff" or “Applicable Tariff”	Shall have the same meaning as provided for in Article 9 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
“Termination Notice”	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
“Transfer Date”	Shall means the date on which this Agreement expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;
“Unit/ Part Commissioning”	Subject to the compliance of conditions / procedure as detailed under Schedule-3 of this Agreement, Unit / Part Commissioning shall mean the Solar PV Capacity (AC MW) to be commissioned as per provisions of this Agreement and RfS document. Part Commissioning shall not be applicable for Projects having capacity less than 50 MW;

Unit Commercial Operation Date (UCOD)”	shall mean the date of issuance of commissioning certificate for the respective part(s) of the Power Project subsequent to the demonstration of the compliance of commissioning as per this Agreement and witnessed by the Committee duly constituted and also start of injection and scheduling power from the Power Project to the Delivery Point and availability / installation of all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

## **1.2 Interpretation**

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

- 1.2.1 “Agreement” shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule” and a “paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A “crore” means a reference to ten million (10,000,000) and a “lakh” means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 “Indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees”, “Rs” or new rupee symbol “₹ ” shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "Winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on

business including the seeking of liquidation, Winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty-five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18 This Agreement and other documents such as Request for Selection Documents, Guidelines including subsequent clarifications, amendments and further clarifications in regard to the RfS shall be read in conjunction with each other and interpreted in harmonious manner. However, in case of any mismatch/contradiction between provisions of different documents, following shall be the order of precedence:
- (a) Power Purchase Agreement
  - (b) RfS Document

## **ARTICLE 2**

### **TERM OF AGREEMENT**

#### **2.1      *Effective Date***

- 2.1.1 This Agreement shall come into effect from (Enter the date of signing of PPA) and such date shall be referred to as the Effective Date.
- 2.1.2 The Parties agree that decisions pertaining to adoption of the Tariff and approval of the same, for procurement of Contracted Capacity, shall be binding on all Parties concerned, as contained in the Electricity Act, 2003 and any amendments thereof.

#### **2.2      *Term of Agreement***

- 2.2.1 Subject to Article 2.3 and 2.4 of this Agreement, this Agreement shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period at least one hundred eighty (180) days prior to the Expiry Date, on mutually agreed terms and conditions.
- 2.2.2 The SPD is free to operate their plants beyond the Expiry Date if other conditions like land lease / Right to Use of Land (as applicable), permits, approvals and clearances etc. allow. In such case unless otherwise agreed by the PPGCL, PPGCL shall not be obligated to procure power beyond the Expiry Date.

#### **2.3      *Early Termination***

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

#### **2.4      *Survival***

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

**ARTICLE 3**  
**CONDITIONS SUBSEQUENT**

**3.1 Satisfaction of conditions subsequent by the SPD**

The SPD agrees and undertakes to duly perform and complete all of the following activities including Financial Closure at the SPD's own cost and risk by [Enter the date as on 12 Months after the Effective Date], unless such completion is affected by any Force Majeure event, or for the activities specifically waived in writing by PPGCL:

The SPD shall make Project financing arrangements to finance its Projects(s) and shall provide necessary certificates to PPGCL in this regard;

The SPD shall submit to PPGCL the relevant documents as stated above, complying with the Conditions Subsequent, within twelve (12) months from the Effective Date.

**3.2 Consequences of non-fulfilment of conditions subsequent and financial closure**

3.2.1 In case of a failure on the part of SPD to fulfill the condition subsequent and submit the documents as provided in Article 3.1, PPGCL shall be entitled to encash the Performance Bank Guarantee/Payment on Order Instrument submitted by the SPD, terminate this Agreement and remove the Project from the list of the selected Projects by giving a notice to the SPD in writing of at least seven (7) days, unless the delay (subject to the conditions that SPD has made / is making all possible efforts) is solely on account of Force Majeure. Unless extended as per provisions of Article 3.2.2 (i) of this Agreement in writing, the termination of the Agreement shall take effect upon the expiry of the 7th day of the above Notice.

3.2.2 (i) An extension, without any impact on the Scheduled Commissioning Date, can however be considered, on the sole request of SPD, on payment of Rs. 1000/- per day per MW to PPGCL. Such extension charges are required to be paid to PPGCL in advance, for the period of extension required. 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). In case such delay in making payment of the extension charges to PPGCL is more than 7 days, the termination of the Agreement shall take effect upon the expiry of such 7th day. In case of the SPD meeting the requirements of conditions subsequent and financial closure before the last date of such proposed delay period, the excess amount deposited by the SPD shall be returned by PPGCL without interest. This extension will not have any impact on the Scheduled Commissioning Date. Any extension charges paid so by the SPD, shall be returned to the SPD without any interest on achievement of successful commissioning within the Scheduled Commissioning Date, on pro-rata basis, based on the Project Capacity commissioned as on Scheduled Commissioned Date. However, in case the SPD fails to commission the Contract Capacity by Scheduled Commissioning Date, the extension charges deposited by the SPD shall not be refunded by PPGCL.

3.2.3 For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

- 3.2.4 In case of inability of the SPD to fulfil the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfilment of the Conditions Subsequent and Financial Closure as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.
- 3.2.5 Provided that due to the provisions of this Article 3.2.4, any increase in the time period for completion of conditions subsequent and financial closure mentioned under Article 3.2, shall also lead to an equal extension in the Scheduled Commissioning Date.

### **3.3 Performance Bank Guarantee/ Payment on Order Instrument**

- 3.3.1 The Performance Bank Guarantee (PBG)/ Payment on Order Instrument (POI) having validity from the date of submission of PBG/ POI until 09 months after the SCD submitted for a value of Rs..... (INR 17.5 Lakh/MW) to be furnished under this Agreement shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement.
- 3.3.2 The failure on the part of the SPD to furnish and maintain the Performance Bank Guarantee/ POI shall be a material breach of the term of this Agreement on the part of the SPD.
- 3.3.3 If the SPD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement or any further extension thereof granted by PPGCL, subject to conditions mentioned in Article 4.5, PPGCL shall encash the Performance Bank Guarantee/ POI equivalent to the amount calculated as per liquidated damage applicable under Article 4.6 as on the date of encashment without prejudice to the other rights of PPGCL under this Agreement.

### **3.4 Return of Performance Bank Guarantee/ Payment on Order Instrument**

- 3.4.1 Subject to Article 3.3, PPGCL shall return / release the Performance Bank Guarantee/ Payment on Order Instrument immediately after the successful Commissioning of the Project after taking into account any liquidated damages / penalties due to delays in commissioning as per provisions stipulated in this Agreement.
- 3.4.2 The return / release of the Performance Bank Guarantee/ Payment on Order Instrument shall be without prejudice to other rights of PPGCL under this Agreement.

## ARTICLE 4

### CONSTRUCTION & DEVELOPMENT OF THE PROJECT

#### **4.1      *SPD's Obligations***

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

- a)    The SPD shall be solely responsible and make arrangements for Land & associated infrastructure for development of the Project and for Connectivity with the CTU/STU System for confirming the evacuation of power by the Scheduled Commissioning date and all clearances related thereto.
- b)    SPD shall be required to submit documents as mentioned below prior to commissioning of the Project:
  - Lease Agreement to establish possession/right to use 100% (hundred per cent) of the required land in the name of the SPD for a period not less than the complete term of the PPA, on or before the Scheduled Commissioning Date (SCD). Wherever leasehold land is involved, the lease should allow transfer/ mortgage of leasehold land lease rights to the lenders or Procurer, in case of default of the SPD.”
  - No Objection Certificate (NoC)/Environmental Clearance (if applicable) for the Project.
  - Forest Clearance (if applicable) for the land for the Project.
  - Approval for Water from the concerned authority (if applicable) required for the Project.
  - A letter from State Transmission Utility (STU)/Central Transmission Utility (CTU) [or solar power park developer, in case of selected site being a solar park] confirming technical feasibility of connectivity of the plant to STU/CTU substation. If the Project site is located in the same State as the Procurer/End Procurer, State Govt. shall endeavor to provide necessary support to facilitate the connectivity of the plant to STU substation.
- c)    Obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. PPGCL shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the Solar Power project. The SPD shall, on his own, obtain permissions/ sanctions from Government authorities, if any required for establishing the project. Any steps that may be taken by PPGCL in regard to grant of such consents and permits or any other approval that maybe required to be obtained by the SPD shall only be a voluntary endeavour with no intention of being bound by any legal or binding obligation.

- d) designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.
- e) the commencement of supply of power up to the Contracted Capacity to PPGCL no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement;
- f) Connecting the Power Project switchyard with the Interconnection Facilities. The SPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at Delivery Point.
- g) Owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15.
- h) **In case of Project being executed through SPVs:** The Selected Bidder executing the project, if being a single company, shall ensure that its shareholding in the SPV/ Project company incorporated for implementing the project and executing the PPA, shall not fall below 51% at any time prior to 01 (one) year after the SCD, except with the prior approval of PPGCL. In the event the selected 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 01 (one) year after SCD, except with the prior approval of PPGCL. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

**In case of the selected Bidder itself executing the PPA,** it shall ensure that its promoters shall not cede control (Control shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors), till 01 (one) year after the SCD, except with the prior approval of PPGCL. However, in case the Project is being set up by a listed Company, this condition will not be applicable.

**In case of companies having multiple promoters** (but none of the shareholders having more than 50% of voting rights and paid-up share capital), it shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 01 (one) year after SCD.

Any change in the shareholding after the expiry of 01 year after SCD can be undertaken under intimation to PPGCL. Transfer of controlling shareholding of the company developing the project within the same group of companies will however be allowed after SCD with the permission of PPGCL, subject to the condition that the management control remains within the same group of companies.

- i) fulfilling all obligations undertaken by the SPD under this Agreement.
- j) Obtaining Connectivity and executing connectivity agreement as per provision of General Network Access (GNA) regulation issued by CERC, for evacuation of the

Contracted Capacity and maintaining it throughout the term of the Agreement. It is further clarified that the Entities as indicated in the Detailed Procedure issued subsequently under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, will be responsible for their respective obligation as notified in the Detailed Procedure irrespective of the provisions of the RfS and PPA.

- k) The SPD shall be responsible to for directly coordinating and dealing with the corresponding 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/State/Central Regulations.
- l) The SPD shall fulfil the technical requirements according to criteria mentioned under Annexure II–Technical requirement for Grid Connected Solar PV Power Projects. The modules used in the Project shall be sourced only from the models and manufacturers included in List-I under the “**Approved List of Models and Manufacturers**” as published by MNRE and valid as on the date of invoicing of such modules.

Further, Components used in Solar PV Projects except Photovoltaic Modules shall be in strict compliance with MNRE Order F.No. 283/22/2019-GRID SOLAR, dated 09<sup>th</sup> February, 2021 for public procurement (Preference to Make in India) to provide for purchase preference (linked with local content) in respect of Renewable Energy (RE) Sector and its subsequent amendments and clarifications issued, if any, shall be applicable for this PPA.

- m) Further, the Project being implemented under this Agreement shall fulfil the criteria as per UPERC Regulations/Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof,
- n) As part of scheduling of power from the Project, the SPD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces of all the RLDCs/ NLDCs/SLDCs concerned for the corridor of power flow, as per the Regulations in force/ procedure issued by Grid Controller of India Limited, under intimation to PPGCL. The SPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.

#### ***4.2 Information regarding Interconnection Facilities***

- 4.2.1 The SPD shall be required to obtain all information from the STU/CTU/Concerned Authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the SPD’s side of the Delivery Point to enable delivery of electricity at the Delivery Point. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the SPD at its own cost.
- 4.2.2 Penalties, fines and charges imposed by the CTU/STU under any statute or regulations/guidelines in relation to delay in commissioning of Project shall be entirely dealt by the SPD and such amount claimed by such agency(ies) shall be

payable by SPD.

- 4.2.3 The responsibility of getting connectivity with the transmission system up to the Delivery Point, will lie with the SPD. The transmission of power up to the point of delivery where the metering is done for energy accounting shall be the responsibility of the SPD at its own cost. The maintenance of Transmission system up to the designated point as per the applicable terms and conditions shall be the responsibility of the SPD. All costs and charges including but not limited to the wheeling charges and losses up to and including at the Delivery Point associated with this arrangement will also be borne by the SPD.
- 4.2.4 In case of Pooling substation, losses in the transmission line shall be apportioned among the SPDs who share such a Pooling arrangement and duly signed by all SPDs, based on their monthly generation.
- 4.2.5 The arrangement of connectivity upto the Delivery Point shall be made by the SPD at its own cost. The entire cost of transmission including cost of construction of line, any other charges, losses etc. from the Project up to the Delivery Point will be borne by the SPD without any reimbursement by the PPGCL. In case of non-availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the SPD, provisions of Article 4.10 shall be applicable.
- 4.2.6 ISTS charges and losses on transmission of power, including waiver for RE power, shall be applicable as per extant regulations. Government of India, from time to time, issues order for waiver of inter-state transmission system (ISTS) charges and losses on transmission of solar power till a certain date. In case the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver, arising out of any reasons whatsoever, PPGCL shall bear no liability with respect to transmission charges and losses levied, if any.

In case the SCD of the Project is before the date till above ISTS waiver is applicable, and if the Project is granted extension in the SCD on account of Force Majeure, or for delay on the part of the transmission provider in providing the transmission even after having taken the requisite steps in time; or on account of delays on the part of any Government Agency, and the Project is commissioned before the extended SCD; it will get benefit of waiver of inter-state transmission charges. However, in case the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver/extended SCD as above, due to reasons attributable to the SPD, the liability of transmission charges and losses would be to the account of the SPD. In case of any extension in SCD beyond 30.06.2025, decision on such extension requests will be taken by MNRE, in line with the OM issued by Ministry of Power vide No. 23/12/2016- R&R dated 30.11.2021, and subsequent amendments/clarifications thereto, read in conjunction with CERC's orders and regulations notified in this regard. The provisions of PPA in regard to liability of the entities to pay the ISTS charges and losses shall stand modified by such exemption/waiver provided as per the above Order/Office Memoranda and regulations issued by CERC, as applicable.

#### **4.3 *Purchase and sale of Contracted Capacity***

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

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

4.4.1 The SPD will be allowed to revise the CUF of the Project once within first year after COD of the full Project Capacity. PPGCL, in any Contract Year except for the Contract Year ending on 31<sup>st</sup> March immediately after COD of the Project, shall not be obliged to purchase any additional energy from the SPD beyond..... Million kWh (MU). Subsequent to commissioning of the Project, if for any Contract Year, except for the Contract Year ending on 31<sup>st</sup> March immediately after COD of the Project, it is found that the SPD has not been able to supply minimum energy of.....Million kWh (MU) till the end of 10 years from the SCD and .....Million kWh (MU) for the rest of the Term of the Agreement, on account of reasons solely attributable to the SPD, the noncompliance by SPD shall make the SPD liable to pay the compensation to PPGCL. The lower limit will, however be relaxable by PPGCL to the extent of grid non- availability for evacuation which is beyond the control of the SPD (as certified by the SLDC/RLDC). This compensation shall be applied to the amount of shortfall in generation during the Contract Year. Such compensation shall ensure that the PPGCL is/are offset for all potential costs associated with low generation and supply of power under the PPA. However, the minimum compensation payable to PPGCL by the SPD shall be 25% (twenty-five percent) of the cost of this shortfall in energy terms, calculated at PPA tariff. This compensation shall not be applicable in events of Force Majeure identified under PPA with PPGCL affecting supply of Solar Power by SPD.

4.4.2 In case the availability is more than the maximum CUF specified, the SPD will be free to sell it to any other entity provided first right of refusal will vest with the PPGCL. In case the PPGCL purchases the excess generation, the same may be done at 75% (seventy-five per cent) of the PPA tariff.

#### **4.5 *Extensions of Time***

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

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

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

4.5.2 Subsequent to grant of connectivity, in case there is a delay in grant/

operationalization of GNA by the CTU and/or there is a delay in readiness of the STU/CTU substation for injection of power, including readiness of transmission infrastructure of the CTU/STU network until SCD of the Project, and it is established that:

- (i) The SPD has complied with the complete application formalities as per RfS,
- (ii) The SPD has adhered to the applicable Procedure in this regard as notified by the CERC/CEA/SERC/STU/CTU, and
- (iii) The delay in grant of connectivity/ GNA by the CTU and/or delay in readiness of the CTU/STU substation, including readiness of the power evacuation and transmission infrastructure of the CTU/STU network, is a factor attributable to the CTU/STU/transmission licensee and is beyond the control of the SPD.

The above shall be treated as delays beyond the control of the SPD and SCD for such Project shall be revised as the date as on 30 days subsequent to the readiness of the Pooling point at PSS and/or Delivery Point at GSS and ISTS network in case of Project located outside Uttar Pradesh. Decision on requisite extension on account of the above factor shall be taken by PPGCL.

- 4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of 180 days from the date of the Force Majeure Notice, either of the Parties may choose to terminate the Agreement as per the provisions of Article 11.3. In case neither party terminates the Agreement under this clause, the Agreement shall stand terminated on the expiry of twelve (12) months of the continuation of the Force Majeure event unless the parties mutually agree to extend the Agreement for the further period.
- 4.5.4 If the Parties have not agreed within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred, either Party may raise the Dispute to be resolved in accordance with Article 16.
- 4.5.5 As a result of such extension on account of Article 4.5.1 or Article 4.5.2, the newly determined Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.
- 4.5.6 Not used.
- 4.5.7 Delay in commissioning of the Project beyond the scheduled commissioning date for reasons other than those specified in Article 4.5.1 & Article 4.5.2 shall be an event of default on part of the SPD and shall be subject to the consequences specified in the Article 4.6.

#### ***4.6 Liquidated Damages not amounting to penalty for delay in Commissioning***

4.6.1 The Project shall be fully commissioned within the Scheduled Commissioning Date as defined in this Agreement. If the SPD is unable to commission the Project by the Scheduled Commissioning Date for the reasons other than those specified in Article 4.5.1 and 4.5.2, the SPD shall pay to PPGCL, damages for the delay in such commissioning and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:

(a) Delay beyond the Scheduled Commissioning Date upto (& including) the date as on 6 months after the Scheduled Commissioning Date, as part of the liquidated damages, the total PBG/POI amount for the Project shall be encashed on per-day basis and proportionate to the balance capacity not commissioned. For example, in case of a Project of 290 MW capacity, if commissioning of 100 MW capacity is delayed by 18 days beyond the SCD, then the liquidated damages shall be:  $\text{PBG/POI amount} \times (100/290) \times (18/180)$ . For the purpose of calculation of liquidated damages, 'month' shall be considered consisting of 30 days.

(b) For avoidance of doubt it is clarified that provisions of Article 4.6.1 will be applicable even in cases where no capacity (**i.e. 0 MW**) is commissioned.

4.6.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee/ Payment on Order Instrument shall be limited to 6 months after the SCD of the Project. In case, the Commissioning of the Project is delayed beyond 6 months after the SCD, it shall be considered as an SPD Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced / amended to the Project Capacity Commissioned within 6 months after the SCD and the PPA for the balance Capacity will stand terminated and shall be reduced from the Project Capacity.

#### **4.7 Acceptance/Performance Test**

4.7.1 Prior to synchronization of the Power Project, the SPD shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or an agency identified by the central government to carry out testing and certification for the Solar Power projects.

#### **4.8 Third Party Verification**

4.8.1 The SPD shall be further required to provide entry to the site of the Power Project free of all encumbrances at all times during the Term of the Agreement to PPGCL and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the SPD at the site of the Power Project. The SPD shall provide full support to PPGCL and/or the third party in this regard.

4.8.2 The third party may verify the construction works/operation of the Power Project being carried out by the SPD and if it is found that the construction works/operation of the Power Project is not as per the Prudent Utility Practices, it may seek clarifications from SPD or require the works to be stopped or to comply with the instructions of such third party.

#### 4.9 Breach of Obligations

The Parties herein agree that during the subsistence of this Agreement, subject to PPGCL being in compliance of its obligations & undertakings under this Agreement, the SPD would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity of power which is the subject matter of this Agreement. It is the specific understanding between the Parties that such bar will apply throughout the entire term of this Agreement.

#### 4.10 Generation compensation for Off-take constraints

##### 4.10.1 Offtake constraints due to Transmission Infrastructure / Grid Unavailability:

After the scheduled commissioning date, if the plant is ready but the necessary power evacuation/ transmission infrastructure is not ready, for reasons not attributable to the SPD, then SCD for such projects may be revised as the date as on 30<sup>th</sup> day subsequent to the readiness of the Delivery Point and other power evacuation infrastructure. Decision on requisite extension on account of the above factor shall be taken by PPGCL on case-to-case basis after examining the issue.

Or

The SPD may seek compensation as per extant Central Electricity Regulatory Commission (CERC)/ UP Electricity Regulatory Commission (UPERC) Regulations.

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

##### 4.10.2 Offtake constraints due to Backdown

(a) The SPD and the PPGCL shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. No RE power plant qualified as must-run power plant defined as per Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules 2021, duly commissioned, shall be directed to back down by the PPGCL as per provisions of the Rules. In case such eventuality of Backdown arises, except for the cases 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 Minimum Generation Compensation, from the PPGCL, in the manner detailed below.

<b>Duration of Backdown</b>	<b>Provision for Generation Compensation</b>
Hours of Backdown during a monthly billing cycle.	<b>Minimum Generation Compensation = 100% of [(Average Generation per hour during the month) × (number of backdown hours during the month) × PPA Tariff]</b> Where, Average Generation per

	hour during the month (kWh) = Total generation in the month (kWh) ÷ Total hours of generation in the month
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- (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). Possible conditions for exclusion of Generation Compensation, on account of Backdown purposes, shall be clearly specified in the RfS and the PPA.
- (c) No back-down / curtailment to be ordered without giving formal/ written instruction for the same.

## ARTICLE 5

### SYNCHRONISATION, COMMISSIONING & COMMERCIAL OPERATION

#### *5.1 Synchronization, Commissioning and Commercial Operation*

- 5.1.1 The SPD shall give the concerned RLDC/SLDC and PPGCL at least sixty (60) days' advanced preliminary written notice and at least thirty (30) days' advanced final written notice, of the date on which it intends to synchronize the Power Project to the Grid System.
- 5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the SPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.1.3 The synchronization equipment and all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the SPD at its generation facility of the Power Project at its own cost. The SPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/Grid System and checking/verification is made by the concerned authorities of the Grid System.
- 5.1.4 The SPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code under intimation to PPGCL. In addition, the SPD will inject in-firm power to grid time to time to carry out operational/ functional test prior to commercial operation. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.
- 5.1.5 The SPD shall commission the Project as detailed in "Schedule 3: Commissioning Procedure" within Eighteen (18) Months of the Effective Date of PPA. Declaration of COD / UCOD shall only be done subject to the demonstration of the compliances as per Schedule-3 and shall be as per the extant Regulation Indian Electricity Grid Code (IEGC).
- 5.1.6 There can be part Commissioning of the Project subject to the condition that the minimum capacity for acceptance of first and subsequent part(s) commissioning shall be 50 MW. Part commissioning of the Project shall mean that all equipment corresponding to the part capacity have been installed and commissioned and corresponding energy has flown into the grid.
- 5.1.7 The Parties agree that for the purpose of commencement of the supply of electricity by SPD to PPGCL, liquidated damages for delay etc., the Scheduled Commissioning Date or extended Scheduled Commissioning Date as defined in this Agreement shall be the relevant date.

#### 5.1.8 Early Commissioning:

The SPD shall be permitted for full commissioning as well as part commissioning of the Project even prior to the Scheduled Commissioning Date, subject to availability of transmission connectivity and GNA. Early commissioning of the Project will be allowed solely at the risk and cost of the SPD, and PPGCL may purchase the energy from such early commissioned Project at the 75% (seventy-five percent) of the PPA tariff.

While calculating the above value of 75% of the PPA tariff, the digits after 2 decimal places will be ignored. For e.g., in case the value of 75% of the PPA tariff is calculated as 2.4567/kWh, the tariff applicable for purchase in case of early commissioning will be read as Rs. 2.45/kWh.

Such intimation for early commissioning shall be provided to PPGCL at least 15 days before the proposed early commissioning date. In case there is no response provided by PPGCL within 7 days from the receipt of such intimation, such early commissioned capacity shall be deemed to have been rejected by PPGCL. In case PPGCL does not agree to purchase such energy, early part/full commissioning of the Project shall still be allowed and the SPD will be free to sell such energy to a third party; subject to grant of connectivity and GNA, until SCD or the date of commencement of procurement of power from the Project as notified by PPGCL, whichever is earlier. In such cases, a Provisional Commissioning Certificate will be issued to SPD for period up to SCD or date of commencement of Power Procurement (whichever is earlier), along with an NOC for sale of Power to 3<sup>rd</sup> Party for such period. UCOD/COD of the Project under the PPA will be the date on which the commissioning certificate is issued upon successful commissioning of the part/full capacity of the Project.

## ARTICLE 6

### DISPATCH AND SCHEDULING

#### *6.1 Dispatch and Scheduling*

- 6.1.1 The SPD shall be entirely responsible and shall be required to declare the Availability and Declared Capacity for the Project and arrange for dispatch of Contracted Capacity in a composite manner under this Agreement as per the applicable regulations / requirements / guidelines of CERC/ SERC /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 applicable Codes/Grid Code requirements and directions, if any, 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 on the account of the SPD.
- 6.1.2 The SPD shall be responsible for directly coordinating and dealing with PPGCL, State Load Dispatch Centre's, 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 procurer are the Grid connected entities.
- 6.1.3 The SPD shall be responsible for any deviation from scheduling and for any resultant liabilities on account of charges for deviation as per applicable prevailing regulations. UI charges on this account shall be directly paid by the SPD.
- 6.1.4 Auxiliary power consumption will be treated as per the concerned Central/State regulations.

## **ARTICLE 7**

### **METERING**

#### ***7.1 Meters***

- 7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the SPD shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.
- 7.1.2 The SPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at SPD's side of Metering Point.
- 7.1.3 In addition to ensuring compliance of the applicable codes, the SPD shall install Main & Check meters at the Metering Point, along with Stand-by meter(s) as per the applicable Central/ State regulations.
- 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 as per relevant regulation/approval are also to be set up at pooling substation for individual projects in addition to the meters at Metering Point as described in clause 7.1.3.

#### ***7.2 Reporting of Metered Data and Parameters***

- 7.2.1 The grid connected Solar PV Power Projects will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI, and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the Project.
- 7.2.2 Online arrangement would have to be made by the SPD for submission of above data regularly for the entire period of this Power Purchase Agreement to the SLDC, PPGCL and the concerned Ministry or concerned agency as per applicable regulation / directions.
- 7.2.3 Reports on above parameters on monthly basis, and/or as required by regulation / Guidelines, shall be submitted by the SPD to MNRE/PPGCL/National Institute of Solar Energy through PPGCL for entire Term of the PPA.

## **ARTICLE 8**

### **INSURANCES**

#### ***8.1 Insurance***

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 to keep the Project in good condition and shall take Industrial All Risk insurance policy covering risks against any loss or damage, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements, Implementation and Support Agreement and under the applicable laws.

#### ***8.2 Application of Insurance Proceeds***

8.2.1 In case of the Project not being implemented through Financing Agreement(s), 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.

In case of the Project being financed through Financing Agreement(s), 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 applied as per such Financing Agreements.

8.2.2 If a Force Majeure Event renders the Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, PPGCL shall have claim on such proceeds of such Insurance limited to outstanding dues of PPGCL.

#### ***8.3 Effect on liability of PPGCL***

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 to PPGCL. 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 9

### APPLICABLE TARIFF

- 9.1 The SPD shall be entitled to receive the Tariff of Rs. .... / kWh [Insert the Tariff discovered through the bidding process conducted by RECPDCL], fixed for the entire term of this Agreement, with effect from the SCD, for the power sold by the SPD to the PPGCL for the scheduled energy as reflected in the Energy Accounts.
- 9.2 Pursuant to Article 5.1.8, in case of early part-commissioning, till SCD, subject to the consent for such purchase by the PPGCL, PPGCL may purchase the generation @ ..... [Insert the value as per 75% (seventy-five per cent) of the Applicable Tariff]. While calculating the above value of 75% of the PPA tariff, the digits after 2 decimal places will be ignored. For e.g., in case the value of 75% of the PPA tariff is calculated as 2.4567/kWh, the tariff applicable for purchase in case of early commissioning will be read as Rs. 2.45/kWh. However, in case the entire Project Capacity is commissioned prior to SCD, PPGCL may purchase energy supplied from commissioning of full capacity till SCD at ..... [Insert Tariff]/kWh. In both the cases of early part or full commissioning of the Project, the Applicable Tariff for the commissioned Project shall be ..... [Insert Tariff]/kWh from and including the SCD.
- 9.3 Any excess generation over and above energy specified in Article 4.4.2, may be purchased by PPGCL at a tariff of ..... (Insert value equal to 75% of the tariff as per Article 9.1). While calculating the above value of 75% of the PPA tariff, the digits after 2 decimal places will be ignored. For e.g., in case the value of 75% of the PPA tariff is calculated as 2.4567/kWh, the tariff applicable for purchase in case of early commissioning will be read as Rs. 2.45/kWh. Any energy produced and flowing into the grid before SCD shall not be at the cost of PPGCL. However, the SPD will not be allowed to sell energy generated prior to SCD or excess energy during any Contract Year to any other entity other than PPGCL (unless refused by PPGCL).

## **ARTICLE 10**

### **BILLING AND PAYMENT**

#### ***10.1 General***

- 10.1.1 From the commencement of supply of power, PPGCL shall pay to the SPD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 10.3, in accordance with Article 9. All Tariff Payments by PPGCL shall be in Indian Rupees.
- 10.1.2 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 Metering Point.
- 10.1.3 The SPD shall be required to make arrangements and payments for import of energy (if any) as per applicable regulations.

#### ***10.2 Delivery and Content of Monthly Bills/Supplementary Bills***

- 10.2.1 Before ninety (90) days of the Scheduled Commissioning Date, PPGCL shall inform SPD the designated email id account where the soft copy of the monthly bill is to be sent. The SPD shall issue via email to PPGCL soft copy of a signed Monthly Bill/Supplementary Bill to designated email id of PPGCL for the immediately preceding Month/relevant period based on the issuance of Energy Accounts along with all relevant documents (payments made by SPD for drawl of power, payment of reactive energy charges, Metering charges or any other charges as per guidelines of UPERC/CERC, if applicable before 11 AM of the day failing which the next business day shall be considered as the date of receipt of the bill. The SPD shall also send one signed hard copy of the bill with all annexures to PPGCL for its record and perusal.

Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RPC or any other competent authority which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy as per Energy Accounts and the Applicable Tariff. Energy drawn from the grid will be regulated as per the applicable Central/State regulations.

- 10.2.2 As per applicable regulation(s) of the Appropriate Commission(s)/ UPERC, all charges pertaining to obtaining open access and scheduling of power, if any, up to the Delivery Point shall be borne by the SPD.

#### ***10.3 Payment of Monthly Bills***

- 10.3.1 Subject to the provisions of Article 10.3.4, PPGCL shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the SPD, as shall have been previously notified by the SPD as below.

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

- i) deductions required by the Law; and
- ii) amount claimed by PPGCL, if any, from the SPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be applicable on day-to-day basis.

The SPD shall open a bank account (the “SPD’s Designated Account”) for all Tariff Payments (including Supplementary Bills) to be made by PPGCL to the SPD, and notify PPGCL of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. PPGCL shall also designate a bank account (“PPGCL Designated Account”) for payments to be made by the SPD to PPGCL, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. PPGCL and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD’s Designated Account or PPGCL’s Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

#### 10.3.3 **Late Payment Surcharge (LPSC)**

LPSC shall be applicable as per MoP LPSC Rules 2022 and amendments thereof.

10.3.4 Subject to the Article 9 of this Agreement, in the event of early Commissioning of the Project and subject to acceptance by PPGCL, the payment for the power fed to the grid may be accounted from the date of UCOD, and SPD would be allowed to raise Bills against such power as per Article 10.2.1, subject to the conditions as stipulated in Article 9.

#### 10.3.5 **Rebate**

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

- a) A Rebate of 2.5 % shall be payable to the PPGCL for the payments made within a period of 10 (ten) days of the presentation of Bill.
- b) Any payments made after ten (10) days of the date of presentation of Bill up to the Due Date shall be allowed a rebate of 2.0 %.
- c) There will be no rebate for the payment made after Due Date.
- d) For the above purpose, the date of presentation of Bill shall be the next Business Day of delivery of the Bill (Soft/Hard copy) at PPGCL.
- e) No Rebate shall be payable on the Bills raised on account of Change in Law (except in case of annuity tariff model being implemented, where rebate will be applicable) relating to taxes, duties, cess etc. and on Supplementary Bill.

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

- 10.4.1 PPGCL shall provide to the SPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit (“Letter of Credit”), opened and maintained which may be drawn upon by the SPD in accordance with this Article.
- 10.4.2 Before the start of supply, PPGCL shall provide payment security to the SPD through Revolving Letter of Credit (LC) of an amount of 1 (one) month’s average billing through a scheduled bank. PPGCL shall open a Letter of Credit in favour of the SPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually.
- 10.4.3 Provided that the SPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawl in a Month.
- 10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, PPGCL shall restore such shortfall before next drawl.
- 10.4.5 PPGCL shall cause the scheduled bank issuing the Letter of Credit to intimate the SPD, in writing regarding establishing of such irrevocable Letter of Credit.
- 10.4.6 PPGCL shall ensure that the Letter of Credit shall be renewed not later than its expiry.
- 10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by PPGCL.
- 10.4.8 If PPGCL fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
- i) a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to SPD and;  
  
a certificate from the SPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

**10.5 Disputed Bill**

- 10.5.1 If the PPGCL does not dispute a Monthly Bill or a Supplementary Bill raised by

the SPD within thirty (30) days of receiving such Bill, the same shall be taken as conclusive

- 10.5.2 If the PPGCL disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 50% of the invoice amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the “Bill Dispute Notice”) to the invoicing Party setting out:
- i) the details of the disputed amount;
  - ii) its estimate of what the correct amount should be; and
  - iii) all written material in support of its claim.
- 10.5.3 If the SPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the SPD shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.
- 10.5.4 If the SPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the PPGCL providing:
- i) reasons for its disagreement;
  - ii) its estimate of what the correct amount should be; and
  - iii) all written material in support of its counter-claim.
- 10.5.5 Upon receipt of the Bill Disagreement Notice by the PPGCL under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the PPGCL and SPD shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- 10.5.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.5.4, the matter shall be referred to Dispute resolution in accordance with Article 16.
- 10.5.7 For the avoidance of doubt, it is clarified the despite a Dispute regarding an invoice, PPGCL shall, without prejudice to its right to Dispute, be under an obligation to make payment of 50% of the invoice amount in the Monthly Bill.

### ***10.6 Quarterly and Annual Reconciliation***

- 10.6.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment payments, Tariff

Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

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

### **10.7 Payment of Supplementary Bill**

10.7.1 SPD may raise a (“Supplementary Bill”) for payment on account of:

- i) Adjustments required by the Energy Accounts (if applicable); or
- ii) Change in Law as provided in Article 12, or
- iii) Payment under Article 10.2 And such Supplementary Bill shall be paid by the other Party.

10.7.2 PPGCL shall remit all amounts due under a Supplementary Bill raised by the SPD to the SPD’s Designated Account by the Due Date, except open access charges, RLDC or scheduling charges and transmission charges (if applicable). For Supplementary Bill on account of adjustment required by energy account and payments under Article 10.7, Rebate as applicable to Monthly Bills pursuant to Article 10.3.5 shall equally apply.

## ARTICLE 11

### FORCE MAJEURE

#### *11.1 Definition of Force Majeure*

A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly or partly prevents or unavoidably delays the performance by the Party (**the Affected Party**) of its obligations under the relevant Power Purchase 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.

#### *11.2 Categorization of Force Majeure Events:*

##### 11.2.1 Natural Force Majeure Event

- a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of Procurer;
- b) radioactive contamination or ionizing radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party;
- c) 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
- d) any event or circumstances of a nature analogous to any of the foregoing.

##### 11.2.2 Non-Natural Force Majeure Event

- a) 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;
- b) 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;
- c) nationalization 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 the Power Purchase 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;

- d) 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; any unlawful or unauthorized 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, license, authorization to be obtained by the Contractor's to perform their respective obligations under the relevant PPA and/or the Project Documents; provided that such delay, modification, denial, refusal or revocation did not result from the SPD's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, license, authorization, as the case may be.

Clarification: The phrase "Change in Law" would include changes brought out through change in Law, Rules, Regulations or orders of competent authorities.

### 11.2.3 Force Majeure Exclusions

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

- a) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
- b) Delay in the performance of any contractor, sub-contractor or their agents;
- c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d) Strikes at the facilities of the Affected Party;
- e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f) Non-performance caused by, or connected with, the Affected Party's:
  - i. Negligent or intentional acts, errors or omissions;
  - ii. Failure to comply with an Indian Law; or
  - iii. Breach of, or default under this Agreement.

### 11.2.4 Notification of Force Majeure Event

- a) 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.

- b) Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under the PPA. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (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.
- c) 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.

#### 11.2.5 Performance Excused

- a) 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 FM Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.
- b) 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.
- c) Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.
- d) Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

#### 11.2.6 No Liability for Other Losses

Save as otherwise provided in the Guidelines, 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.

#### 11.2.7 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.

### ***11.3 Termination Due to Force Majeure Event***

#### **11.3.1 Termination due to Natural Force Majeure Event**

- a) If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Natural Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Natural 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 11.2.5 (Performance Excused); or that it is uneconomic 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 above, the Affected 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
  - i) No Termination Compensation shall be payable to the SPD.
  - ii) The SPD shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

### ***11.4 Termination due to Non-Natural Force Majeure Event***

- a) Upon occurrence of a Non-Natural Force Majeure Event, the SPD shall, at its discretion, have the right to terminate the PPA forthwith after the completion of the period of 180 (one hundred and eighty) Days from the date of the Force Majeure Notice.
- b) Notwithstanding anything in Article 11.2.6, on termination of the PPA pursuant to Article 11.4 (a).
  - (i) the Procurer shall pay to the SPD, 'Force Majeure Termination Compensation' equivalent to the amount of the Debt Due and the 110% (one hundred and ten per cent) of the Adjusted Equity, as defined in these Guidelines, and takeover the Project assets.
  - (ii) the SPD shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event."

**ARTICLE 12**

**CHANGE IN LAW**

The provisions for Change in Law shall be in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 notified by MoP on 22nd October 2021 and amendments thereof issued from time to time.

## ARTICLE 13

### EVENTS OF DEFAULT AND TERMINATION

#### **13.1 SPD Event of Default and the consequences thereof:**

- 13.1.1 In the event the SPD is unable to commission the plant within the stipulated time period, or fails to supply power in terms of the PPA, or assigns or novates any of its rights or obligations contrary to the terms of the PPA, or repudiates the PPA, or effectuates a change in control or shareholding of its promoters in breach of the provisions of the PPA, or commits any other acts or omissions as laid down in the PPA and is also unable to cure any of the aforesaid within the cure period of 60 days, the SPD shall be construed to be in default.
- 13.1.2 Upon being in default, the SPD shall be liable to pay to the PPGCL, damages, as provided in these Guidelines in Schedule 3 for failure to commission within stipulated time and Clause 4.4.1 for failure to supply power in terms of the PPA. For other cases, pay to the PPGCL, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity. The PPGCL shall have the right to recover the said damages by way of forfeiture of bank guarantee, if any, without prejudice to resorting to any other legal course or remedy.
- 13.1.3 In addition to the levy of damages as aforesaid, in the event of a default by the SPD, the lenders shall be entitled to exercise their rights of substitution, in accordance with the substitution agreement provided in the PPA and in concurrence with the PPGCL. However, in the event the lenders are unable to substitute the defaulting SPD within the stipulated period, the PPGCL may terminate the PPA and acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.”

#### **13.2 PPGCL Event of Default and the consequences thereof:**

- 13.2.1 If the Procurer is in default on account of reasons including inter alia failure to pay the monthly and/or supplementary bills except disputed bills within the stipulated time period or repudiation of the PPA, the defaulting Procurer shall, subject to the prior consent of the SPD, novate its part of the PPA to any third party, including its Affiliates within the stipulated period.
- 13.2.2 In the event the aforesaid novation is not acceptable to the SPD, or if no offer of novation is made by the defaulting Procurer within the stipulated period, then the SPD may terminate the PPA and at its discretion, require the defaulting PPGCL to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 110% (one hundred and ten per cent) of the adjusted equity as defined below, 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.
- 13.2.3 In the event of termination of PPA, any damages or charges payable to the STU/

CTU, for the connectivity of the plant, shall be borne by the PPGCL.

13.2.4 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.

13.2.5 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 Clause 13.2.5 (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.”

## ARTICLE 14

### LIABILITY AND INDEMNIFICATION

#### **14.1 Indemnity**

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

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

#### **14.2 Procedure for claiming Indemnity**

14.2.1 Third party claims

- a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(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 in accordance with [Article 16.3](#) 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 Indemnifying Party.

- b) The Indemnified Party may contest the claim by referring to the Appropriate Commission for which it is entitled to be Indemnified and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the

Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

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

#### **14.3 *Indemnifiable Losses***

Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party 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 nonpayment of such losses after a valid notice under this Article 14.3, such event shall constitute a payment default under Article 13.

#### **14.4 *Limitation on Liability***

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

PPGCL 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.

#### **14.5 *PPGCL's Liability***

It is specifically agreed that the payment of money becoming due from the PPGCL to the SPD under this Agreement for supply of Solar Power to the extent of the Contracted Capacity.

#### **14.6 *Duty to Mitigate***

The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage

which has occurred under this Article 14.

## ARTICLE 15

### ASSIGNMENTS AND CHARGES

#### *15.1 Assignments*

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party, except to the Project Lenders or Lender's Representative as security for their debt under the Financing Agreements, other than by mutual consent between the Parties to be evidenced in writing. Such assignment shall be agreed to by PPGCL subject to the compliance of provisions contained in this Agreement and more specifically to the provisions of Article 4.1.1 of this Agreement. In no case, such assignment shall be permissible prior to the declaration of SCD.

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

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

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement. An amount of Rs. 5 Lakh per Transaction as Facilitation Fee (non-refundable) shall be deposited by the SPD to PPGCL. Provided further that, such consent shall not be withheld by the SPD if PPGCL seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

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

#### *15.2 Permitted Charges*

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

## ARTICLE 16

### GOVERNING LAW AND DISPUTE RESOLUTION

#### ***16.1 Governing Law***

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 Gautam Budh Nagar (UP).

#### ***16.2 Amicable Settlement and Dispute Resolution***

##### ***16.2.1 Amicable Settlement***

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (“Dispute”) by giving a written notice (Dispute Notice) to the other Party, which shall contain:
  - (a) a description of the Dispute;
  - (b) the grounds for such Dispute; and
  - (c) all written material in support of its claim.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 16.2.1(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 either Party pursuant to Article 16.2.1(i)
  - (a) if the other Party does not furnish any counter claim or defense under Article 16.2.1 (ii)
  - (b) or thirty (30) days from the date of furnishing counter claims or defense by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 16.2.1(ii)
  - (c) the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

#### ***16.3 Dispute Resolution:***

##### **Dispute Resolution by the Appropriate Commission:**

In the event UPERC is the Appropriate Commission, any dispute arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such dispute shall be adjudicated by the

UPERC. All other disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996.

***16.4 Parties to Perform Obligations:***

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

## ARTICLE 17

### MISCELLANEOUS PROVISIONS

#### ***17.1 Amendment***

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

#### ***17.2 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.

#### ***17.3 Waiver***

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

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

#### ***17.4 Confidentiality***

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

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

#### ***17.5 Severability***

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

#### ***17.6 Notices***

17.6.1 All notices or other communications which are required to be given under this

Agreement shall be in writing and in the English language.

- 17.6.2 If to the SPD, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address :  
Attention :  
Email :  
Fax. No. :  
Telephone No. :

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

Address :  
Attention :  
Email :  
Fax. No. :  
Telephone No. :

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

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

### ***17.7 Language***

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

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

### ***17.8 Restriction of Shareholders / Owners' Liability***

Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Party for any of the contractual obligations of the

concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 2013.

### ***17.9 Taxes and Duties***

- 17.9.1 The SPD shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the SPD, contractors or their employees that are required to be paid by the SPD as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.
- 17.9.2 PPGCL shall be indemnified and held harmless by the SPD against any claims that maybe made against PPGCL in relation to the matters set out in Article 17.9.1.
- 17.9.3 PPGCL shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the SPD by PPGCL on behalf of SPD.

### ***17.10 Independent Entity***

- 17.10.1 The SPD shall be an independent entity performing its obligations pursuant to the Agreement.
- 17.10.2 Subject to the provisions of the Agreement, the SPD shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the SPD or contractors engaged by the SPD in connection with the performance of the Agreement shall be under the complete control of the SPD and shall not be deemed to be employees, representatives, contractors of PPGCL 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 PPGCL.

### ***17.11 Compliance with Law***

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

### ***17.12 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.

### ***17.13 Order of priority in application***

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below:

- i. Applicable Law, rules and regulations framed thereunder;
- ii. The Grid Code; and
- iii. The terms and conditions of this Agreement;

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

For and on behalf of [PPGCL]	For and on behalf of [SPD]
Name: Designation: Address:	Name: Designation: Address:
Signature with seal	Signature with seal
Witness:  1.  2.	Witness:  1.  2.

## SCHEDULE 1

### Format for Performance Bank Guarantee

(To be on non-judicial stamp paper of appropriate value as per Stamp Act)

In consideration of the ----- [*Insert name of the Bidder*] (hereinafter referred to as selected 'Solar Power Developer' or 'SPD') having its registered office at .....submitting the response to RfS inter alia for selection of the project of the capacity of ..... MW, for supply of power there from on long term basis, in response to the RfS no. .... dated ..... issued by Prayagraj Power Generation Company Limited (hereinafter referred to as PPGCL) having Registered Office at 12 & 13, Shatabdi Bhavan, Sector-4 Gautam Buddha Nagar,(U.P), 201301 and PPGCL considering such response to the RfS of .....[*insert the name of the selected Solar Power Developer*] (which expression shall unless repugnant to the context or meaning thereof include its executers, administrators, successors and assignees) and selecting the Solar Power Project of the developer and issuing Letter of Award No ----- Dated\_\_\_\_\_ to (Insert Name of selected Solar Power Developer) as per terms of RfS and the same having been accepted by the selected SPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [*from selected Solar Power Developer or a Project Company, ----- {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable*]. As per the terms of the RfS, the \_\_\_\_\_ [*insert name & address of Bank*] (hereinafter referred to as the 'Guarantor Bank') hereby agrees unequivocally, irrevocably and unconditionally to pay to PPGCL at [*Insert Name of the Place from the address of the PPGCL*] forthwith on demand in writing from PPGCL or any Officer authorised by it in this behalf, any amount upto and not exceeding Rupees----- [Total Value] only, on behalf of \_\_\_\_\_ [*Insert name of the selected Solar Power Developer / Project Company*]

This bank guarantee shall be valid and binding on this Guarantor Bank up to and including \_\_\_\_\_ and shall not be terminable by notice or any change in the constitution of the Guarantor Bank or the term of contract or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Bank Guarantee is restricted to Rs. \_\_\_\_\_ (Rs. \_\_\_\_\_ only). Our Bank Guarantee shall remain in force until \_\_\_\_\_ PPGCL shall be entitled to invoke this Bank Guarantee till \_\_\_\_\_.

The Guarantor Bank hereby agrees and acknowledges that the PPGCL shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by PPGCL, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to PPGCL.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by ----- [*Insert name of the selected Solar Power Developer / Project Company as applicable*] and/or any other person. The Guarantor Bank shall not require PPGCL to justify the invocation of this BANK GUARANTEE, nor shall

the Guarantor Bank have any recourse against PPGCL in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Delhi shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly PPGCL shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the selected Solar Power Developer / Project Company , to make any claim against or any demand on the selected Solar Power Developer / Project Company or to give any notice to the selected Solar Power Developer / Project Company or to enforce any security held by PPGCL or to exercise, levy or enforce any distress, diligence or other process against the selected Solar Power Developer / Project Company.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to PPGCL and may be assigned, in whole or in part, (whether absolutely or by way of security) by PPGCL to any entity to whom PPGCL is entitled to assign its rights and obligations under the PPA.

Notwithstanding anything contained hereinabove, our liability under this Bank Guarantee is restricted to Rs. \_\_\_\_\_ (Rs. \_\_\_\_\_ only) and it shall remain in force until \_\_\_\_\_. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if PPGCL serves upon us a written claim or demand.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Power of Attorney No. \_\_\_\_\_

For  
\_\_\_\_\_ [Insert Name of the Bank]

Banker's Stamp and Full Address.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Witness:

1. ....

Signature

Name and Address

2. ....

Signature

Name and Address

*Notes:*

- 1. *The Stamp Paper should either in the name of the executing Bank or the party on whose behalf the BG has been issued.*
- 2. *The Performance Bank Guarantee shall be executed by any of the Bank from the List of Banks enclosed.*

**SCHEDULE 2**

**FORMAT OF PAYMENT ON ORDER INSTRUMENT TO BE ISSUED BY  
IREDA/REC/PFC (IN LIEU OF PBG)**

No.

Date

PPGCL

\_\_\_\_\_

\_\_\_\_\_

Reg: M/s\_\_\_\_(insert name of the PPA signing entity) (Project No.....  
\_\_\_\_\_(Insert Project ID issued by PPGCL) – Issuance of Payment on  
OrderInstrument for an amount of Rs.\_\_\_\_\_

Dear Sir,

1. It is to be noted that M/s.\_\_\_\_\_(Insert Name of the POI issuing Agency) ('IREDA/REC/PFC') has sanctioned a non-fund-based limit loan of Rs.....(Rupees.....only) to M/s\_\_\_\_\_ under the Loan Agreement executed on\_\_\_\_\_to execute Renewable Energy Projects.
2. At the request of M/s, on behalf of..... (insert name of the SPV), this Payment on Order Instrument (POI) for an amount of Rs..... (Rupees..... (In words)). This Payment on Order Instrument comes into force immediately.
3. In consideration of the .....[Insert name of the Bidder] (hereinafter referred to as selected Solar Power Developer') submitting the response to RfS inter alia for selection of Contracted Capacity of ..... MW, at [Insert name of the place] under RfS for..... [Insert name of the RfS], for supply of power there from on long term basis, in response to the RfS dated.....issued by REC Power Development and Consultancy Limited on behalf of PPGCL Ltd (hereinafter referred to as PPGCL) and PPGCL considering such response to the RfS of [insert the name of the selected Solar Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Solar Power Project of the Solar Power Developer and issuing Letter of Award No..... to (Insert Name of selected Solar Power Developer) as per terms of RfS and the same having been accepted by the selected SPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Solar Power Developer or a Project Company, M/s --- ----- {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable]. As per the terms of the RfS, the..... [insert name & address of IREDA/PFC/REC] hereby agrees unequivocally, irrevocably and unconditionally to pay to PPGCL at [Insert Name of the Place from the address of the PPGCL] forthwith on demand in writing from PPGCL or any Officer authorized by it in this behalf, any amount up to

and not exceeding Rupees----- [Total Value] only, on behalf of M/s.....  
[Insert name of the selected Solar Power Developer / Project Company]

4. In consideration of the above facts, IREDA/REC/PFC, having its registered office at.....agrees to make payment for the sum of Rs..... lakhs (in words.....) to PPGCL on the following conditions: -
- (a) IREDA/REC/PFC agrees to make payment of the above said amount unconditionally, without demur and without protest within a period of\_\_\_\_\_ days of receipt of request from PPGCL within the validity period of this letter as specified herein;
  - (b) The commitment of IREDA/REC/PFC, under this Payment on Order Instrument will have the same effect as that of the commitment under the Bank Guarantee issued by any Public Sector Bank and shall be enforceable in the same manner as in the case of a Bank Guarantee issued by a Bank and the same shall be irrevocable and shall be honored irrespective of any agreement or its breach between IREDA/REC/PFC or its constituents notwithstanding any dispute that may be raised by them against PPGCL;
  - (c) The liability of IREDA/REC/PFC continues to be valid and binding on IREDA/REC/PFC and shall not be terminated, impaired and discharged, by virtue of change in its constitution and specific liability under letter of undertaking shall be binding on its successors or assignors;
  - (d) The liability of IREDA/REC/PFC shall continue to be valid and binding on IREDA/REC/PFC and shall not be terminated/ impaired/ discharged by any extension of time or variation and alternation made given or agreed with or without knowledge or consent of the parties (PPGCL and Bidding Party), subject to the however to the maximum extent of amount stated herein and IREDA/REC/PFC is not liable to any interest or costs etc.;
  - (e) This Payment of Order Instrument can be invoked either partially or fully, till the date of validity;
  - (f) IREDA/REC/PFC agrees that it shall not require any proof in addition to the written demand by PPGCL made in any format within the validity period. IREDA/REC/PFC shall not require PPGCL to justify the invocation of the POI against the SPV/SPD, to make any claim against or any demand against the SPV/SPD or to give any notice to the SPV/SPD;
  - (g) The POI shall be the primary obligation of IREDA/REC/PFC and PPGCL shall not be obliged before enforcing the POI to take any action in any court or arbitral proceedings against the SPV/SPD;
  - (h) Neither PPGCL is required to justify the invocation of this POI nor shall IREDA/REC/PFC have any recourse against PPGCL in respect of the payment made under letter of undertaking;
5. Notwithstanding anything contrary contained anywhere in this POI or in any other

documents, this POI is and shall remain valid upto.....and IREDA/REC/PFC shall make payment thereunder only if a written demand or request is raised within the said date and to the maximum extent of Rs.....and IREDA/REC/PFC shall in no case, be liable for any interest, costs, charges and expenses and IREDA's/REC's/PFC's liability in no case will exceed more than the above amount stipulated.

6. In pursuance of the above, IREDA/REC/PFC and PPGCL have signed an Umbrella Agreement dated.....setting out the terms and conditions for issue of letter of undertaking by IREDA/REC/PFC to PPGCL and the said terms and conditions shall be read as a part of this letter of undertaking issued for the project of PP mentioned above.

Thanking you,

Yours faithfully  
For and on behalf of M/s.....  
(Name of the POI issuing agency).

( )  
General Manager (TS)

Copy to:-  
M/s. \_\_PP\_\_\_\_\_  
..... As per their request

( )  
General Manager (TS)

### **SCHEDULE 3**

#### **COMMISSIONING SCHEDULE**

Plant shall be commissioned in 15 months from the date of execution of PPA. Subject to Article 11 of the PPA, delay in commissioning, beyond the Scheduled Commissioning Period shall involve penalties, on the SPD, as detailed below

1. For Delay in commissioning upto 6 (six) months from SCD, encashment of Performance Bank Guarantee (PBG) on per day basis and proportionate to the capacity not commissioned.
2. For Delay in commissioning beyond six months from SCD, SPD Event of Default, as per Article 13.1 of the PPA, shall be considered to have occurred and the contracted capacity shall stand reduced to the Project Capacity commissioned upto SCD + 6 (six) months. The PPA for the balance capacity not commissioned shall be terminated.

#### **COMMISSIONING PROCEDURE**

❖ **Capacity of Solar PV Projects:**

- i) The Project configuration shall be allowed as per the following matrix:

Sr. No.	Solar PV Project Capacity Bid	Minimum DC Arrays Capacity to be installed	Minimum Rated Inverter Capacity*	Maximum AC Capacity Limit at Delivery Point
1	290 MW	290 MW	290 MW	290 MW

If Greenshoe option is accepted, the capacity in the above table shall be 580 MW.

\*In case the rated inverter capacity is mentioned in kVA, the IEC test certificate declaring the power factor of the Inverter/PCU at rated power has to be submitted and the power factor shall be multiplied by the kVA rating to calculate the rated capacity of the inverter in kW.

- ii) The SPD shall be required to demonstrate compliances with the “Technical Requirements for Grid Connected Solar PV Power Plants” as mentioned in the RfS and Guidelines.
- iii) Higher DC capacity arrays can also be allowed, subject to the condition that the AC capacity limit as mentioned in (i) above for scheduling at the Delivery Point as per Article 4.4 “Right to Contracted Capacity & Energy” of the PPA is complied with.
- iv) For commissioning of the Project, cumulative capacity of DC arrays and cumulative capacity of the inverters installed shall be considered. In case of part commissioning of the Project, it shall be required to have the DC Arrays Capacity and inverters capacity to be installed not less than the proposed part commissioning capacity.
- v) If generation at any time exceeds the maximum permissible AC capacity at Delivery Point, the excess generation during that period may not be considered under PPA.

**APPENDIX-1**

**Installation Report**

*(To be provided by SPD and to be submitted at most 7 days prior to proposed commissioning date, which shall be verified by Commissioning Committee)*

Sr. No.	Capacity of the Project (MW)	
	Capacity already commissioned (MW)	
	Capacity proposed to be commissioned (MW)	
I.	Technology used (Mono/Multi Crystalline / thin film / Others; please specify along with capacity of each type)	
II.	Type of Tilt (Fixed Tilt/Seasonal Tilt/Tracking)	
III.	Rating of each module (Wp)	
IV.	Number of modules installed of each type (along with SerialNos. of all the modules installed)	
V.	Make of Module(s) installed of each type (including name of the Supplier and country of origin)	
VI.	Number of PCUs / Inverters installed (along with Serial Nos. of all the PCUs/Inverters installed)	
VII.	Make of the PCUs / Inverters (including name of supplier and country of origin)	
IX.	Rating of PCUs / Inverters	
X.	Date of installation of full capacity (as per capacity proposed to be commissioned)	
	PV arrays	
	PCUs / Inverters	
	Transformers	
	Capacity of the Project (MW)	

## APPENDIX-2

### Sample Part Commissioning / Full Commissioning Certificate of Solar PV Power Project

*(To be issued by the State Nodal Agency)*

This is to certify that <M/s> having its registered office at ----- has successfully commissioned Capacity < MW > out of total <MW> installed Capacity on (Date) of their Solar PV Power Generation Project at Village -----, Tehsil/Taluka -----, Dist. ----- and State --.

The Commissioning Certificate has been issued on the basis of the following documents enclosed:

- (i) Installation Report including Snap shots of the Project from various angles
- (ii) Electrical Inspector Report
- (iii) Synchronization Certificate
- (iv) Minutes of Meeting of the Commissioning Committee / recommendation of the Agency visiting the Project.