

**DRAFT**

**STANDARD**

**POWER SALE AGREEMENT**

**FOR**

**SALE OF ..... MW BUNDLED POWER**

**ON LONG TERM BASIS**

**Between**

**NTPC Vidyut Vyapar Nigam Ltd. (NVVN)**

**And**

..... **[Insert Name of Distribution Utility]**

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

## **INDEX**

<b>SECTION</b>	<b>CONTENTS</b>	<b>PAGE NO.</b>
1.	<b>ARTICLE 1: DEFINITIONS AND INTERPRETATION .....</b>	<b>5</b>
2	<b>ARTICLE 2 : TERM OF AGREEMENT .....</b>	<b>11</b>
3	<b>ARTICLE 3 : OPEN ACCESS &amp; TRANSMISSION .....</b>	<b>12</b>
4	<b>ARTICLE 4: METERING .....</b>	<b>13</b>
5	<b>ARTICLE 5: APPLICABLE TARIFF .....</b>	<b>14</b>
6	<b>ARTICLE 6: BILLING AND PAYMENT .....</b>	<b>15</b>
7	<b>ARTICLE 7 : FORCE MAJEURE .....</b>	<b>22</b>
8	<b>ARTICLE 8: CHANGE IN LAW.....</b>	<b>25</b>
9	<b>ARTICLE 9: EVENTS OF DEFAULT AND TERMINATION .....</b>	<b>26</b>
10	<b>ARTICLE 10: LIABILITY AND INDEMNIFICATION .....</b>	<b>29</b>
11	<b>ARTICLE 11: ASSIGNMENTS AND CHARGES .....</b>	<b>32</b>
12	<b>ARTICLE 12: GOVERNING LAW AND DISPUTE RESOLUTION.....</b>	<b>33</b>
13	<b>ARTICLE 13: MISCELLANEOUS PROVISIONS.....</b>	<b>35</b>
1	<b>SCHEDULE 1: AMOUNT REALISATION FOR SOLAR POWER.....</b>	<b>39</b>
2	<b>SCHEDULE 2: AMOUNT REALISATION FOR NTPC POWER.....</b>	<b>40</b>
3	<b>SCHEDULE 3: AMOUNT REALISATION FOR BUNDLED POWER .....</b>	<b>41</b>
4	<b>SCHEDULE 4: NVVN-SPD PPA .....</b>	<b>42</b>
5	<b>SCHEDULE 5: NVVN-NTPC PPA.....</b>	<b>43</b>

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

Between

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 first part.

And

..... [Insert name of the Distribution Utility], a company incorporated under the Companies Act 1956, having its registered office at ..... [Insert address of the registered office of Distribution Utility] (hereinafter referred to as “Discom”, 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.

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

Whereas:

- A. NVVN has been identified as the nodal agency for purchase and sale of 33kV and above grid connected ..... power [Insert ‘Solar PV’ or ‘Solar Thermal’ as applicable] under the National Solar Mission by Ministry of Power (MoP), Government of India (GoI).
- B. NVVN has also been authorised by Ministry of Power, GoI and under the provisions of the National Solar Mission to bundle the purchased Solar Power with an equivalent MW capacity from the central unallocated quota from NTPC power stations at the rate notified by CERC.
- C. NVVN has signed a Power Purchase Agreement (PPA) with ..... [Insert name of identified solar power developer] (hereinafter referred to as “SPD”) for procurement of ..... MW [Insert capacity] Solar Power on a long term basis.

- D. NVVN has also signed a Power Purchase Agreement (PPA) with NTPC Ltd. (hereinafter referred to as “NTPC”) for procurement of .....MW [Insert capacity] power on a long term basis.
- E. NVVN has agreed to sell Bundled Power to the Discom and the Discom has agreed to purchase such Bundled Power from NVVN as per the terms and conditions of this Agreement.
- F. This agreement shall be operative and coterminus with the power purchase agreements that NVVN has entered into with the SPD and NTPC viz. NVVN-SPD PPA and NVVN-NTPC PPA for purchase of solar power and power generated from unallocated quota respectively.
- G. The Parties hereby agree to execute this Power Sale Agreement setting out the terms and conditions for the sale of Bundled Power up to the agreed Contracted Capacity by NVVN to the Discom.

**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 Sale Agreement" or "PPA"	shall mean this Power Sale 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 sub-section (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;
“Business Day”	shall mean with respect to NVVN and Discom, 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;]
“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 Transmission Utility” or “CTU”	shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;
“Change in Law”	shall have the meaning ascribed thereto in Article 8 of this Agreement;
“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;
“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

	NVVN Preliminary Default Notice or Discom Preliminary Default Notice as provided in Article 9 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
“Contract Year”	Shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that 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 of Bundled Power contracted with Discom for sale of such power by NVVN to Discom;
"Delivery Points"	shall mean SPD Delivery Point and NTPC Delivery Point;
“Dispute”	shall mean any dispute or difference of any kind between NVVN and the Discom 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 12 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 Discom 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 Discom;
“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 9 of this Agreement;
“Expiry Date”	Shall mean the date occurring twenty five (25) years from the date of sale of Bundled Power by NVVN to Discom;
"Force Majeure" or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 7 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 Discom 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 Discom and NVVN;
"Interconnection Facilities"	shall mean the facilities on SPD’s side of the SPD Delivery Point or NTPC’s side of NTPC Delivery Point for sending and metering the electrical output in accordance with this Agreement and, subject to Article 4, the Metering System required for supply of power ;
“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 6.3.4 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;
“Letter of Credit” or “L/C”	shall have the meaning ascribed thereto in Article 6.4 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 6 of this Agreement;
“National Solar Mission”	Shall mean the Jawaharlal Nehru National Solar Mission launched by the Government of India on ..... [Insert Date];
“NTPC Delivery Point”	Shall mean the delivery point as identified in NVVN-NTPC PPA;
“NVVN-SPD PPA”	Shall mean the power purchase agreement signed between NVVN and SPD for procurement of .... MW [Insert capacity] Solar Power by NVVN from SPD and annexed hereto as Schedule 4 of this Agreement;

“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 and annexed hereto as Schedule 5 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 6.4 of this Agreement;
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 9 of this Agreement;
“RBI”	shall mean the Reserve Bank of India;
“Rebate”	shall have the same meaning as ascribed thereto in Article 6.3.5 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;
"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 on the Discom;
[Insert this definition if applicable] “Solar Photovoltaic” or “Solar PV”	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;
“Solar Power”	Shall mean Solar Photovoltaic or Solar Thermal power generated from the power project;
[Insert this definition if applicable] “Solar Thermal”	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;
"SPD Delivery Point"	Shall mean the delivery point as identified in the NVVN-SPD PPA;
"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;
"Supplementary Bill"	shall mean a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 6 of this Agreement;
"Tariff"	Shall have the same meaning as provided for in Article 5 of this Agreement;
"Tariff Payments"	shall mean the payments to be made under Monthly Bills as referred to in Article 6 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 9 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 Discom terminates this Agreement, pursuant to Article 9 of this Agreement; or
- ii. If NVVN-SPD PPA 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 7 (Force Majeure), Article 9 (Events of Default and Termination), Article 10 (Liability and Indemnification), Article 12 (Governing Law and Dispute Resolution), Article 13 (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 : OPEN ACCESS & TRANSMISSION**

#### **3.1 *Open Access***

- 3.1.1 The Discom shall be responsible for obtaining and maintaining long term open access, if required, from the Delivery Points to its receiving substation(s).
- 3.1.2 The Discom shall be required to apply for open access as per the applicable regulations specified by the Appropriate Commission and shall apply for open access well in advance so as to start evacuating the Contracted Capacity from the Delivery Points.
- 3.1.3 The Discom shall strive to obtain open access from the concerned SLDC/RLDC for the period equivalent to at least the Term of the Agreement.
- 3.1.4 Delay or failure by the Discom to obtain open access as required under this Article 3.1 due to reasons solely attributable to the Discom shall not relieve it from the payment obligations to NVVN which shall commence from the date of supply of power by NTPC and SPD.

#### **3.2 *Charges***

- 3.2.1 As per applicable regulation(s) of the Appropriate Commission(s), all charges pertaining to open access of the transmission network of the concerned STU/CTU from the Delivery Points to the receiving substation(s) shall be borne by the Discom.
- 3.2.2 NVVN shall neither be liable for obtaining the open access nor for any payments to be made for such open access to the concerned STU/CTU by the Discom.

#### **3.3 *Losses***

- 3.3.1 The Discom shall be liable to bear all the transmission losses in respect of the power evacuated from the Delivery Points to its receiving substation(s).

#### **4 ARTICLE 4: METERING**

##### **4.1 *Metering***

4.1.1 The metering arrangements for metering the electrical energy supplied at the SPD Delivery Point and NTPC Delivery Point shall be as per the provisions identified in the NVVN-SPD PPA and NVVN-NTPC PPA respectively.

4.1.2 The energy details obtained from Energy Accounts shall be provided to the Discom by NVVN along with each Monthly Bill validating the total energy for which the Monthly Bill is generated.

4.1.3 Energy Accounts shall be binding on both the Parties for billing and payment purposes.

##### **4.2 *Energy Accounting & Scheduling***

4.2.1 The scheduling and energy accounting of NTPC power shall be as per the provisions of the Grid Code and NVVN-NTPC PPA while the scheduling and energy accounting of solar power shall be as per the provisions of the NVVN-SPD PPA and Grid Code.

**5 ARTICLE 5: APPLICABLE TARIFF**

- 5.1.1 The Applicable Tariff for Bundled Power shall be derived as per the provisions of Schedule 3 of this Agreement and the Discom shall make the Tariff Payments to NVVN as per the provisions of this Agreement.

## **6 ARTICLE 6: BILLING AND PAYMENT**

### **6.1 General**

6.1.1 From the commencement of supply of power, the Discom shall pay to NVVN the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in Article 5. All Tariff Payments by the Discom shall be in Indian Rupees.

### **6.2 Delivery and Content of Monthly Bills**

6.2.1 NVVN shall issue to the Discom a signed Monthly Bill for the immediately preceding Month not later than ten (10) days after the respective Monthly Bills for energy supplied by NTPC and the SPD are received by NVVN . In case the Monthly Bill for the immediately preceding Month is issued after such ten (10) days period , 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.

### **6.3 Payment of Monthly Bills**

6.3.1 The Discom shall pay the amount payable under the Monthly Bill on the Due Date to such account of NVVN, as shall have been previously notified to the Discom in accordance with Article 6.3.3 below.

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

- i) deductions required by the Law; and
- ii) amounts claimed by the Discom, if any, from NVVN, through an invoice duly acknowledged by NVVN, to be payable by NVVN, and not disputed by NVVN 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 the Discom shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) Days period.

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

### **6.3.4 Late Payment Surcharge**

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

#### 6.3.5 Rebate

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

- a) For payment of Bill(s) of NVVN being made by the Discom 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.

#### 6.4 Payment Security Mechanism

##### Letter of Credit (LC):

6.4.1 The Discom shall provide to NVVN, 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 the Discom, which may be drawn upon by NVVN in accordance with this Article. The Discom shall provide NVVN draft of the Letter of Credit proposed to be provided to NVVN two(2) months before the Effective Date.

6.4.2 Not later than one (1) Month before the Effective Date, the Discom shall through a scheduled bank at ..... *[Identified Place]* open a Letter of Credit in favour of NVVN, 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 one point one (1.1) times the estimated average monthly billing;
- ii) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the monthly Tariff Payments of the previous Contract Year.

Provided that NVVN 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 6.4.2 due to any reason whatsoever, the Discom shall restore such shortfall within seven (7) days.

- 6.4.3 The Discom shall cause the scheduled bank issuing the Letter of Credit to intimate NVVN, in writing regarding establishing of such irrevocable Letter of Credit.
- 6.4.4 If the Discom fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 6.6.7, NVVN may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Discom, an amount equal to such Monthly Bill or Supplementary Bill or part thereof plus Late Payment Surcharge, if applicable, in accordance with Article 6.3.4 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 the Discom;
  - ii) a certificate from NVVN 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.
- 6.4.5 The Discom shall ensure that the Letter of Credit shall be renewed not later than forty five (45) days prior to its expiry.
- 6.4.6 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Discom, however, Letter of Credit negotiation charges shall be borne and paid by NVVN.
- 6.4.7 Where necessary, the Letter of Credit may also be substituted by an unconditional and irrevocable bank guarantee or an equivalent instrument as mutually agreed by NVVN and the Discom.

**Collateral Arrangement** [*Insert this Article 6.4.8 only in case of private distribution utilities*]

- 6.4.8 As a further support for the Discom's obligations, on or prior to the Effective Date, the Discom and NVVN shall execute Default Escrow Agreement (referred as "Default Escrow Agreement") for the establishment and operation of the Default Escrow Account in favour of NVVN, through which the revenues of the Discom shall be routed and used as per the terms of the Default Escrow Agreement. The Discom and NVVN shall contemporaneously with the execution of the Default Escrow Agreement enter into the Agreement to Hypothecate Cum Deed of Hypothecation, whereby the Discom shall agree to hypothecate, to NVVN, effective from forty five (45) days prior to the Effective Date, as the case maybe, the amounts to the extent as required for the Letter of Credit as per Article 6.4.2 routed through the Default Escrow Account and the Receivables in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation. The Default Escrow Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation are collectively referred to as the "Collateral Arrangement". The minimum revenue flow in any Month in the Default Escrow Account shall be at least equal to the amount required for the Letter of Credit as per Article 6.4.2.

Provided that the Discom shall ensure that NVVN has first ranking charge on the revenues routed through the Default Escrow Account and the Receivables in

accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation. However, such first ranking charge shall be on the amounts, in excess of amounts, which have already been charged or agreed to be charged prior to the date of the execution of the Default Escrow Agreement.

**OR**

**Tripartite Agreement [Insert this as Article 6.4.8 instead of Collateral Agreement for govt. owned discoms]**

As a further support for the Discom's obligations, on or prior to the Effective Date, a Tripartite Agreement may be signed in between the central government, the state government of the Discom and RBI. NVVN shall be authorized by the central government to invoke such Tripartite Agreement in case of payment default by the Discom. If the Discom fails to pay a Monthly Bill or Supplementary Bill or part thereof within thirty (30) days from the Due Date, NVVN shall have the right to invoke such Tripartite Agreement, after giving a notice of seven (7) days to the Discom, whereby the pending dues from the Discom shall be routed through RBI to NVVN's designated account.

**6.5 Third Party Sales by NVVN**

- 6.5.1 Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of an event where the Discom has not made full payment of the undisputed amount by the Due Date of an Invoice through the payment mechanism provided in this Agreement, NVVN shall follow the steps as enumerated in Articles 6.5.2 and 6.5.3.
- 6.5.2 NVVN shall have the right to recover the due amounts from the Discom by duly exercising the Payment Security Mechanism as the provisions of Article 6.4.
- 6.5.3 In case NVVN is not able to realize the due payments beyond thirty (30) days after the Due Date, NVVN shall have the right (but not the obligation) to divert the Bundled Power or part thereof and sell it to any third party namely;
- i) Any consumer, subject to applicable Law; or
  - ii) Any licensee under the Act;

NVVN shall request the concerned SLDC/RLDC to divert such power to third party as it may consider appropriate.

Provided that such sale of power to third party shall not absolve the Discom from its obligation to pay in full to NVVN for the solar power as per NVVN-SPD PPA and capacity charge liability as per NVVN-NTPC PPA and any other outstanding payment liability of the Discom as per this Agreement..

The amount realized from the diversion and sale of power to third party over and above the energy charges, trading margin, open access charges and other costs shall be adjusted against the pending liability of the Discom.

- 6.5.4 Sales to any third party shall cease and regular supply of electricity to the Discom shall commence and be restored within three (3) months from the date of payments made in full to NVVN for the Invoice outstanding undisputed amount.

Provided that the liability of the Discom to make the Tariff Payments to NVVN as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available by NTPC and SPD for usage by the Discom.

- 6.5.5 In case the Discom fails to pay in full the outstanding undisputed amount as mentioned in Article 6.5.3 above for more than two (2) months, NVVN shall have the right to terminate this Agreement.

- 6.5.6 Further notwithstanding anything to the contrary contained in this Agreement, the Discom shall be liable to make the Tariff Payments to NVVN as per the respective Energy Accounts including capacity charge obligations as provided in NVVN-NTPC PPA.

## **6.6 Disputed Bill**

- 6.6.1 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.

- 6.6.2 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.

- 6.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.6.2, 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.

- 6.6.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.6.2, 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.
- 6.6.5 Upon receipt of the Bill Disagreement Notice by the disputing Party under Article 6.6.4, 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.
- 6.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 6.6.4, the matter shall be referred to Dispute resolution in accordance with Article 12.
- 6.6.7 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 12 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.
- 6.6.8 If a Dispute regarding a Monthly Bill or a Supplementary Bill is settled pursuant to Article 6.5 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 6.6.5 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.
- 6.6.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Discom 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.
- 6.7 *Quarterly and Annual Reconciliation***
- 6.7.1 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.
- 6.7.2 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 Discom and NVVN shall jointly sign such reconciliation statement.

Within fifteen (15) days of signing of a reconciliation statement, the Discom 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 12.

## **6.8 *Payment of Supplementary Bill***

6.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Energy Accounts (if applicable);
- ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or
- iii) Change in Law as provided in Article 8,

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

6.8.2 The Discom shall remit all amounts due under a Supplementary Bill raised by NVVN to NVVN's Designated Account by the Due Date and notify NVVN of such remittance on the same day or NVVN shall be eligible to draw such amounts through the Letter of Credit. Similarly, NVVN shall pay all amounts due under a Supplementary Bill raised by the Discom, if any, by the Due Date to concerned Discom's designated bank account and notify the Discom of such payment on the same day. For such payments by NVVN, Rebate as applicable to Monthly Bills pursuant to Article 6.3.5 shall equally apply.

6.8.3 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 6.3.4.

## **6.9 *Renewable purchase obligation***

6.9.1 The Discom may identify the energy procured from the SPD Delivery Point to meet its renewable purchase obligations (as mandated by the Appropriate Commission). Provided that the renewable purchase obligation of the Discom shall be considered to be met by the Discom only if there is no payment default for such energy procured by the Discom and a certificate to such effect is provided by NVVN to the Discom.

6.9.2 NVVN shall provide such certificate identifying the quantum of solar energy supplied by NVVN and being met by the Discom for each year within thirty (30) days after the end of such year.

## **7 ARTICLE 7 : FORCE MAJEURE**

### **7.1 Definitions**

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

### **7.2 Affected Party**

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

### **7.3 Force Majeure**

7.3.1 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 in performing its obligations:

- a) act of God, including, but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions resulting in evacuation of power being disrupted from the Delivery Points; or
- b) Explosion, accident or breakage of transmission facilities to delivery power from the Delivery Points to the receiving substation(s); or
- c) 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 making the performance of obligations as specified herein as impossible; or
- d) radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural 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.
- e) An event of force majeure identified under NVVN-NTPC PPA and/or NVVN-SPD PPA thereby affecting supply of power by SPD and/or NTPC.
- f) An event of force majeure affecting the concerned STU/CTU, as the case may be, thereby affecting the evacuation of power from the Delivery Points by the Discom;

#### **7.4 Force Majeure Exclusions**

- 7.4.1 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. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
  - b. Strikes at the facilities of the Affected Party;
  - c. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
  - d. 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.

#### **7.5 Notification of Force Majeure Event**

- 7.5.1 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.

- 7.5.2 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.

#### **7.6 Duty to Perform and Duty to Mitigate**

- 7.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 7.3, 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.

**7.7 Available Relief for a Force Majeure Event**

7.7.1 Subject to this Article 7:

- (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 as specified under this Agreement;
- (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.

## **8 ARTICLE 8: CHANGE IN LAW**

### **8.1 Definitions**

In this Article 8, the following terms shall have the following meanings:

8.1.1 "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 NVVN or any income to NVVN:

- 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 Discom;
- any change in tax or introduction of any tax made applicable for sale of power by NVVN to the Discom 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 NVVN, or (ii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.

### **8.2 Relief for Change in Law**

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

8.2.2 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.

## **9 ARTICLE 9: EVENTS OF DEFAULT AND TERMINATION**

### **9.1 *Discom Event of Default***

9.1.1 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 Discom Event of Default:

- (i) Any undisputed amount remains outstanding beyond a period of ninety (90) days after the Due Date and NVVN is unable to recover the amount outstanding from the Discom through the Letter of Credit ; or
- (ii) The Discom fails to evacuate power from the Delivery Points.
- (iii) if (a) the Discom 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 Discom, or (c) the Discom 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 Discom will not be a Discom 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 Discom and expressly assumes all obligations of the Discom under this Agreement and is in a position to perform them; or

- (iv) the Discom 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 Discom is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the Discom within thirty (30) days of receipt of first notice in this regard given by NVVN.
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Discom.

### **9.2 *NVVN Event of Default***

9.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event , shall constitute the Event of Default on the part of defaulting NVVN:

- (i) NVVN repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Discom in this regard; or
- (ii) except where due to any Discom'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 Discom to NVVN; or

(iii) 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;

(iv) occurrence of any other event which is specified in this Agreement to be a material breach or default of NVVN.

### **9.3 Procedure for cases of Discom Event of Default**

- 9.3.1 Upon the occurrence and continuation of any Discom Event of Default under Article 9.1, NVVN shall have the right to deliver to the Discom a notice, 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.
- 9.3.2 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.
- 9.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 9.3.4 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 Discom 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 Discom.

#### **9.4 Procedure for cases for NVVN Event of Default**

- 9.4.1 Upon the occurrence and continuation of any NVVN Event of Default specified in Article 9.2 the Discom shall have the right to deliver to NVVN, a Discom Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 9.4.2 Following the issue of a Discom 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.
- 9.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 9.4.4 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 Discom may terminate this Agreement by giving a written Termination Notice of thirty (30) days to NVVN with a copy to the Appropriate Commission.

#### **9.5 Termination due to Force Majeure**

- 9.5.1 If the Force Majeure Event or its effects continue to be present beyond a period of twelve (12) months, 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.

#### **9.6 Termination of back to back agreements**

In case of termination of either NVVN-NTPC PPA or NVVN-SPD PPA or both, this Agreement shall automatically terminate. Provided that in case of such termination as identified in this Article 9.6, any pending monetary liabilities of either Party shall survive the termination of this Agreement.

## **10 ARTICLE 10: LIABILITY AND INDEMNIFICATION**

### **10.1 *Indemnity***

10.1.1 The Discom 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 Discom of any of its obligations under this Agreement, except to the extent that any such claim has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of NVVN, its contractors, servants or agents; 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 Discom of any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by the Discom, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute “Indemnifiable Losses”) has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of NVVN, its contractors, servants or agents, or
  - (ii) any of the representations or warranties of the Discom, if any made under this Agreement, being found to be inaccurate or untrue.

10.1.2 NVVN shall indemnify, defend and hold the Discom harmless against:

- a) any and all third party claims against the Discom, 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 except to the extent that any such claim has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Discom, its contractors, servants or agents; 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 Discom 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 10 shall not apply to such breaches by NVVN, for which specific remedies have been provided for under this Agreement.), except to the extent that any such Indemnifiable Losses have arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Discom, its contractors, servants or agents, or

- (ii) any of the representations or warranties of NVVN, if any made under this Agreement, being found to be inaccurate or untrue.

## **10.2 Procedure for claiming Indemnity**

### **10.2.1 Third party claims**

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 10.1.1(a) or 10.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 10.1.1(a) or 10.1.2(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 12.3.2; 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 10.1.1(a) or 10.1.2(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.

## **10.3 Indemnifiable Losses**

- 10.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 10.1.1(b) or 10.1.2(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 10.3, such event shall constitute a payment default under Article 9.

## **10.4 Limitation on Liability**

- 10.4.1 Except as expressly provided in this Agreement, neither the Discom 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 Discom or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

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

### **10.5 *Duty to Mitigate***

10.5.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 10.

## **11 ARTICLE 11: ASSIGNMENTS AND CHARGES**

### **11.1 *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.

### **11.2 *Permitted Charges***

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

## **12 ARTICLE 12: GOVERNING LAW AND DISPUTE RESOLUTION**

### **12.1 *Governing Law***

12.1.1 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.

### **12.2 *Amicable Settlement and Dispute Resolution***

#### **12.2.1 *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 12.3.

### **12.3 *Dispute Resolution***

#### **12.3.1 *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 the Discom under this Agreement towards NVVN shall not be affected in any manner by reason of inter-se disputes amongst the Discom.

### **12.3.2 Dispute Resolution through Arbitration**

- i. If the Dispute arises out of or in connection with any claims not covered in Article 12.3.1i, 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.

### **12.4 Parties to Perform Obligations**

- 12.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 12.3 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.

### **13 ARTICLE 13: MISCELLANEOUS PROVISIONS**

#### **13.1 *Amendment***

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

#### **13.2 *Third Party Beneficiaries***

13.2.1 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.

#### **13.3 *Waiver***

13.3.1 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:

13.3.2 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.

#### **13.4 *Confidentiality***

13.4.1 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 Parties.

13.4.2 Notwithstanding the provisions under Article 13.4.1, the Discom agrees and acknowledges that NVVN may at any time, disclose the terms and conditions of the Agreement to any person, to the extent stipulated under the Law.

#### **13.5 *Severability***

13.5.1 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.

### **13.6 Notices**

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

13.6.2 If to the Discom, 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.:

13.6.3 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.:

13.6.4 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.

13.6.5 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.

### **13.7 Language**

13.7.1 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.

13.7.2 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.

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

13.8.1 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.

### **13.9 *Taxes and Duties***

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

13.9.2 NVVN shall be indemnified and held harmless by the Discom against any claims that may be made against NVVN in relation to the matters set out in Article 13.9.1.

13.9.3 NVVN shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Discom by NVVN on behalf of Discom or its personnel.

### **13.10 *No Consequential or Indirect Losses***

13.10.1 The liability of the Discom 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 Discom claim from one another any indirect or consequential losses or damages.

### **13.11 *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 Grid Code; and
- iii. the terms and conditions of this Agreement;

### **13.12 *Independent Entity***

13.12.1 The Discom shall be an independent entity performing its obligations pursuant to the Agreement.

13.12.2 Subject to the provisions of the Agreement, the Discom shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Discom or contractors engaged by the Discom in connection with the performance of the Agreement shall be under the complete control of the Discom 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 Discom shall be construed to create any contractual relationship between any such employees, representatives or contractors and NVVN.

### **13.13 *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  
[Discom]

Name, Designation and Address

Name, Designation and Address

\_\_\_\_\_  
Signature with seal

\_\_\_\_\_  
Signature with seal

Witness:

1.

2.

Witness:

1.

2.

## **1 SCHEDULE 1: AMOUNT REALISATION FOR SOLAR POWER**

- i. The payments to be made by the Discom to NVVN for the Bundled Power in a Monthly Invoice shall comprise of amounts to be realized for Solar Power component and NTPC power component.
- ii. The Discom shall be required to make the Tariff Payments for Bundled Power.
- iii. The amount realization for Solar Power for the Month may be computed as hereunder:-

$$\mathbf{A(sp) = E(sp) * T(sp)}$$

where

- A(sp) = Amount realization (in Rs.) for Solar Power for the applicable Month;
- E(sp) = No. of units (kWh) metered at SPD Delivery Point and verified by the Energy Accounts for the applicable Month;
- T(sp) = Tariff (in Rs./kWh) which shall be as defined in NVVN-SPD PPA;

## **2 SCHEDULE 2: AMOUNT REALISATION FOR NTPC POWER**

- i. The payments to be made by the Discom to NVVN for the Bundled Power in a Monthly Invoice shall comprise of amounts to be realized for Solar Power component and NTPC power component.
- ii. The Discom shall be required to make the Tariff Payments for the Bundled Power.
- iii. The amount realization for NTPC power component for the Month shall be computed as per applicable orders by CERC:-
- iv. For illustration,

$$\mathbf{A(np) = Capacity Charges for the applicable Month + E(np) * V(np) + Other applicable charges as per CERC order}$$

where

- A(np) = Amount realization (in Rs.) for NTPC power component for the applicable Month;
- E(np) = No. of units (kWh) scheduled at NTPC Delivery Point as per the Energy Accounts for the applicable Month;
- V(np) = Variable charges (in Rs./kWh) for the applicable Month;
- Applicable charges may include foreign exchange rate variation/ hedging costs, cess, duties and other levies etc.

**And**

$$\mathbf{T(np) = A(np)/E(np)}$$

where

- T(np) = Tariff (in Rs./kWh) for the applicable Month;
- E(np) = No. of units (kWh) scheduled at NTPC Delivery Point as per the Energy Accounts for the applicable Month.

### 3 **SCHEDULE 3: AMOUNT REALISATION FOR BUNDLED POWER**

- i. The payments to be made by the Discom to NVVN for the Bundled Power in a Monthly Invoice shall comprise of amounts to be realized for Solar Power component and NTPC power component.
- ii. The Discom shall be required to make Tariff Payments for Bundled Power.
- iii. The amount realization for Bundled Power for the Month may be computed as hereunder:-

**a) Applicable Tariff for Bundled Power**

$$T(\mathbf{bp}) = [E(\mathbf{sp}) * T(\mathbf{sp}) + E(\mathbf{np}) * T(\mathbf{np})] / [E(\mathbf{sp}) + E(\mathbf{np})] + T(\mathbf{m})$$

where

- $T(\mathbf{bp})$  = Tariff (in Rs./kWh) for Bundled Power for the applicable Month;
- $E(\mathbf{sp})$  = No. of units (kWh) scheduled/metered at SPD Delivery Point as per the Energy Accounts for the applicable Month;
- $T(\mathbf{sp})$  = Tariff (in Rs./kWh) which shall be as defined in NVVN-SPD PPA;
- $E(\mathbf{np})$  = No. of units (kWh) scheduled at NTPC Delivery Point as per the Energy Accounts for the applicable Month;
- $T(\mathbf{np})$  = Tariff (in Rs./kWh) for the applicable Month;
- $T(\mathbf{m})$  = Trading Margin, as applicable.

**b) Amount realization for Bundled Power**

$$A(\mathbf{bp}) = E(\mathbf{bp}) * T(\mathbf{bp})$$

Where:

$A(\mathbf{bp})$  = Amount realization (in Rs.) for Bundled Power for the applicable Month;

$E(\mathbf{bp}) = E(\mathbf{sp}) + E(\mathbf{np})$ , in kWh; and

$T(\mathbf{bp})$  = Tariff (in Rs./kWh) for Bundled Power for the applicable Month;

**4 SCHEDULE 4: NVVN-SPD PPA**

[To be annexed]

**5**      ***SCHEDULE 5: NVVN-NTPC PPA***

[To be annexed]