

DRAFT

STANDARD

POWER PURCHASE AGREEMENT

FOR

PROCUREMENT OF MW SOLAR POWER

ON LONG TERM BASIS

Between

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

And

NTPC Vidyut Vyapar Nigam Ltd. (NVVN)

..... [Insert month and year]

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

Between

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

And

NTPC Vidyut Vyapar Nigam Limited, a company incorporated under the Companies Act 1956, having its registered office at [Insert address of the registered office of NTPC Vidyut Vyapar Nigam Ltd.] (hereinafter referred to as “NVVN”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the second part.

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

Whereas:

- A. NVVN has been identified as the nodal agency for sale and purchase of 33kV and above grid connected [Insert ‘Solar PV Power’ or ‘Solar Thermal Power’ as applicable] under the National Solar Mission by Ministry of Power (MoP), Government of India (GoI).
- B. The SPD had registered itself with NVVN after meeting the eligibility requirements and has got selected by the Central Empowered Committee to sign a Memorandum of Understanding (MoU) with NVVN.
- C. [Insert as the case may be ‘The SPD has already set up’ or ‘Pursuant to the MoU, the SPD has agreed to set up’] the Solar Power Project of [Insert capacity] MW capacity in the state of [Insert state]

- D. The SPD has agreed to sign this Power Purchase Agreement with NVVN to sell Solar Power to NVVN as per the terms and conditions of this Agreement.
- E. NVVN has agreed to purchase such Solar Power from SPD and sell it to Discom after bundling it with the unallocated power from the central unallocated quota of NTPC Power Projects as per the provisions of the National Solar Mission.
- F. NVVN has signed a Power Sale Agreement with the Discom to sell such bundled power as per the provisions of the National Solar Mission
- G. This Agreement shall be operative and coterminus with the PSA that NVVN shall enter into with the Discom for selling of bundled power.
- H. *[Insert this for projects under migration schemes only: “The SPD has confirmed the connectivity to the grid substation from the state transmission utility (STU) to NVVN at the voltage level of 33kV or above.”]*
- I. The SPD has submitted the Performance Bank Guarantee to NVVN as per the format provided in Schedule 1 of this Agreement.
- J. NVVN agreesto procure power up to the Contracted Capacity at CERC notified Tariff from the SPD as per the terms of this Agreement.
- K. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power up by SPD to NVVN.

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

1. ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 *Definitions*

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued / framed by 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 any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time;
“Agreement” or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	shall mean the the Central Regulatory Commission referred to in subsection (1) of section 76 or the State Regulatory Commission referred to in section 82 or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
“Bundled Power”	Shall mean MW [Insert capacity] to be sold by NVVN to the Discom, after bundling Solar Power received from SPD and equivalent power received from NTPC, at the rate notified by CERC;
“Business Day”	shall mean with respect to SPD and NVVN, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the state of [Insert name of the state in which the registered office of NVVN is located;]
“Capacity Utilisation Factor” or “CUF”	Shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time;
“CERC”	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
“Central Empowered Committee”	Shall mean the committee formed as per the provisions of the National Solar Mission for selection of solar power developers;
“Change in Law”	shall have the meaning ascribed thereto in Article 12 of this Agreement;
“Commissioning Date”	Shall mean the actual commissioning date of the Power Project on which the SPD starts injecting power from the Power Project to the

Delivery Point;

- “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 a SPD Preliminary Default Notice or NVVN 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;
- “Performance Bank Guarantee” shall mean the irrevocable unconditional bank guarantee, submitted by the SPD to NVVN from a bank mentioned in Schedule 2 of this Agreement in the form attached hereto as Schedule 1, in accordance with the terms of this Agreement;
- “Contract Year” Shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that:
- (i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and
 - (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement
- "Contracted Capacity" shall mean[Insert capacity] MW contracted with NVVN for supply by the SPD to NVVN at the Delivery Point from the Solar Power Project;
- "Delivery Point" shall mean the commercial metering point at STU grid substation interface at 33kV or above of
- i) Power Project switchyard with the intrastate/interstate transmission system, as the case may be, for injection of electrical energy generated from the Power Project into the intrastate/interstate transmission system, as the case may be;

or

- ii) Dedicated transmission line from the Power Project switchyard with the intrastate/interstate transmission system, as the case may be, for injection of electrical energy generated from the Power Project into the intrastate/interstate transmission system.

“Discom”	Shall mean the distribution utility who has signed the PSA with NVVN for purchase of Bundled Power;
“Dispute”	shall mean any dispute or difference of any kind between NVVN and the SPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
"Due Date"	shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by NVVN 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 NVVN;
“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 thereunder from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
" Energy Accounts"	shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
“Event of Default”	shall mean the events as defined in Article 13 of this Agreement;
“Expiry Date”	Shall mean the date occurring twenty five (25) years from the Commissioning Date;
“Financial Closure”	shall mean the execution of all the Financing Agreements required for the Power Project and fulfillment of conditions precedents and waiver, if any, of any of the conditions precedent for the initial draw down of funds there under;
“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 NVVN;

"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 11 of this Agreement;
"Grid Code" / "IEGC" or "State Grid Code"	shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act 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;
"Indian Governmental Instrumentality"	shall mean the Government of India, Governments of state(s) of [Insert the name(s) of the state(s) in India, where the Power Project, NVVN and SPD are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the SPD and NVVN;
"Installed Capacity"	Shall mean the name plate capacity or the capacity of the Power Project (reckoned at the generator terminals), approved by the Appropriate Commission from time to time;
"Insurances"	shall mean the insurance cover to be obtained and maintained by the SPD in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on SPD's side of the Delivery Point for sending and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;
"Invoice" or "Bill"	shall mean either a Monthly Invoice, or a Supplementary Invoice by any of the Parties;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 10.3.4 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 Commission;

“Lender(s)”	shall mean the banks, other financial institutions, multilateral agencies, RBI registered non banking financial companies, mutual funds and agents or trustees of debenture/ bond holders, including their successors and assignees, who have agreed as on or before commencement of supply of power from the Power Project to provide the SPD with the debt financing and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned: Provided that, such assignment or transfer shall not relieve the SPD of its obligations to NVVN under this Agreement in any manner and does not lead to an increase in the liability of NVVN at any given point of time;
“Lender’s Representative”	shall mean the person notified by the Lenders in writing as being the representative of the Lenders and such person may from time to time be replaced by the Lenders pursuant to the Financing Agreements by written notice to the SPD ;
“Letter of Credit” or “L/C”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Monthly Bill" or “Monthly Invoice”	shall mean a monthly invoice prepared as per the provisions of Article 10 of this Agreement;
“National Solar Mission”	Shall mean the Jawaharlal Nehru National Solar Mission launched by the Government of India on [Insert Date];
“NVVN-NTPC PPA”	Shall mean the power purchase agreement signed between NVVN and NTPC for procurement of MW [Insert capacity] power by NVVN from NTPC;
"Operating Period";	shall mean the period commencing from the Commissioning Date, until the last day of the Term of this Agreement or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
“Payment Security Mechanism”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“Power Project”	shall mean the solar power generation facility of Installed Capacity of[Insert capacity] MW, located at [Insert name of the place] in [Insert name of the District and State]; This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, and all the other assets, buildings/structures, equipments, plant and

	machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement;
“Power Sale Agreement” or “PSA”	Shall mean the power sale agreement entered between the Discom and NVVN (NVVN-Discom PSA) for selling the bundled power as per the provisions of National Solar Mission and annexed hereto as Schedule 4 of this Agreement;
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 13 of this Agreement;
"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" or "Rs."	shall mean Indian rupees, the lawful currency of India;
“Scheduled Commissioning Date”	shall mean [Insert Date that is twelve (12) months from the Effective Date in case of Solar PV projects or twenty eight (28) months from the Effective Date in case of Solar Thermal projects];
“Selectee” [Insert this definition only if the SPD chooses the option of Lender’s substitution	shall mean a new company (i) proposed by the Lenders pursuant to Schedule 3 hereof and approved by NVVN (ii) or proposed by NVVN in accordance with Schedule 3 hereof and approved by the Lenders, for substituting the SPD for the residual period of the PPA

rights]	by amendment of the PPA or by execution of a fresh PPA in accordance with the terms and conditions contained in the said Schedule;
"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 Sub-section (1) of Section 83 of the Electricity Act 2003;
"SLDC"	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
"SLDC Charges"	shall mean the charges levied by any of the relevant SLDCs for the supply of power by the SPD to NVVN;
[Insert this definition if applicable]	Shall mean the solar photovoltaic power project that uses sunlight for direct conversion into electricity and that is [Insert 'set up' or 'being set up'] by the SPD to provide Solar Power to NVVN as per the terms and conditions of this Agreement;
"Solar Photovoltaic" or "Solar PV"	
"Solar Power"	Shall mean Solar Photovoltaic or Solar Thermal power generated from the Power Project;
[Insert this definition if applicable]	Shall mean the solar thermal power project that uses sunlight for direct conversion into electricity through concentrated solar power technology based on either line focus or point focus principle and that is [Insert 'set up' or 'being set up'] by the SPD to provide Solar Power to NVVN as per the terms and conditions of this Agreement;
"Solar Thermal"	
"State Transmission Utility" or "STU"	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
"Substitution Notice"	shall have the same meaning as ascribed to in Clause 3.3 of Schedule 3 of this Agreement;
"Supplementary Bill"	shall mean a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 10 of this Agreement;
"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;

"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" and "Rs." shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;

- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

2 ARTICLE 2 : TERM OF AGREEMENT

2.1 *Effective Date*

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

2.2 *Term of Agreement*

2.2.1 This Agreement subject to Article 2.3 and 2.4 shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date.

2.3 *Early Termination*

2.3.1 This Agreement shall terminate before the Expiry Date:

- i. if either NVVN or SPD terminates the Agreement, pursuant to Article 13 of this Agreement; or
- ii. If either of NTPC-NVVN PPA or NVVN-Discom PSA gets terminated;

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 liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 3.2.2, Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 16 (Governing Law and Dispute Resolution), Article 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

3 ARTICLE 3 : CONDITIONS SUBSEQUENT

3.1 Satisfaction of conditions subsequent by the SPD

- 3.1.1 The SPD agrees and undertakes to duly perform and complete all of the following activities at the SPD's own cost and risk within three (3) months from the Effective Date, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by NVVN:
- a) [Insert in case of Solar Thermal projects only: "The SPD should have made adequate arrangements for water required for the Power Project. The SPD shall submit the documentary evidence in the form of approval from the competent state/local authority for the quantity of water required for the power station;"]
 - b) The SPD shall have obtained all Consents, Clearances and Permits required for supply of power to NVVN as per the terms of this Agreement;
 - c) The SPD shall have sent a written notice to NVVN indicating the Installed Capacity for the Power Project expressed in MW;
 - d) The SPD shall have achieved Financial Closure and has provided a certificate to NVVN from the lead banker to this effect;
 - e) The SPD shall have made adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at the Delivery Point and shall have submitted a letter from the STU confirming consent of STU to provide connectivity at the Delivery Point;
 - f) *[Insert if the SPD opts for substitution rights of the Lenders]* The SPD shall have provided an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the terms of this Agreement;

3.2 Consequences of non-fulfillment of conditions subsequent

[Insert Article 3.2.1 - 3.2.4 only if extension is envisaged to be provided

- 3.2.1 If any one or more of the conditions specified in Article 3.1 is not duly fulfilled by the SPD, even within one (1) month after the time specified under Article 3.1, otherwise than for the reasons directly attributable to NVVN or Force Majeure event in terms of Article 3.2.3, then on and from the expiry of such period and until the SPD has satisfied all the conditions specified in Article 3.1, the SPD shall, on weekly basis, be liable to furnish to NVVN additional Performance Bank Guarantee from any of the banks listed in Schedule 11 of this Agreement, of Rs. (.....)*[Insert Amount not less than that derived on the basis of Rs. 1.50 lakhs per MW of Contracted Capacity]*, within two (2) Business Days of expiry of every such Week. Such additional Performance Bank Guarantee shall initially be valid till nine (9) months beyond the period specified in Article 3.1 above and NVVN shall be entitled to hold and/ or invoke the Performance Bank Guarantee, including such additional Performance Bank Guarantee, in accordance with the provisions of this Agreement. However, upon satisfaction of the conditions subsequent by the SPD, the additional Performance Bank Guarantee shall be returned by NVVN.

3.2.2 Subject to Article 3.2.3, if:

- (i) fulfillment of any one or more of the conditions specified in Article 3.1 is delayed beyond the period of one (1) month after the date specified in Article 3.1 above, and the SPD fails to furnish the additional Performance Bank Guarantee to NVVN in accordance with Article 3.2.1 hereof; or
- (ii) the SPD furnishes additional Performance Bank Guarantee to NVVN in accordance with Article 3.2.1 hereof, but fails to fulfill the conditions specified in Article 3.1 for a period of three (3) months beyond the period specified in Article 3.1 above,

NVVN shall have the right to terminate this Agreement by giving a Termination Notice to the SPD in writing of at least seven (7) days. The termination of the Agreement shall take effect upon the expiry of the last date of the procedure specified in Article 13 (“Termination Date”).

If NVVN elect to terminate this Agreement in the event specified in the preceding paragraph of this Article, the SPD shall be liable to pay to NVVN on the Termination Date an amount of Rupees (.....) *[Insert amount not less than that derived on the basis of Rs. xx lakhs per MW of the Contracted Capacity]*.

NVVN shall be entitled to recover this amount on the Termination Date, by invoking the Performance Bank Guarantee and shall then return the balance Performance Bank Guarantee, if any, to the SPD. If NVVN is unable to recover the amount or any part thereof from the Performance Bank Guarantee, the amount not recovered from the Performance Bank Guarantee, if any, shall be payable by the SPD to NVVN within ten (10) days from the Termination Date.

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

3.2.3 In case of inability of the SPD to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.

3.2.4 Tariff adjustments, if any, on account of any extension of time arising under any of the sub-articles of Article 3.2.1 shall be decided by the Appropriate Commission. The decision of the Appropriate Commission shall be final and binding on both the Parties;

Provided that due to the provisions of this Article 3.2, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Commissioning Date. Provided further that such extension of Scheduled Commissioning Date shall not be allowed beyond March 31, 2013.]

OR

[Insert this Article 3.2 in place of above Articles 3.2.1 - 3.2.4 in case extension of time is not provided: “If any one or more of the conditions specified in Article 3.1 is not duly fulfilled by the SPD within the timeline specified under Article 3.1 otherwise than for the reasons directly attributable to NVVN or Force Majeure event, NVVN shall have the right to invoke and encash the Performance Bank Guarantee in its favor and this Agreement shall stand terminated.]

3.3 *Performance Bank Guarantee*

- 3.3.1 The Performance Bank Guarantee to be furnished under this Agreement shall be for guaranteeing the commencement and continuity 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 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, subject to conditions mentioned in Article 4.5, NVVN shall have the right to encash the Performance Bank Guarantee without prejudice to the other rights of NVVN under this Agreement.

3.4 *Return of Performance Bank Guarantee*

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

4 ARTICLE 4 : CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 *SPD's Obligations*

- 4.1.1 The SPD undertakes to be responsible, at SPD's own cost and risk, for:
- a) obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; and
 - b) designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.
 - c) the commencement of supply of power up to the Contracted Capacity to NVVN no later than the Scheduled Commissioning Date; and
 - d) connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point; and
 - e) owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;
 - f) maintaining its controlling shareholding prevalent at the time of signing of MoU up to a period of three (3) years after Commissioning Date; and
 - g) fulfilling all obligations undertaken by the SPD under this Agreement.

4.2 *Information regarding Interconnection Facilities*

- 4.2.1 The SPD shall be required to obtain all information with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the SPD's side of the Delivery Point.

4.3 *Purchase and sale of Contracted Capacity*

- 4.3.1 Subject to the terms and conditions of this Agreement, the SPD undertakes to sell to NVVN and NVVN undertakes to pay Tariff as determined by CERC for all the energy generated from the Contracted Capacity and metered at the Delivery Point.

4.4 *Right to Contracted Capacity & Energy*

- 4.4.1 Subject to provisions of this Agreement, the entire Contracted Capacity subject to a maximum of Million kWh (MU) in any Contract Year shall be for the exclusive benefit of NVVN and NVVN shall have the exclusive right to purchase such energy from the SPD. Provided that NVVN, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the SPD beyond Million kWh (MU).

4.4.2 Notwithstanding Article 4.4.1, the SPD is free to sell such power to any third party prior to the Scheduled Commissioning Date and any capacity which is in excess of the quantum of power agreed to be supplied under this Agreement from Scheduled Commissioning Date.

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

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

4.5.2 In case of extension occurring due to reasons specified in Article 4.5.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than six (6) Months or the date on which the SPD elects to terminate this Agreement, whichever is later.

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 [Insert “three (3) Months” in case of Solar PV projects or “six (6) months” in case of Solar Thermal Projects], any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.

4.5.4 If the Parties have not agreed, within thirty (30) days after the affected Party’s performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.

4.5.5 As a result of such extension, the Scheduled Commissioning Date and the Expiry Date newly determined shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.

4.5.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond March 31, 2013.

4.6 *Liquidated Damages for delay in commencement of supply of power to NVVN*

4.6.1 If the SPD is unable to commence supply of power to NVVN by the Scheduled Commissioning Date other than for the reasons specified in Article 4.5.1, the SPD shall pay to NVVN, Liquidated Damages for the delay in such commencement of

supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date at the rate of/MW/day for delay of first 30 days and Rs. /MW/day for delay thereafter.

- 4.6.2 The SPD's maximum liability under this Article 4.6 shall be limited to the amount of liquidated damages calculated in accordance with Article 4.6.1 for and up to twelve (12) Months of delay for commencement of supply of power from the Scheduled Commissioning Date or the date of termination of Agreement whichever is later.

Provided that in case of failure of the SPD to start supply of power to NVVN even after expiry of twelve (12) Months from its Scheduled Commissioning Date, it shall be considered as a SPD Event of Default and provisions of Article 13 shall apply.

- 4.6.3 The SPD shall pay the amount calculated pursuant to Article 4.6.1 to NVVN within ten (10) days of the earlier of:

- a) the date on which the SPD commences supply of power to NVVN, or
- b) expiry of the period mentioned in Article 4.6.2.

- 4.6.4 If the SPD fails to pay the amount of liquidated damages within the period of ten (10) days as specified in Article 4.6.3, NVVN shall be entitled to recover the said amount of the liquidated damages by invoking the Performance Bank Guarantee. If the then existing Performance Bank Guarantee is for an amount which is less than the amount of the liquidated damages payable by the SPD to NVVN under this Article 4.6, then the SPD shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Performance Bank Guarantee by NVVN.

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 an agency identified by the central/state 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 NVVN and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the SPD at the site of the Power Project.
- 4.8.2 The third party or NVVN 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.
- 4.8.3 The third party may carry out checks for testing the CUF of the Power Project. At any time during the Term of the Agreement, if the CUF of the Power Project is found to be below [Insert value i.e. 5% less than CUF] or if it is found that the SPD has not been able to maintain a CUF of [Insert value i.e. 3% less than CUF] for a consecutive/non consecutive period of three (3) months during a Contract Year on

account of reasons solely attributable to SPD, NVVN shall have the right to assign the liability of payment of liquidated damages to the distribution utility as identified in the PSA, to the SPD. The SPD shall be liable to pay such liquidated damages as identified in the PSA to NVVN.

5 ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

5.1 *Synchronisation, Commissioning and Commercial Operation*

- 5.1.1 The SPD shall give the concerned RLDC/SLDC and NVVN at least sixty (60) days advanced preliminary written notice and atleast thirty (30) days advanced final written notice, of the date on which it intends to synchronise 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 any Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.1.3 The synchronization equipment shall be installed by the SPD at its generation facility of the Power Project at its own cost. The SPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the Chief Engineer of the concerned sub-station/Grid System and checking/verification is made by the concerned Senior Executive Enggr. (Protection) of the Grid System.
- 5.1.4 The SPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code.
- 5.1.5 The SPD shall start commercial operations as soon as it receives communication from NVVN and the distribution utility and directions from the concerned SLDC/RLDC.

6 ARTICLE 6: CAPACITY UTILISATION AND DISPATCH

6.1 *Capacity Utilisation*

6.1.1 For reasons solely attributable to the SPD, if the Power Project is unable to achieve a CUF as per the terms and conditions specified in Article 4.8.3, the provisions pertaining to payment of liquidated damages to NVVN as specified in Article 4.8.3 shall apply.

6.2 *Dispatch*

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

7 ARTICLE 7: METERING

7.1 Meters

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

8 ARTICLE 8: INSURANCES

8.1 *Insurance*

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

8.2 *Application of Insurance Proceeds*

8.2.1 Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

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

8.3 *Effect on liability of NVVN*

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

9 ARTICLE 9: APPLICABLE TARIFF

9.1.1 The SPD shall be entitled to receive a Tariff of Rs...../kWh [Insert as applicable] as determined by CERC for the energy supplied at the Delivery Point during a Contract Year pertaining to the Contracted Capacity.

10 ARTICLE 10: BILLING AND PAYMENT

10.1 General

10.1.1 From the commencement of supply of power, NVVN shall pay to the SPD the monthly Tariff Payments, on or before the Due Date, in accordance with Article 9. All Tariff Payments by NVVN shall be in Indian Rupees.

10.2 Delivery and Content of Monthly Bills

10.2.1 The SPD shall issue to NVVN a signed Monthly Bill for the immediately preceding Month not later than five(5) days of the next Month. In case the Monthly Bill for the immediately preceding Month is issued after five(5) days of the next Month, the Due Date for payment of such Monthly Bill shall be extended by thirty (30) days.

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

10.3 Payment of Monthly Bills

10.3.1 NVVN shall pay the amount payable under the Monthly Bill on the Due Date to such account of the SPD, as shall have been previously notified by the SPD in accordance with Article 10.3.3 below.

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

- i) deductions required by the Law; and
- ii) amounts claimed by NVVN, if any, from the SPD, through an invoice duly acknowledged by the SPD, to be payable by the SPD, and not disputed by the SPD within thirty (30) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that NVVN shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) Days period.

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

10.3.4 Late Payment Surcharge

In the event of delay in payment of a Monthly Bill by NVVN thirty (30) days beyond its Due Date, a Late Payment Surcharge shall be payable by NVVN to the SPD at the rate of 1.25% per month. The Late Payment Surcharge shall be claimed by the SPD through the Supplementary Bill.

10.3.5 Rebate

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

- a) For payment of Bill(s) of the SPD being made by NVVN through Letter of Credit (LC) on presentation, a Rebate of 2% shall be allowed.
- b) For payments made thereafter or other than through Letter of Credit (LC) within the Due Date, a Rebate of 1% shall be allowed.
- c) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess.

10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 NVVN 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 by NVVN, which may be drawn upon by the SPD in accordance with this Article.

10.4.2 Not later than one (1) Month before the Scheduled Commissioning Date, NVVN shall through a scheduled bank at [*Identified Place*] open a Letter of Credit in favour of the SPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to the estimated average monthly billing;
- ii) for each subsequent Contract Year, equal to the average of the monthly Tariff Payments of the previous Contract Year.

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

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, NVVN shall restore such shortfall within seven (7) days.

10.4.3 NVVN shall cause the scheduled bank issuing the Letter of Credit to intimate the SPD, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.4 If NVVN fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 10.5.7, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from NVVN, an amount equal to such Monthly Bill or Supplementary Bill or part thereof plus Late Payment Surcharge, if applicable, in accordance with Article 10.3.4 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid by NVVN;
- ii) a certificate from the SPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and
- iii) calculations of applicable Late Payment Surcharge, if any.

10.4.5 NVVN shall ensure that the Letter of Credit shall be renewed not later than forty five (45) days prior to its expiry.

10.4.6 All costs relating to opening and maintenance of the Letter of Credit shall be borne by NVVN, however, Letter of Credit negotiation charges shall be borne and paid by the SPD.

10.5 Disputed Bill

10.5.1 If a Party does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.

10.5.2 If a Party disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, that Party shall, within thirty (30) 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 invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the invoicing Party shall revise such Bill within seven (7) days of receiving the Bill Dispute Notice. The disputing Party shall thereafter within seven (7) Days of receiving the revised Bill from the invoicing Party, make the payment thereunder, and if the disputing Party has already made the excess payment, the invoicing Party shall refund to the disputing Party such excess amount within seven (7) days of receiving the Bill Dispute Notice. 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 invoicing Party 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 disputing Party 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 disputing Party under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the disputing Party and the invoicing Party shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

10.5.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.5.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

10.5.7 In case of Disputed Bills, it shall be open to the aggrieved Party to approach the Appropriate Commission for Dispute resolution in accordance with Article 16 and also for interim orders protecting its interest including for orders for interim payment pending Dispute resolution and the Parties shall be bound by the decision of the Appropriate Commission, including in regard to interest or Late Payment Surcharge, if any directed to be paid by the Appropriate Commission.

10.5.8 If a Dispute regarding a Monthly Bill or a Supplementary Bill is settled pursuant to Article 10.5 or by the Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 10.5.5 or settled by Dispute resolution mechanism along with interest at the same rate as Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable.

10.5.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, NVVN shall, without prejudice to its/ their right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months Invoices (being the undisputed portion of such three Months' invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the Energy Accounts and in accordance with this Agreement.

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 at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year 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 NVVN shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the SPD or NVVN, as the case may be, shall raise a Supplementary Bill for the Tariff adjustment payments for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the Tariff adjustment payments for the relevant quarter/ Contract Year, as may be due as a result of such reconciliation. 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 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Regional Energy Account (if applicable);
- ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or
- iii) Change in Law as provided in Article 12,

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

10.7.2 NVVN shall remit all amounts due under a Supplementary Bill raised by the SPD to the SPD's Designated Account by the Due Date. Similarly, the SPD shall pay all amounts due under a Supplementary Bill raised by NVVN, if any, by the Due Date to concerned NVVN's designated bank account. For such payments by NVVN, Rebate as applicable to Monthly Bills pursuant to Article 10.3.5 shall equally apply.

10.7.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 10.3.4.

10.8 *Limitation of Liability*

10.8.1 NVVN's liability to make payments to the SPD under this Article 10 for the Monthly Bill shall be limited to the extent NVVN has been able to realize its payments due from the Discom after exhausting all the payment security measures defined in the NVVN-Discom PSA for the applicable Month.

11 ARTICLE 11 : FORCE MAJEURE

11.1 Definitions

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

11.2 Affected Party

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

11.3 Force Majeure

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

- a) act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado,
- b) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the Affected Party; or
- c) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Parties to perform their obligations under this Agreement or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development/ operation of the Power Project , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
- d) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against the supply of power by the SPD to NVVN, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.
- e) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo;, revolution, riot, insurrection, terrorist or military action; or
- f) radio active contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.

11.4 Force Majeure Exclusions

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

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

11.5 Notification of Force Majeure Event

11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

11.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

11.6 *Duty to Perform and Duty to Mitigate*

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

11.7 *Available Relief for a Force Majeure Event*

11.7.1 Subject to this Article 11:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.5;
- (c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.

12 ARTICLE 12: CHANGE IN LAW

12.1 Definitions

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

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

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPD;
- any change in tax or introduction of any tax made applicable for supply of power by the SPD as per the terms of this Agreement.

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

12.2 Relief for Change in Law

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

12.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and provide relief for the same shall be final and governing on both the Parties.

13 ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

13.1 SPD Event of Default

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

(i) the failure to commence supply of power to NVVN up to the Contracted Capacity, relevant to the Scheduled Commissioning Date, by the end of twelve (12) months or March 31, 2013, whichever is earlier; or

(ii) if

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

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

(i). is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or

(ii). is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;

(iii) if (a) the SPD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the SPD, or (c) the SPD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

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

(iv) the SPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from NVVN in this regard; or

(v) except where due to any NVVN's failure to comply with its material obligations, the SPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPD within thirty (30) days of receipt of first notice in this regard given by NVVN.

(vi) failure to replace the Performance Bank Guarantee, as per the terms of this Agreement; or

- (vii) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SPD.

13.2 NVVN Event of Default

13.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the SPD of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting NVVN:

- (i) NVVN fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly/ Supplementary Bill for a period of ninety (90) days after the Due Date and the SPD is unable to recover the amount outstanding to the SPD through the Letter of Credit provided NVVN has realized the payments due from the Discom as per the provisions of NVVN-Discom PSA for the applicable Month; or
- (ii) NVVN repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the SPD in this regard; or
- (iii) except where due to any SPD's failure to comply with its obligations, NVVN is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by NVVN within thirty (30) days of receipt of notice in this regard from the SPD to NVVN; or
- (iv) if
 - NVVN becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
 - any winding up or bankruptcy or insolvency order is passed against NVVN, or
 - NVVN goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

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

13.3 Procedure for cases of SPD Event of Default

- 13.3.1 Upon the occurrence and continuation of any SPD Event of Default under Article 13.1, NVVN shall have the right to deliver to the SPD a notice [*Insert further in case SPD chooses for Lenders substitution rights: “with a copy to the Lender’s Representative”*], stating its intention to terminate this Agreement (NVVN Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 13.3.2 Following the issue of NVVN Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 13.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the SPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, NVVN may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the SPD.

A copy of the Termination Notice shall be given to the Lenders’ Representative. The Lenders may exercise or NVVN may require the Lenders to exercise their substitution rights and other rights provided to them, if any, under Financing Agreements and NVVN would have no objection to the Lenders exercising their rights if it is in consonance with provisions of Schedule 3 of this Agreement.

13.4 Procedure for cases of NVVN Event of Default

- 13.4.1 Upon the occurrence and continuation of any NVVN Event of Default specified in Article 13.2 the SPD shall have the right to deliver to NVVN, a SPD Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 13.4.2 Following the issue of a SPD Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 13.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 13.4.4 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or NVVN Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the SPD shall be free to sell the Contracted Capacity to any third party of the SPD’s choice.

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

13.5 Termination due to Force Majeure

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

14 ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1 Indemnity

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

- a) any and all third party claims against NVVN 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 NVVN from third party claims arising by reason of:
 - (i) 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), or
 - (ii) any of the representations or warranties of the SPD, if any made under this Agreement, being found to be inaccurate or untrue.

14.1.2 NVVN shall indemnify, defend and hold the SPD harmless against:

- a) any and all third party claims against the SPD, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by NVVN of any of its obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the SPD from third party claims arising by reason of
 - (i) a breach by NVVN of any of its obligations under this Agreement (Provided that this Article 14 shall not apply to such breaches by NVVN, for which specific remedies have been provided for under this Agreement.) or
 - (ii) any of the representations or warranties of NVVN, if any made under this Agreement, being found to be inaccurate or untrue.

14.2 Procedure for claiming Indemnity

14.2.1 Third party claims

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or 14.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

- i) the Parties choose to refer the dispute before the Arbitrator in accordance with Article 16.3.2; and
- ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

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

14.3 Indemnifiable Losses

14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 14.3, 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 NVVN 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 NVVN, the SPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 NVVN shall have no recourse against any officer, director or shareholder of the SPD or any Affiliate of the SPD or any of its officers, directors or shareholders for such claims excluded under this Article. The SPD shall have no recourse against any officer, director or shareholder of NVVN, or any Affiliate of NVVN or any of its officers, directors or shareholders for such claims excluded under this Article.

14.5 *Duty to Mitigate*

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

15 ARTICLE 15: ASSIGNMENTS AND CHARGES

15.1 Assignments

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

Provided that, such consent shall not be withheld if NVVN 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.

[Insert this para in case the SPD chooses the option of Lender's substitution rights: "The SPD shall be entitled to assign its rights and obligations under this Agreement in favor of the Selectee duly appointed pursuant to the terms of Schedule 3 of this Agreement."]

15.2 Permitted Charges

15.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

16 ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION

16.1 *Governing Law*

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

16.2 *Amicable Settlement and Dispute Resolution*

16.2.1 *Amicable Settlement*

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

16.3 *Dispute Resolution*

16.3.1 *Dispute Resolution by the Appropriate Commission*

- i. Where any Dispute (i) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (ii) relates to any matter agreed to be referred to the Appropriate Commission, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

- ii. The obligations of NVVN under this Agreement towards the SPD shall not be affected in any manner by reason of inter-se disputes amongst NVVN.

16.3.2 Dispute Resolution through Arbitration

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

- i) The Arbitration Tribunal shall consist of three (3) Arbitrators. Each party shall appoint one Arbitrator within 30 days of the receipt of request for settlement of dispute by Arbitration. The two appointed Arbitrators shall within 30 days of their appointment, appoint a third Arbitrator who shall act as presiding Arbitrator. In case the party fails to appoint an Arbitrator within 30 days from the date of receipt of request or the two appointed Arbitrator fails to agree on third Arbitrator within 30 days of their appointment, the appointment of Arbitrator, as the case may be, shall be made in accordance with the Indian Arbitration and Conciliation Act, 1996
- ii) The place of arbitration shall be Delhi. The language of the arbitration shall be English.
- iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- iv) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.
- v) The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.

16.4 Parties to Perform Obligations

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

17 ARTICLE 17: MISCELLANEOUS PROVISIONS

17.1 *Amendment*

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

17.2 *Third Party Beneficiaries*

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

17.3 *Waiver*

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

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

17.4 *Confidentiality*

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

- a) to their professional advisors;
- b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- c) disclosures required under Law.

without the prior written consent of the other Party.

17.5 *Severability*

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

17.6 Notices

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

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

Address :

Attention :

Email :

Fax. No. :

Telephone No.:

17.6.3 If to NVVN, 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:

(i) Address :

Attention

Email :

Fax. No. :

Telephone No.:

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

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

17.7 Language

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

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

17.8 Restriction of Shareholders / Owners' Liability

17.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. 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, 1956.

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

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

17.10 No Consequential or Indirect Losses

17.10.1 The liability of the SPD and NVVN shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall NVVN or the SPD claim from one another any indirect or consequential losses or damages.

17.11 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 terms and conditions of this Agreement; and
- iii. Prudent Utility Practices

17.12 Independent Entity

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

17.12.2 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 NVVN 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 NVVN.

17.13 Compliance with Law

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

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

For and on behalf of
[NVVN]

For and on behalf of
[SPD]

Name, Designation and Address

Name, Designation and Address

Signature with seal

Signature with seal

Witness:

1.

2.

Witness:

1.

2.

1 SCHEDULE 1: FORMAT OF THE PERFORMANCE BANK GUARANTEE

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution.)

In consideration of the[Insert name of the SPD with address] agreeing to undertake the obligations under the PPA and [Insert name of NVVN] (herein after referred to as NVVN), agreeing to execute the PPA with NVVN for **procurement of Solar Power on long term basis**, the [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to NVVN at[Insert address of NVVN] forthwith on demand in writing from NVVN or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees (Rs) only [Insert the amount on the basis of Rs. 25lakh/MW of the Contracted Capacity] as per the terms of PPA on behalf of NVVN.

This guarantee shall be valid and binding on the Guarantor Bank up to and including[Insert date of validity of CPG] and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the PPA 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 Guarantee is restricted to Rupees. (Rs. only). Our Guarantee shall remain in force until [Insert the date of validity of the CPG]. NVVN shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

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

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, [Insert name of NVVN or the SPD] and/ or any other person. The Guarantor Bank shall not require NVVN to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against NVVN in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at [Insert name of city] 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, liquidation, winding up, dissolution 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 NVVN shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against NVVN/SPD, to make any claim against or any demand on NVVN/SPD or to give any notice to NVVN/SPD or to enforce any security held by NVVN or to exercise, levy or enforce any distress, diligence or other process against NVVN/SPD.

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

The Guarantor Bank hereby agrees and acknowledges that NVVN shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rupees. crores (Rs. crores only) and it shall remain in force until[Date to be inserted is three (3) months after the Scheduled Commissioning Date], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by [Insert name of NVVN/SPD]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if NVVN serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this day of at

Signature

Name:

Designation with Bank Stamp

Attorney as per power of attorney No.

For:

..... [Insert Name of the Bank]

Full Address:

Dated this day of 20.....

Witness:

1.

Signature

Name and Address

2.

Signature

Name and Address

Note: The Stamp Paper should be in the name of the Executing Bank.

2 SCHEDULE 2: LIST OF BANKS

Scheduled Commercial Banks

SBI and Associates

1. State Bank of India
2. State Bank of Bikaner and Jaipur
3. State Bank of Hyderabad
4. State Bank of Indore
5. State Bank of Mysore
6. State Bank of Patiala
7. State Bank of Saurashtra
8. State Bank of Travancore

Nationalised Banks

1. Allahabad Bank
2. Andhra Bank
3. Bank of India
4. Bank of Maharashtra
5. Bank of Baroda
6. Canara Bank
7. Central Bank of India
8. Corporation Bank
9. Dena Bank
10. Indian Bank
11. Indian Overseas Bank
12. Oriental Bank of Commerce
13. Punjab National Bank
14. Punjab and Sind Bank
15. Syndicate Bank
16. Union Bank of India

17. United Bank of India
18. UCO Bank
19. Vijaya Bank

2. Foreign Banks

- 1 BNP Paribas
- 2 Citi Bank N.A.
- 3 Deutsche Bank A.G.
- 4 The Hongkong and Shanghai Banking Corporation Ltd.
- 5 Standard Chartered Bank
- 6 ABN Amro Bank N.V.
- 7 UFJ Bank Ltd.
- 8 Sumitomo Mitsui Banking Corporation
- 9 Societe Generale
- 10 Barclays Bank
- 11 Bank of Novascotia

3. Scheduled Private Banks

- 1 ING Vysya Bank Ltd.
- 2 ICICI Bank Ltd.
- 3 HDFC Bank Ltd.
- 4 IDBI Bank Ltd
- 5 Axis Bank
- 6 Kotak Mahindra Bank

[Note: NVVN is authorized to modify the aforesaid list of Banks as deemed fit.]

3 SCHEDULE 3: SUBSTITUTION RIGHTS OF LENDERS

[This Schedule shall be inserted only if the Successful Bidder requests for substitution rights of the Lenders to be provided]

3.1 Substitution of the SPD

3.1.1 Subject to the terms of this Agreement, upon occurrence of a SPD Event of Default under this Agreement, the Lenders shall, have the right to seek substitution of the SPD by a Selectee for the residual period of the Agreement, for the purposes of securing the payments of the total debt amount from the SPD and performing the obligations of the SPD, in accordance with the provisions of this Schedule.

3.1.2 The Lenders may seek to exercise right of substitution by an amendment or novation of the PPA in favour of the Selectee. The SPD shall cooperate with the Lenders to carry out such substitution.

3.2 NVVN Notice of Default

3.2.1 NVVN while serving the Preliminary Default Notice on the SPD as per this Agreement, shall simultaneously also issue a copy of the same to the Lenders.

3.3 Substitution Notice

3.3.1 In the event of failure of the SPD to rectify the SPD Event of Default giving rise to Preliminary Default Notice and on receipt of a copy of the Termination Notice by SPD, the Lenders, either on their own or through a representative (the “**Lenders’ Representative**”) shall be entitled to notify NVVN and the SPD of the intention of the Lenders to substitute the SPD by the Selectee for the residual period of the PPA (the “**Substitution Notice**”).

3.4 Interim operation of Power Project

3.4.1 On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule 3 of this Agreement.

3.4.2 On issue of a Substitution Notice, the Lenders shall have the right to request the SPD to continue for the interim operation of the Power Project till the substitution of the Selectee is complete.

3.4.3 The SPD shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the Selectee is finally substituted.

3.4.4 The Lenders and NVVN shall, simultaneously have the right to commence the process of substitution of the SPD by the Selectee in accordance with these terms and the SPD hereby irrevocably consents to the same.

3.5 Process of Substitution of SPD

- 3.5.1 The Lenders' Representative may, on delivery of a Substitution Notice notify NVVN and the SPD on behalf of all the Lenders about the Lenders' decision to invite and negotiate, at the cost of the Lenders, offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of NVVN, such Selectee shall be entitled to receive all the rights of the SPD and shall undertake all the obligations of the SPD under the PPA, in accordance with these terms of substitution.
- 3.5.2 The Lenders and the SPD shall ensure that, upon NVVN approving the Selectee, the SPD shall transfer absolutely and irrevocably, the ownership of the Power Project to such Selectee simultaneously with the amendment or novation of the PPA in favour of the Selectee as mentioned in Clause 3.1.2 of this Schedule.

3.6 *Modality for Substitution*

Criteria for selection of the Selectee

- 3.6.1 The Lenders and / or the Lenders' Representative shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:
- a) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the SPD to NVVN under and in accordance with the PPA and also payment of the total debt amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;
 - b) the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or any Lender or between the Selectee and NVVN, involving sums greater than Rupees (Rs) [*Insert amount*] at any time in the last two (2) years as on the date of the substitution notice to the SPD.
 - c) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained and the security in favour of the Lenders under the Financing Agreements is preserved.

3.7 *Modalities*

- 3.7.1 The following modalities shall be applicable to any substitution of the SPD by the Selectee pursuant to this Agreement.
- 3.7.2 The Lenders' Representative shall on behalf of the Lenders propose to NVVN (the "Proposal") pursuant to Clause 3.7.3 below, the name of the Selectee for acceptance, seeking:
- a) grant of all the rights and obligations under the PPA to the Selectee (as substitute for the SPD);

- b) amendment of the PPA to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the SPD under the original PPA; and
 - c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this Agreement.
- 3.7.3 The Proposal shall contain the particulars and information in respect of the Selectee and the data and information as NVVN may reasonably require. NVVN may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.
- 3.7.4 The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by NVVN of the Proposal:
- a) observe, comply, perform and fulfill the terms, conditions and covenants of the PPA, which according to the terms therein are required to be observed, complied with, performed and fulfilled by the SPD, as if such Selectee was the SPD originally named under the PPA; and
 - b) be liable for and shall assume, discharge and pay the total debt amount or then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and NVVN as if such Selectee was the SPD originally named under such Financing Agreements.
- 3.7.5 At any time prior to taking a decision in respect of the Proposal received under Clause 3.7.2, NVVN may require the Lender/ Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of NVVN as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.
- 3.7.6 NVVN shall convey its approval or disapproval of such Proposal to the Selectee. Such decision shall be made by NVVN at its reasonably exercised discretion within twenty one (21) days of:
- (a) the date of receipt of the Proposal by it; or
 - (b) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by NVVN under Clause 3.7.3 above is received;
- whichever is later.
- 3.7.7 Upon approval of the Proposal and the Selectee by NVVN, the Selectee mentioned in the Proposal shall become the Selectee hereunder.
- 3.7.8 Following the rejection of a Proposal, the Lenders and/ or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the

rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this article shall apply *mutatis mutandis* to such fresh Proposal.

3.7.9 The substitution of the SPD by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the SPD, NVVN and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and NVVN and upon transfer of ownership and complete possession of the Power Project the SPD to the Selectee. The quantum and manner of payment of the consideration payable by the Selectee to the SPD towards purchase of the Power Project and assumption of all the rights and obligations of the SPD under the PPA as mentioned in this Agreement shall be entirely between the SPD, Selectee and the Lenders and NVVN shall in no way be responsible to bear the same.

3.7.10 Upon the substitution becoming effective pursuant to Clause 3.7.9 above, all the rights of the SPD under the PPA shall cease to exist.

Provided that, nothing contained in this sub-article shall prejudice any pending / subsisting claims of the SPD against NVVN or any claim of NVVN against the erstwhile SPD or the Selectee.

3.7.11 The Selectee shall, subject to the terms and conditions of the substitution, have a period of ninety (90) days to rectify any breach and/ or default of the SPD subsisting on the date of substitution and required to be rectified and shall incur the liability or consequence on account of any previous breach and/ or default of the SPD.

3.7.12 The decision of the Lenders and NVVN in the selection of the Selectee shall be final and binding on the SPD and shall be deemed to have been made with the concurrence of the SPD. The SPD expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

3.7.13 The Lenders shall be solely and exclusively responsible for obtaining any and all consents/ approvals or cooperation, which may be required to be obtained from the SPD under this Agreement and NVVN shall not be liable for the same.

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

3.8 *SPD's Waiver*

- 3.8.1 The SPD irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Lenders, the Lender's Representative and NVVN or exercise of their rights under and in accordance with these terms.
- 3.8.2 The SPD irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in Clause 3.7.10, it shall cease to have any rights under the PPA or the Financing Agreements other than those expressly stated therein.
- 3.8.3 The SPD warrants and covenants that any agreement entered into by the SPD, in relation to the Power Project, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Lenders or NVVN. The SPD further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Power Project and which lack a legally enforceable clause providing for automatic novation of such agreement, the SPD shall procure an amendment in the concluded agreement to incorporate such clause.

3.9 *Interim Protection Of Service And Preservation Of Security Appointment of a Receiver*

- 3.9.1 In every case of the Lenders issuing a Substitution Notice and the SPD failing to operate the Power Project in accordance with Clause 3.4.3 and NVVN not electing to act as Receiver as per Clause 3.9.2 hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.
- 3.9.2 If the assets of the Power Project are, in the opinion of NVVN, necessary and required for the operation and maintenance of the Power Project, NVVN shall be entitled to elect to act as the Receiver for the purposes of this Article and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and SPD hereby consent and agree to the same. Upon NVVN so intimating the SPD and the Lender's representative their desire to act as Receiver, the SPD and the Lender's representative shall co-operate with NVVN to facilitate the same.
- 3.9.3 Upon appointment of the court appointed Receiver or NVVN acting as Receiver, all the receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by NVVN and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the Lenders in accordance with the terms of its appointment.
- 3.9.4 When acting as a Receiver or operator in accordance with Clause 3.9, NVVN shall be entitled to be remunerated for such services as may be determined by the Appropriate Commission. Furthermore, when acting as a Receiver, NVVN shall not be liable to

the Lenders, the Lenders' Representative, SPD or any third party for any default under the PPA, damage or loss to the Power Project or for any other reason whatsoever, except for wilful default of NVVN.

3.10 Substitution Consideration

3.10.1 The Lenders and NVVN shall be entitled to appropriate any consideration received for the substitution of the SPD as hereinabove provided, from the Selectee towards the payment of Lenders' and NVVN's respective dues, if any, to the exclusion of the SPD.

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

3.11 Change in Lenders

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

4 SCHEDULE 4: POWER SALE AGREEMENT (PSA)

[To be annexed]