

**STANDARD**  
**POWER PURCHASE AGREEMENT (PPA)**  
**FOR**  
**PROCUREMENT OF ... ..kW GRID CONNECTED**  
**SOLAR POWER ON LONG TERM BASIS**  
**BETWEEN**  
**..... [Insert Name of Solar Power Developer]**

**And**

**..... [Insert Name of Buying Entity]**

**Table of Content****Page No**

ARTICLE 1:	DEFINITIONS AND INTERPRETATION.....	6-18
ARTICLE 2:	TERM OF AGREEMENT.....	19-20
ARTICLE 3:	CONTRACTED CAPACITY AND PERFORMANCE SECURITY.....	21
ARTICLE 4:	CONSTRUCTION & DEVELOPMENT OF THE PROJECT.....	22-28
ARTICLE 5:	SYNCHRONIZATION, COMMISSIONING AND COMMERCIAL OPERATION	29
ARTICLE 6:	METERING .....	30-32
ARTICLE 7:	APPLICABLE TARIFF.....	33
ARTICLE 8:	BILLING AND PAYMENT.....	34-37
ARTICLE 9:	FORCE MAJEURE.....	38-40
ARTICLE 10:	CHANGE IN LAW.....	41-43
ARTICLE 11:	GENERAL COVENANTS.....	44-47
ARTICLE 12:	EVENTS OF DEFAULT AND TERMINATION .....	48-52
ARTICLE 13:	LIABILITY AND INDEMNIFICATION.....	53-55
ARTICLE 14:	ASSIGNMENT & NOVATION.....	56
ARTICLE 15:	GOVERNING LAW, JURISDICTION & ARBITARTION PROCEDURE.....	57-58
ARTICLE 16:	INSURANCES .....	59
ARTICLE 17:	MISCELLANEOUS PROVISIONS.....	60-66
Schedule-A	FORMULA FOR DETERMINATION OF IMPACT IN TARIFF OR CHARGES DUE TO CHANGE IN LAW.....	67
Schedule-1	LOCATION DETAILS OF THE PROJECT.....	68
Schedule-2	FORMAT OF PERFORMANCE BANK GUARANTEE.....	69
Schedule-3	FORMAT OF PAYMENT OF ORDER INSTRUMENT.....	70
Schedule-4	FORMAT OF COMMISSIONING PROCEDURE.....	71-73
Schedule-5	FORMAT OF INSTALLATION REPORT.....	74-75
Schedule-6	FORMAT OF SCHEDULED COMMISSIONING DATE SCHEDULE.....	76

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

And

**(Insert Name Buying Entity)**, [Insert Address], (hereinafter referred to as **“Buying Entity”** or **“BE”** which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) as a Party of the **Second Part;**

The Buying Entity and SPD are each individually referred to as a "Party" and collectively as the "Parties".

WHEREAS:

- A. The Government of India has approved the PM Surya Ghar: Muft Bijli Yojana on 29th February, 2024 to increase the share of solar rooftop capacity. The administrative approval has been granted to the scheme vide Order No. 318/17/2024-Grid Connected Rooftop dated 16th March, 2024.
- B. Under the scheme, all Government rooftops under the administrative control of Central Government Ministries / Departments, including autonomous bodies, subordinate offices etc. shall be saturated with rooftop solar to the extent that is technically feasible by 31<sup>st</sup> December, 2025. Ministries shall utilize available rooftop space for such saturation, through the RESCO mode or capex mode, on a priority basis.

- C. SJVN Ltd (hereinafter referred as “SJVN/Scheme Implementation Partner”) has been designated as Scheme Implementation Partner (SIP) vide Office D.O. No. 318/5/2024 - GCRT dated 11.05.2024 issued by Ministry of New and Renewable Energy (MNRE), Govt of India. The SIP to act as the primary agency to assist Ministries/Departments allocated to them in achieving rooftop solar saturation on Government buildings.
- D. SJVN (hereinafter referred to as “SJVN”) had initiated a Tariff Based Competitive Bid Process for setting up of Grid connected Rooftop Solar Power Project (without battery storage) with a individual/ cumulative on the ( Buildings of Ministry Name) under Renewable Energy Service Company i.e RESCO/ Power Purchase Agreement (PPA) mode on the terms and conditions contained in the Request for Selection (hereinafter referred to as “RfS”) issued by SJVN vide RfS No..... dated ..... [Insert Name of the Bidding Company] has been selected in the Competitive Bidding Process, {in case Bidding Company is executing the Project through SPV} has constituted a Special Purpose Vehicle ... [Insert Name of the SPV] (hereinafter referred to as ‘SPD’), for designing, supply, installation, testing & commissioning including warranty and Comprehensive Operations & Maintenance of the Grid connected Rooftop Solar Projects (without battery storage) on the feasible Government Buildings Roofs of <Insert Name of Buying Entity >) in <Insert State Name> informed by the <Insert Name of Buying Entity >) on the National Portal of PM Surya Ghar: Muft Bijli Yojana and supply such electricity generated to <Insert Name of Buying Entity >) as per this Power Purchase Agreement (PPA) signed between SPD & <Insert Name of Buying Entity >) on whose building Grid connected Rooftop Solar Power Project is to be installed per this Power Purchase Agreement.
- E. SJVN has issued the Letter of Award No. .... dated .... in favour of the [Insert name of the Bidding Company] on the CUF quoted by the SPD for development and establishment of Rooftop Solar Power Project on the <Insert Name of Buying Entity >) of final capacity ..... kW in (Insert State Name ) on which BE has given consent to sign the PPA & as per terms and conditions contained in the RfS & this Power Purchase Agreement and other bidding documents.
- F. In terms of the RfS and the Bidding Documents, the SPD has furnished the Performance Bank Guarantee/ Payment on Order Instrument in the sum of Rs.....in favour of SJVN as per the format provided as a part of the Bidding Documents.

- G. Whereas, the proposed Project being setup on the said **<Insert Name of Buying Entity >** of (Insert State Name ) to enable the onward supply of such electricity to the building of office on which project is being setup.
- H. Both the parties have agreed to execute this Power Purchase Agreement in terms of the provisions of the RfS, the bidding documents, Letter of Award in regard to the terms and conditions for establishment of the Rooftop Solar Power Project at..... **<Insert Name of Buying Entity >** of (Insert State Name ) for generation and supply of electricity by the SPD to BE.
- I. SPD has agreed to prepare Site Survey, Feasibility Report, Access, Design, Supply, Storage, Civil works (inclusive of construction material & water) Installation, Testing and Commissioning including Warranty, Comprehensive Operation & Maintenance of Solar PV Projects for the period of (25) years from the date of extended/ Scheduled Commissioning Date (SCD) of the project;
- J. BE has agreed to purchase the entire Solar Power of the said Project on the terms and conditions contained in this Agreement.
- K. Deleted.
- L. BE has agreed to pay for the energy purchased from SPD at a tariff to be determined as per provisions contained herein;

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

## ARTICLE 1: DEFINITIONS AND INTERPRETATION

### 1.1. Definitions

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

“Accounting Year”	means the Financial Year commencing from 1 <sup>st</sup> April of a calendar year and ending on 31 <sup>st</sup> March of the next calendar year. The 1 <sup>st</sup> accounting year for the unit shall start from the date of commissioning of the unit and shall end on the 31 <sup>st</sup> March of the next calendar year:
“Act” or “ Electricity Act, 2003”	Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
“Actual Monthly Generation”	means the amount of energy recorded by the Main Metering System during each calendar month of the Term, pursuant to Article 6.1;
Adjusted Equity	means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the :Reference Date”), in the manner set forth below, to reflect the chance in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first Day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date:  i) On or before Scheduled Commissioning Date (SCD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date;  ii) An amount equal to the Adjusted Equity as on SCD shall be deemed to be the base (the “Base Adjusted

	<p>Equity”);</p> <p>iii) After SCD the Adjusted Equity, reduced by 0.333% (zero point three three three percent) thereof at the commencement of each month following the SCD [reduction of 1% (one percent ) per quarter of a year] and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the SCD and the Reference Date;</p> <p>For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the PPA period is extended, but the revision on account of WPI shall continue to be made.</p>
“Affiliate”	<p>means a company that, directly or indirectly,</p> <p>i. controls, or</p> <p>ii. is controlled by, or</p> <p>iii) is under common control with, a company developing a Project or a Member in a Consortium developing the Project and control means ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such company or right to appoint majority Directors to the Board of Directors.</p>
“Agreement” or Power Purchase Agreement “or “PPA”	<p>means this Power Purchase Agreement executed hereof, including the schedules, amendments, modifications and supplements made in writing by the Parties from time to time;</p>
“Applicable Law”	<p>means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority in India having jurisdiction over such Person or its property, enforceable by law or in equity, including the interpretation and administration thereof by such Governmental Authority;</p>

<p>“Appropriate Commission”</p>	<p>means the Central Electricity Regulatory Commission referred to in sub- section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act 2003, as the case may be; For this agreement, JERC: shall mean Joint Electricity Regulatory Commission</p>
<p>“Assignment”</p>	<p>has the meaning set forth in Article 14.1;</p>
<p>“Business Day”</p>	<p>means any day other than Sunday or any other day on which banks in _____ [Insert place of location of Buying Entity’s Office] are required or authorized by Applicable Law to be closed for business;</p>
<p>“Buying Entity”</p>	<p>mean the (Insert Name of Buying Entity )which is authorized to sign the PPA with the SPD, either by itself or through its authorized agency or shall mean the Buying Entity i.e BE, as the case may be</p>
<p>“Buying Entity Default”</p>	<p>has the meaning set forth in Article 12.3;</p>
<p>“Buying Entity Indemnified Parties”</p>	<p>has the meaning set forth in Article 13;</p>
<p>“Competent Court of Law”</p>	<p>means 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;</p>
<p>“Commissioning”</p>	<p>means the Project will be considered as commissioned if all equipment as per rated Project Capacity has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the PPA;</p>
<p>“Contract Year”</p>	<p>means 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</p>

	<p>Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and</p> <p>ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement</p>
“Confidential Information”	has the meaning set forth in Article 17.5
“Consents, Clearances and Permits”	means all authorization, 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;
“Capacity Utilization Factor” or “CUF”	<p>“means the percentage of power generated and measured at the Metering Point divided by the contracted capacity multiplied by the number of hours (8760 Hours) in a calendar year shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 as amended from time to time. However for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity; In any Contract Year, if ‘X’ MWh of energy has been metered out at the Delivery Point for ‘Y’ MW Project capacity, <math>CUF = (X \text{ MWh} / (Y \text{ MW} * 8760)) * 100\%</math>; For leap year no of hours should be considered as 8784 in a calendar year.</p>
Contracted Capacity	means....KW (AC /DC) of Solar PV power contracted with BE for sale of such power by the SPD. AC capacity means.....KW (AC /DC) output at the delivery point.

<p>“Debt Due”</p>	<p>means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:</p> <ul style="list-style-type: none"> <li>i) the principal amount of the debt provided by the Senior Leaders under the Financing Agreements for financing the Total Project Cost (the ‘Principal’) but excluding any part of the principal that had fallen due for repayment 2 (two) years period to the Transfer Date;</li> <li>ii) All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (i) above until the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreement to any Senior Leader, (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Utility Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by leaders for financing the Total Project Cost.</li> </ul> <p>Provided that if all or any part of the Debt Due to convertible into Equity at the option of Senior Leaders and / or the Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken.</p> <p>Provided further that the Debt Due, on or after SCD shall in no case exceed 80% (eighty percent) of the Total Project Cost.</p>
<p>“Deemed Generation”</p>	<p>"Deemed Generation" has the meaning set forth in Article 6.3 (d)</p>

"Delivery Point"	shall be the single point, at a location mutually agreed by the Parties, in line with applicable regulation/ rules where Solar Power is delivered by the SPD from the System to the Buying Entity;
"DISCOM" or "DISCOM(s)"	shall mean the local distribution licensee/ utility providing electrical distribution and interconnection services at the Premises of the BE;
"Dispute"	has the meaning set forth in Article 15
"Disruption Period"	has the meaning set forth in Article 6.3 (d)
"Distribution Utility"	means the local electric distribution owner and operator providing electric distribution and interconnection services to Buying Entity at the Premises;
"Due Date"	shall mean the fifteenth (15th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hard copy/ fax/email and duly acknowledged by the BE 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 BE.
"Effective Date"	has the meaning set forth in Article 2;
"Estimated Remaining Payments"	means as of any date, the estimated remaining Solar Power Payments to be made through the end of the applicable Term, as reasonably determined by SPD in accordance with Article 8;

"Expiration Date"	means the date on which the Agreement terminates by reason of expiration of the Term.
"Financing Party"	means, as applicable (i) any Person (or its agent) from whom the SPD (or an Affiliate of the SPD) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide financing to the SPD (or an Affiliate of the SPD) with respect to the System;
"First Operational Year"	means the period commencing from SCD and expiring at the end of the Calendar Month in which Project completes twelve (12) Months from the SCD
"Force Majeure Event"	has the meaning set forth in Article 9.1;
"Governmental Approval"	means any approval, consent, franchise, permit, certificate, resolution, concession, license or authorization issued by or on behalf of any applicable Governmental Authority for the purpose of setting up of the Project and / or for sale and purchase of Solar Power of the Project pursuant to this Agreement;
"Governmental Authority"	means any central, state, regional, district, town, city or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government;
"Indemnified Persons"	means the Buying Entity Indemnified Parties or the SPD Indemnified Parties, as the context requires;

<p>“Insolvency Event”</p>	<p>means with respect to a Party, that either:</p> <p>i. such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary proceeding under any insolvency or bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or</p> <p>ii. It is clarified that a dissolution or liquidation will not be an Insolvency Event if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization, and the resulting company retains creditworthiness similar to the dissolved or liquidated entity and expressly assumes all obligations of the dissolved and liquidated entity under this Agreement and is in a position to perform them;</p>
<p>“Installation Work”</p>	<p>means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for the SPD at the Premises;</p>
<p>“Invoice” or “Bill”</p>	<p>means either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;</p>
<p>“Invoice Date”</p>	<p>has the meaning set forth in Article 8;</p>

"Lender"	means such bank, or other financial institution, including their successors and assignees, who have agreed to provide the SPD with debt financing of the Project;
"Losses"	means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys' fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation);
"Main Metering System"	means all meter(s) and metering devices owned by the SPD and installed at the Delivery point for measuring and recording the delivery and receipt of energy;
"Metering Date"	means the first Business day of each calendar month subsequent to the month in which the Solar Power is generated by the SPD. The billable units shall be equal to the difference between the meter reading on the Metering Date and the meter reading on the previous month's Metering Date;
"Minimum CUF"	means..... CUF to be maintained by the Generator for each and every Operational Year. This limit may be relaxed to the extent as permitted by demand and supply side variations as defined in the PPA
"Party or Parties"	has the meaning set forth in the preamble to this Agreement;
"Performance Ratio"	means the ratio of plant output versus installed plant capacity at any instance with respect to the radiation measured. $PR = (\text{Measured output in kW} / \text{Installed plant capacity in kW} * 1000 \text{ W/m}^2 / \text{Measured radiation intensity in W/m}^2)$

"Person"	means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority;
"Premises"	means the premises described in Schedule-1 to this Agreement. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule-1 to this Agreement;
"Prudent Utility Practices"	<p>means 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:</p> <ul style="list-style-type: none"> <li>a. operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power station;</li> <li>b. the requirements of Indian Law; and</li> </ul> <p>the physical conditions at the site of the Project;</p>
"Purchase Date"	means the date on which title to the System transfers to the BE pursuant to the BE exercising its purchase option under Article 2.3
"Purchase Price"	means the payment made by BE to the SPD under the circumstances described in Article 2.3.
"RESCO MODEL"	means where the Ministry/Department undertakes electricity procurement from RESCO contractor (s) i.e SPD & the SPD intend to use a Premise owned/used by the BE and enters into the PPA with BE for supply of Solar Power for 25 Operational Years at a tariff determined through mutual arrangement or competitive bidding

<p>“Scheduled Commissioning Date” or “SCD” of the Project</p>	<p>means ..... [Insert Date]; or _____ month from the effective date of PPA.</p>
<p>“Selectee”</p>	<p>means, a new company (i) proposed by the Lenders and approved by the BE (ii) or proposed by the BE and approved by the Lenders, for substituting the SPD for the residual period of the Agreement by amendment of the Agreement or by execution of a fresh power purchase agreement in accordance with the terms and conditions contained in this PPA.</p>
<p>“Solar Power”</p>	<p>means the supply of electrical energy output from the System;</p>
<p>“SPD Default”</p>	<p>has the meaning set forth in Article 12;</p>
<p>“SPD Indemnified Parties”</p>	<p>has the meaning set forth in Article 13;</p>
<p>“Rooftop Solar Power Project” or “Project”</p>	<p>includes the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, and all other material comprising the Installation Work; The rated project capacity shall be as follows: AC /DC Capacity: .....</p>
<p>“System Operations”</p>	<p>means the SPD’s operation, maintenance and repair of the System performed in accordance with the requirements herein;</p>

“Tariff”	means the applicable price per kWh as per Article 7;
“Term”	has the meaning set forth in Article 2.2;

## 1.2. Interpretation

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

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

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

## **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 both the Parties and such date shall be referred to as the Effective Date.

### **2.2. Term of Agreement**

2.2.1 The term of the Agreement shall commence on the Effective Date and shall continue for twenty-five (25) years from the extended/Scheduled Commissioning Date of operation (the "Term"), unless and until terminated earlier pursuant to the provisions of the Agreement.

### **2.3. Purchase Option/ Purchase Obligation**

So long as a BE default shall not have occurred and be continuing, BE has the option to purchase the Rooftop Solar Power Project /System by paying the SPD the Purchase price equivalent to the amount of the debt due and 110% (one hundred and ten per cent) of the adjusted equity. To exercise its purchase option, the BE shall not less than Ninety (90) days prior to the proposed Purchase Date, provide written notice to the SPD of BE's intent to exercise its option to purchase the System on such purchase date: In the event BE confirms its intention to exercise the purchase option in writing to the SPD, (i) BE shall pay the applicable purchase price to the SPD on the Purchase Date, and such payment shall be made in accordance with any written instructions delivered to BE by the SPD for payments under the Agreement, and (ii) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to BE on the Purchase Date, free and clear of all liens and (B) assign all vendor warranties for the System to BE. Upon execution of the documents and payment of the applicable purchase price in each case as described in the preceding sentence, the agreement shall terminate automatically and the BE shall become the owner of the System. Upon such termination, the SPD shall offer its operations and maintenance ("O&M") services to the BE and the Parties may enter into an O&M agreement in this regard. The terms and conditions of the O&M agreement will be negotiated in good faith between the Parties.

### **2.4. Early Termination**

2.4.1 This Agreement shall terminate before the Expiry Date: if either SPD or BE terminates this Agreement, pursuant to Article 12 of this Agreement;

## **2.5. Survival**

2.5.1 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 9 (Force Majeure), Article 12 (Events of Default and Termination), Article 13 (Liability and Indemnification), Article 15 (Governing Law, Jurisdiction & Arbitration Procedure), Article 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

**ARTICLE 3: CONTRACTED CAPACITY AND PERFORMANCE SECURITY**

**3.1 Contracted Capacity**

3.1.1 The SPD shall configure the project with the objective of supplying solar power to the Buying Entity. Accordingly, the Project Capacity i.e. Contracted Capacity shall mean the rated capacity of the Rooftop Solar Power Project as signed in PPA of final capacity ..... kW.

**3.2 Performance Bank Guarantee/ Payment on Order Instrument**

3.2.1 The Performance Bank Guarantee (PBG)/ Payment on Order Instrument (POI) having validity from the date of submission of PBG/POI until ..... (insert validity period as per RfS conditions), submitted for a value of Rs. (in words) under this Agreement, shall be for guaranteeing the commissioning of the project as per the Contracted Capacity within the time specified in this Agreement.

3.2.2 The failure on the part of the SPD to furnish and maintain the Performance Bank Guarantee/ POI shall be a material breach of the term of this Agreement on the part of the SPD.

3.2.3 If the SPD fails to commission the project till SCD specified in this Agreement or any further extension thereof granted by SJVN, subject to conditions mentioned in Article 4.7, SJVN shall encash the Performance Bank Guarantee/ POI equivalent to the amount calculated as per penalties applicable under Article 4.9 as on the date of encashment without prejudice to the other rights of SJVN under this Agreement.

**3.3 Return of Performance Bank Guarantee/ Payment on Order Instrument**

3.3.1. Subject to Article 3.2, SJVN shall return/ release the Performance Bank Guarantee/ Payment on Order Instrument within 30 days (from the date of expiration of validity of PBG) after taking into account any liquidated damages / penalties due to delays in commissioning of the project beyond SCD & failure to supply power in terms of PPA &/or as per provisions stipulated in this Agreement.

3.3.2. The return / release of the Performance Bank Guarantee/ Payment on Order Instrument shall be without prejudice to other rights of SJVN under this Agreement.

## ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

### 4.1 SPD's Obligations

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

- a. The SPD shall be solely responsible for development of the Project and for Connectivity with BE for confirming the availability of power system required for supply of power by the SCD and all clearances related thereto.
- b. Obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. BE shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the Rooftop Solar Power Project. The Solar Power Developer shall, on his own, obtain permissions/ sanctions from Government authorities, if any required for establishing the Project. Any steps that may be taken by BE in regard to grant of such consents and permits or any other approval to be taken by the SPD shall only be a voluntary endeavour with no intention of being bound by any legal or binding obligation.
- c. Designing, constructing, erecting, commissioning, completing and testing the Power Project & Operation & Maintenance of system in accordance with the RfS No \_\_\_\_\_ dated \_\_\_\_\_ of SJVN, applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.
- d. The SPD shall make adequate arrangements to connect the Rooftop Solar Power Project with the Interconnection Facilities at Interconnection / Metering / Delivery Point.
- e. The commencement of supply of power up to the Contracted Capacity to BE no later than the SCD and continuance of the supply of power throughout the term of the Agreement.
- f. Owning the Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under this agreement.
- g. Maintaining minimum 51% shareholding prevalent at the time of signing of PPA up to a period of one (1) year after the SCD;  
Further, maintaining minimum 51% shareholding prevalent at the time of signing of PPA up to a period of one (1) year after the SCD in line with Clause \_\_\_ of the RfS; {applicable in case the Project is being executed by the SPV}
- h. Fulfilling all obligations undertaken by the SPD under this Agreement and also as per the terms of the RfS.
- i. The SPD shall be responsible to for directly coordinating and dealing with the corresponding Buying Entity, and other authorities in all respects. The SPD

shall fulfil the technical requirements according to criteria mentioned under Annexure B of the RfS-Technical requirement for Government Buildings Rooftop Solar Project. The modules used in the Project shall be sourced only from the models and manufacturers included in List-I under the “Approved List of Models and Manufacturers” as published by MNRE and valid as on the date of invoicing of such modules.

- j. The SPD shall be solely responsible for and obligated to ensure that the Project being implemented under this Agreement shall fulfil the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof.
- k. The SPD shall be solely responsible upon Termination, it shall be the responsibility of the SPD to transfer the Project to the BE free of all encumbrances and at zero cost.
- l. The SPD shall ensure the operations of the Project in a prudent utility basis with an objective of regular power supply to BE as per the agreement
- m. The SPD shall ensure that a bi-monthly progress report is submitted during Construction Period (from Effective Date to SCD) to SJVN i.e. within first seven (7) days of the subsequent month.

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

4.2.1 The SPD shall be required to obtain all information from the /concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the SPD’s side of the Delivery Point to enable delivery of electricity at the Delivery Point. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the SPD at his own cost.

4.2.2 The responsibility of getting connectivity with the transmission system up to the Interconnection Point, will lie with the SPD. The transmission of power/equipment up to the point of interconnection where the DISCOM metering is done for energy accounting shall be the responsibility of the SPD at his own cost. The maintenance of Transmission system/equipment up to the designated point as per the applicable terms and conditions shall be the responsibility of the SPD to be obtained at his own cost. All costs and charges including but not limited to the losses up to and including at the Interconnection Point associated with this arrangement will also be borne by the SPD.

### **4.3. Remote Monitoring System (RMS)**

4.3.1 SPD shall ensure that all Projects are Remote Monitoring System (RMS) enabled. The data from such RMS may be enabled so that Projects would be monitored or analyzed remotely by SJVN/BE, independently or at its Centralized Monitoring Centre (CMC). The SPD shall support SJVN/BE or its authorized representatives in establishing technical handshake between RMS and the Centralized Monitoring Centre (CMC).

4.3.2 **Not Used.**

### **4.4 Title To the Project**

4.4.1. Throughout the duration of the PPA, the SPD shall be the legal and beneficial owner of the Project at all times, and the Project shall remain a property of the SPD and shall not attach to or be deemed a part of, or fixture to, the Premises. The title to the Project will be transferred to the BE at Termination of the PPA at the end of the Term (i.e. after completion of twenty-five (25) Operational Years) within thirty (30) Days. The title to be transferred to BE free of all encumbrances and at zero cost to the BE as on the same condition of the project on date of transfer.

### **4.5 Purchase and sale of Power**

4.5.1 Subject to the terms and conditions of this Agreement, the SPD undertakes to sell solar power to BE and BE undertakes to purchase such energy and pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.

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

4.6.1 It shall be the responsibility of the SPD, entirely at its cost and expense to install such number of Solar panels and associated equipment as may be necessary to achieve the required Energy supply and CUF of the Project declared by the SPD at the time of submission of response to RfS and the SPDs will be allowed to revise the same once within first year after SCD. Thereafter, the CUF for the Project shall remain unchanged for the entire term of the PPA. The declared annual CUF shall in no case be less than 15 % for Project to be set up in the State of ..... The SPD shall maintain generation so as to achieve annual energy supply corresponding to CUF within + 10% and -15% of the declared value till the end of 10 years from SCD, subject to the annual CUF remaining minimum of 15%, and within +10% and -20% of the declared value of the annual

CUF thereafter till the end of the PPA term. The lower limit will, however, be relaxable to the extent of Force Majeure events and non- availability of grid during solar generation hours, for evacuation which is beyond the control of the SPD. The annual CUF will be calculated every year from 1st April of the year to 31st March next year. Relaxation to the non- availability of grid beyond the control of SPD need to be certified by BE. Further, duly signed hindrance register shall be maintained during the time of execution and O&M.

- 4.6.2. Subsequent to Project commissioning, if for any Contract Year, except on 31st march immediately after Project commissioning, it is found that the SPD has not been able to supply minimum energy corresponding to the value of annual CUF within the permissible lower limit of CUF declared by the SPD from the project for the rest of the Term of agreement, save and except in case of Force Majeure, the SPD shall be levied liquidated damages @50% of the PPA tariff for the shortfall in energy terms.

#### **4.7 Extensions of Time**

- 4.7.1 In the event that the SPD is prevented from performing its obligations under Article 4.1 by the SCD due to:

- a. any BE's Event of Default; or
- b. Force Majeure Events affecting BE, or
- c. Force Majeure Events affecting the SPD, or
- d. Inability to provide clear access of site for work to SPD,

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

- 4.7.2 In case of extension due to reasons specified in Article 4.7.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of three (3) months from the date of the Force Majeure Notice, termination of this Agreement shall be caused solely at the discretion of BE, as per the provisions of Article 9.

- 4.7.3 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 SCD or the Expiry Date should be deferred, either Party may raise the Dispute to be resolved in accordance with Article 15.

- 4.7.4 As a result of such extension on account of Article 4.7.1 or Article 4.7.2, the newly determined SCD and newly determined Expiry Date shall be deemed to

be the SCD and the Expiry Date for the purposes of this Agreement.

- 4.7.5 Delay in commencement of power supply from the project beyond the SCD for reasons other than those specified in Article 4.7.1 & Article 4.7.2 shall be an event of default on part of the SPD and shall be subject to the consequences specified in the Article 4.6.
- 4.7.6 Immediately upon the happening of any such event as aforesaid, the SPD shall inform the Buying Entity/SJVN accordingly, but the SPD shall nevertheless use constantly his best endeavors to prevent and/or make good the delay and shall do all that may be required in this regard. The SPD shall request, in writing along with documentary evidence, for extension of time, to which he may consider himself eligible under the Contract, within Seven days of the date of happening of any such events as indicated above.
- 4.7.7 In any such case as may have arisen due to any of the events, as aforesaid, and which shall be brought out by the SPD in writing, the SJVN may give a fair and reasonable extension of Time for Completion based on fact and documentary evidence, after taking into consideration the nature of the work delayed and practicability of its execution during the period of extension. A sperate hindrance record for delay encountered during currency of contract shall be maintained jointly signed/agreed by SPD & Buying Entity.

#### **4.8 Acceptance/Performance Test**

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

#### **4.9 Penalty for delay in commissioning of the project**

- 4.9.1 The SPD shall commission the full Project Capacity within SCD as defined in this Agreement. If the SPD is unable to commission the Project by the SCD for the reasons other than those specified in Article 4.7.1 and 4.7.2, the SPD shall pay to SJVN, penalty for the delay in commissioning and making the Contracted Capacity available for dispatch by the SCD as per the following:
- a. Delay beyond the SCD upto (& including) the date as on \_\_\_\_\_ month (s) after the SCD or the extended SCD, if applicable: The total PBG/POI amount shall be encashed on per-day basis. For example, if the commissioning of the project is delayed by 18 days beyond the SCD, then the penalty shall be: PBG amount X (18/ Scheduled Commissioning Period).
  - b. For avoidance of doubt it is clarified that provisions of Article 4.8.1 will

be applicable even in case where no capacity (i.e. 0 kW) has been commissioned

4.9.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee/ Payment on Order Instrument shall be limited to \_\_\_\_\_ month (s) after the SCD/extended SCD of the Project. In case, the commissioning of the Project is delayed beyond \_\_\_\_\_ month (s) after the SCD, following shall be applicable:

(a) The Contracted Capacity shall stand reduced/ amended to the capacity corresponding to the Project Capacity that has commenced power supply until the date as on \_\_\_\_\_ month (s) after the SCD and the PPA for the balance capacity will stand terminated and shall be reduced from the Contracted Capacity

However, BE/SJVN has the full right to give extension to SPDs beyond the time line as mentioned above in case reason of delay is beyond the reasonable control of SPD.

4.9.3 The SPD acknowledges and accepts that the methodology specified herein above for calculation of penalty payable by the SPD is a genuine and accurate pre-estimation of the actual loss that will be suffered by BE. SPD further acknowledges that a breach of any of the obligations contained herein result in injuries and that the amount of the penalty or the method of calculating the penalty specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the BE in each case specified under this Agreement.

#### **4.10 Third Party Verification**

4.10.1 The SPD shall be further required to provide entry to the site of the Rooftop Solar Power Project (from which power under this Agreement is being made available) free of all encumbrances at all times during the Term of the Agreement to SJVN/BE and a third Party nominated by any Indian Governmental Instrumentality/SJVN for inspection and verification of the works being carried out by the SPD at the site of the Power Project. The SPD shall provide full support to SJVN/BE and/or the third party in this regard.

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

#### **4.11 Breach of Obligations**

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

## **ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION**

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

- 5.1.1 The SPD shall give BE and SJVN at least Forty Five (45) days' advanced preliminary written notice and at least thirty (30) days' advanced final written notice, of the date on which it intends to synchronize the Power Project to the Grid System.
- 5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the SPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.1.3 The SPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by concerned DISCOM Grid System and checking/verification is made by the concerned authorities of the DISCOM.
- 5.1.4 The SPD shall immediately after each synchronization, inform the DISCOM to which the Power Project is electrically connected in accordance with applicable Grid Code under intimation to SJVN. In addition, the SPD will inject in-firm power to grid time to time to carry out operational/ functional test prior to commercial operation. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.
- 5.1.5 The SPD shall commission the Project as detailed in "Schedule-4: Commissioning Procedure" within \_\_\_\_\_ month (s) from the Effective Date of PPA. Declaration of SCD shall only be done subject to the demonstration of the compliances as per Schedule-4.
- 5.1.6 The Parties agree that for the purpose of commencement of the supply of electricity by SPD to BE, liquidated damages for delay etc., the Scheduled Commissioning Date or extended Scheduled Commissioning Date as defined in this Agreement shall be the relevant date.

### **5.2 Early Commissioning**

- 5.2.1 The SPD shall be permitted for full commissioning of the Project even prior to the Scheduled Commissioning Date. Early commissioning of the Project will be allowed solely at the risk and cost of the SPD, and BE may purchase the energy from such early commissioned Project at the PPA tariff.

## **ARTICLE 6: METERING**

### **6.1 Metering**

- 6.1.1 The metering arrangements for metering the electrical energy supplied at the SPD delivery point shall be at outgoing feeder from the Project. The metering arrangements shall comply with the norms of SERC/CEA/DISCOM, as applicable.
- 6.1.2 The Metering shall be of ABT platform. A set of Main and Check Meters of 0.2S accuracy class, as per CEA (Installation & operation of meters) Regulations 2006/ IEGC as applicable, shall be procured and installed by SPD at Interconnection Point .
- 6.1.3 The Main & Check meter shall be checked and sealed by SPD in presence of BE at the time of installation as per the CEA (Installation & Operation of Meters) Regulations 2006 as amended from time to time.
- 6.1.4 In case Main meter or Check meter fail, for the purpose of Billing, then at least one of the failed meter shall be immediately replaced by SPD. In case of failure of main meter, readings of check meter shall be taken for billing purpose.
- 6.1.5 In case of failure of meters, energy accounting for the period shall be as per procedure stipulated in CEA (Installation and Operation of Meters) Regulations 2006 and amendments thereon. If the Main Meter(s) fail to record or if any of the PT fuses is blown out, energy shall be computed based on check meter.
- 6.1.6 Periodic testing of Main, Check meter shall be carried out in the presence of representatives of SPD and BE as per procedure laid out in CEA (Installation and Operation of Meters) Regulations, 2006. For any testing and/ or replacement, notice of seven days will be given.

### **6.2 Energy Dispatch**

It is understood and agreed by and between the parties that SPD shall operate the Project as per applicable grid operating standards and relevant statutory provisions/ guidelines and codes, as applicable from time to time.

### **6.3 System Disruptions**

- (a) Availability of premises: BE will provide full access of the site to SPD for installation, operation and maintenance of Rooftop Solar Power Project during the period of Agreement. BE will also provide unrestricted access of the Premises to SPD for operation and maintenance of Rooftop Solar Power Project.
- (b) Suspension of Delivery: SPD shall be entitled to suspend delivery of electricity

from the System to the Delivery Point for the purpose of maintaining and repairing the System upon giving one week's advance written notice to the BE except in the case of emergency repairs. Such suspension of Service shall not constitute a breach of this Agreement provided that the SPD shall use commercially reasonable efforts to minimize any interruption in service to the BE. However, any preventive maintenance shall be done only during the period when plant is not generating.

- (c) BE will not provide/construct any structure within its Premises or around its premises which shades the solar panels effecting the generation of the energy during the Agreement period.
- (d) Roof Repair and other System Disruptions: In the event that (a) the BE repairs the Premises' roof for any reason not directly related to damage, if any, caused by the System, and such repair required the partial or complete temporary disassembly or movement of the System, or (b) any act or omission of BE or BE's employees, Affiliates, agents or subcontractors (collectively, a "BE Act" ) result in a disruption or outage in System production, and such events attributable to BE (except Force majeure, then, in either case) BE shall (i) pay the SPD for all work required by the SPD to disassemble or move the System and re-assemble the system after completion of the repair work and (ii) continue to make all payments for the Solar Power during such period of System disruption (the "**Disruption Period**"). For the purpose of calculating Solar Power Payments and lost revenue for such Disruption Period, Solar Power shall be deemed to have been produced at the average rate over the preceding 12 (Twelve) months, or, if the disruption occurs within the first 12 months of operation, the average over such period of operation (deemed generation). SPD shall inform about the 'disruption or outage in System production, for reasons attributable to BE in 'writing with date and time of such occurrences, and BE's liability shall start from the date of intimation for above of disruption or outage in system production, on account of BE.
- (e) BE agrees to purchase one hundred percent (100%) of the Solar Power generated by the System and made available by the SPD to BE at the Delivery Point during each relevant month of the Term. In the event that the BE is unable to off take 100% of the electricity generated, when it is generated, then Deemed Generation will apply only in case following conditions:
  - i) If the BE is not able to export or record the excess units generated due to faults in the equipment's of the BE e.g., Net meter, Cables, Equipment's etc., which may stop the feeding / record of the Solar Power generated.
  - ii) In the event that the BE fails to ensure adequate space for solar equipment to ensure that other structures do not partially or wholly shade any part of

the Rooftop Solar Power Project and if such shading occurs, the SPD may apply for Deemed Generation.

Furnishing the calculation for loss in generation due to above shall be supported by the relevant data, which shall be approved by BE within one month of submission failing which the SPD shall claim provisional deemed generation till the issue is finally settled.

**ARTICLE 7: APPLICABLE TARIFF**

- 7.1.1. The SPD shall be entitled to receive the Tariff of Rs. \_\_\_\_\_/ kWh [Insert the Tariff discovered through the bidding process conducted by SJVN], fixed for the entire term of this Agreement, with effect from the date of commissioning of the project, for the actual energy/power sold to BE.
- 7.1.2. Any implication of Change in Law as per Article 10 which shall result in a revision of the tariff accordingly, will be applicable from the month subsequent to such change.

## **ARTICLE 8: BILLING AND PAYMENT**

### **8.1 General**

8.1.1 From the date of commissioning of the project by SPD, the BE shall pay to SPD the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in Article 7. All Tariff Payments by the BE shall be in Indian Rupees.

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

8.2.1 SPD shall issue to the BE Monthly Bill for the immediately preceding Month/relevant period upto 5<sup>th</sup> Business day of the next month.

8.2.2 The Monthly Bill prepared as per the PPA, shall include the following;

- i) The Solar Power calculations for the relevant billing period.
- ii) Any other adjustments to cover charges related to supply of power and any other prior-period adjustments;
- iii) Late Payment Surcharge, if any (shall be raised through Supplementary Bill).

### **8.3 Payment of Monthly bills**

8.3.1 BE shall pay the amount payable under the Monthly Bill on or before the Due Date i.e 15 days from date of issuance of bill to such account of SPD, as shall have been previously notified by the SPD to the BE in accordance with Article 8.3.2 below.

8.3.2 SPD shall open a bank account ("SPD's Designated Account") for all Tariff Payments to be made by the BE to SPD, and notify the BE of the details of such account at least thirty (30) Days before the dispatch of the first Monthly Bill. The BE shall also designate a bank account (the "BE's Designated Account") for payments to be made by SPD to the BE, if any, and notify SPD of the details of such account thirty (30) Days before the dispatch of its first request for such payment. SPD and BE shall instruct their respective bankers to make all payments under this Agreement to the Buying Entity's Designated Account or SPD's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

### **8.4. Late Payment Surcharge**

8.4.1. In the event of delay in payment of a Monthly Bill by the BE beyond its Due Date, a Late Payment Surcharge shall be payable by the BE to SPD at the rate of 1.0% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by SPD through

Supplementary Bill.

**8.5. REBATE**

- 8.5.1. Save for any dispute, BE shall be eligible for rebate of 1% per Month on the amount of outstanding payment, for payment of any Bill within first seven (7) Business Days from the Metering Date, calculated on a Day to Day basis for each Day of the month.
- 8.5.2. In case of any disputed bill, the rebate shall be allowed on only that payment which is made within first seven (7) days of Metering Date, irrespective of the outcome of final settlement of the dispute.
- 8.5.3. No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess etc.

**8.6. Disputed Bill**

- 8.6.1. If the BE does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party within Seven (07) days of receiving, such Bill shall be taken as conclusive.
- 8.6.2. If the BE disputes the amount payable under a Monthly Bill or a Supplementary Bill, as it may be, it shall pay the un-disputed amount within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party against disputed amount setting out:
  - (i) the details of the disputed amount;
  - (i) its estimate of what the correct amount should be; and
  - (ii) all written material in support of its claim.
- 8.6.3. If the SPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.6.2, the SPD shall make appropriate adjustment in the next Monthly Bill. In such a case, excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.
- 8.6.4. If the SPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.6.2, it shall, within thirty (30) days of receiving the Bill Dispute Notice, furnish a notice ("Bill Disagreement Notice") to the BE 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.

- 8.6.5 Upon receipt of the Bill Disagreement Notice by the BE under Article 8.6.4, authorized representative(s) of the BE and SPD shall meet and make best endeavours to amicably resolve such dispute within thirty (30) days of receipt of the Bill Disagreement Notice.
- 8.6.6 If the Parties do not amicably resolve the Dispute within thirty (30) days of receipt of Bill Disagreement Notice pursuant to Article 8.6.4, the matter shall be referred to Dispute resolution in accordance with Article 15.
- 8.6.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the BE shall, without prejudice to its right to Dispute, be under an obligation to make payment, of the un-disputed amount in the Monthly Bill.
- 8.6.8 The Parties acknowledge that all payments made against Monthly Bills and/or Supplementary Bills shall be subject to quarterly reconciliation within thirty (30) days of the end of the quarter of each Contract Year and annual reconciliation at the end of each Contract Year within thirty (30) days thereof to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.
- 8.6.9 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 BE and SPD shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the SPD shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. 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 15.

## **8.7. Payment Security Mechanism**

### **Letter of Credit**

- 8.7.1. BE shall provide to the SPD, in respect of payment of its Monthly Bills, an unconditional, revolving and irrevocable letter of credit ("Letter of Credit") equivalent to an 110 % of estimated average of three (3) months SPD bills, opened and maintained which may be drawn upon by the SPD in accordance with this Article.
- 8.7.2. Upon completion of the initial 30 days of supply BE shall, through a scheduled bank, open a Letter of Credit within 15 days in favour of the SPD, to be made operative from a date prior to the Due Date of its second Monthly Bill payable after completion of initial 30 days of supply 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 110% of the estimated average of projected twelve (12) months SPD bills .
- ii) for each subsequent Contract Year, equal to 110% of the estimated average of actual twelve (12) SPD bills of the previous Contract Year.

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

8.7.4. Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 8.6.2 due to any reason whatsoever, BE shall restore such shortfall before next drawl.

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

8.7.6. BE shall ensure that the Letter of Credit shall be renewed not later than its current expiry date.

8.7.7. All costs relating to opening, maintenance of the Letter of Credit shall be borne by BE.

8.7.8. If BE fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, then, subject to Article 8.6.6 & 8.6.9, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 8.6.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to SPD and;
- 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;

## **ARTICLE 9: FORCE MAJEURE**

### **9.1 Definition**

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

### **9.2 Affected Party**

9.2.1 An affected Party means SPD or BE whose performance has been adversely affected by an event of Force Majeure.

### **9.3 Force Majeure**

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

- 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, tornado if and only if it is declared/ notified by the competent state/ central authority/ agency (as applicable), resulting in evacuation of power being disrupted from the Delivery Points; or
- b) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action if and only if it is declared / notified by the competent state / central authority / agency (as applicable), making the performance of obligations as specified herein as impossible; or
- c) Radioactive contamination or ionizing radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.
- d) An event of force majeure affecting the concerned BE, as the case may be, thereby affecting the Delivery of power from the SPD to the Buying Entity.
- e) A force Majeure event shall not be based on the economic hardship of

either party.

- f) In case of any damage because of force majeure event in building it shall be repaired at the cost of BE & in case of any damage because of force majeure event in Rooftop Solar Power Project then it shall be repaired at the cost of SPD.

#### **9.4 Force Majeure Exclusions**

9.4.1 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; or
  - ii. Failure to comply with an Indian Law; or
  - iii. Breach of, or default under this Agreement.
- g) Any pre-existing dispute on project Building and/or right-of-way or other project related issues.

#### **9.5 Notification of Force Majeure Event**

9.5.1 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 fifteen (15) 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 restoration of communications, but not later than one (1) day after such reinstatement. The other Party shall respond on the claim of the Affected Party within fifteen (15) days of receipt of the said intimation of Force Majeure.

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.

9.5.2 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.

#### **9.6 Duty to Perform and Duty to Mitigate**

9.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 9.3, 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.

#### **9.7 Available Relief for a Force Majeure Event**

9.7.1 Subject to this Article 9:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement 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 for the period prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
- (d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

## ARTICLE 10: CHANGE IN LAW

### 10.1. Definitions

In these rules, unless the context otherwise requires:

10.1.1 In this Article 10, the term “Change in Law” shall refer to the occurrence of any of the following events, only after [Insert the last date of bid submission], including any enactment or amendment or repeal of any law, which have a direct effect on the Project, leading to corresponding changes in the cost requiring change in tariff, and includes-

- i. change in interpretation of any law by a competent court; or
- ii. the enactment of any new law; or
- iii. a change in any domestic tax, including duty, levy, cess, charge or surcharge by the Central Government, State Government or Union Territory administration leading to corresponding changes in the cost; or
- iv. a change in any condition of an approval or license obtained or to be obtained for purchase, supply or transmission of electricity, unless specifically excluded in the agreement for the purchase, supply or transmission of electricity, which results in any change in the cost.

However, Change in Law/Regulation shall not include-

- i. Any change in taxes on corporate income or any change in any withholding tax on income or dividends; or
- ii. change in respect of deviation settlement charges or frequency intervals by an Appropriate Commission. The term “law” in this provision includes any Act, Ordinance, order, bye-law, rule, regulation, notification, for the time being in force, in the territory of India.

10.1.2 In the event of occurrence of any of events as provided under Article 10.1.1 which results in any adverse financial loss/ gain to the SPD/BE then, in order to ensure that the SPD/BE is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the SPD/BE shall be entitled to compensation by the other party, as the case may be. Compensation payment on account of such ‘Change in Law’ shall be adjusted and be recovered in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 notified by the Ministry of Power on 22.10.2021 (and subsequent amendments, if any).

Compensation payment on account of such ‘Change in Law’ shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

## **10.2 Relief for Change in Law**

10.2.1 In case of Change in Law taking place prior to SCD / Extended SCD from the Project, the compensation will be passed through on in the form of increase/decrease in the tariff, linked with increase/decrease in the Project cost, which will be automatically paid through the monthly energy billing. The pass through in this case shall be as per the formula / provisions as stipulated in Schedule-A and shall be effective from date of commissioning of the Project. SPD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 10.

10.2.2 For the purposes of 10.2.1 above, the affected party, which intends to adjust and recover the costs due to change in law, shall give a 21 days' prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of 21days from the date of the notice above, whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

10.2.3 Not used

10.2.4 Not used

10.2.5 In case Change in Law results in delay in commissioning of the Project, where cause and effect between these two can be clearly established, the SJVN may provide suitable time-extension in Financial Closure, Scheduled Commissioning Date, as the case may be.

10.2.6 If the event of any decrease in the project cost by the SPD or any income to the SPD on account of any of the events as indicated above, SPD, as per methodology/ formula specified in Schedule-A, shall pass on the benefit of such to BE. In the event of the SPD failing to comply with the aforementioned requirement, BE shall make such deductions in the monthly tariff payments on immediate basis.

10.2.7 After the adjustment of the amount of the impact in the tariff, the SPD shall adjust the monthly tariff or charges annually based on actual amount recovered/ paid, to ensure that the payment to the affected party is not more than the yearly annuity amount.

10.2.8 The recovery of the impacted amount, in case of the fixed amount shall be,

- a. within a period of one-hundred eighty months; or
- b. in case of recurring impact, until the impact persists

### **10.3 Notification of Change in Law**

- 10.3.1 In case any increase or decrease in the Project Cost occurs due to Change in Law affecting the Tariff payable under this Agreement, in accordance with Article 10, the SPD shall serve notice to Buying Entity(ies) of such Change in Law for giving a three weeks prior notice about the proposed impact in tariff, positive or negative, to be recovered. SPD, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the aforementioned notice referred whichever is later, shall furnish Buying Entity(ies), the computation of impact in tariff or charges to be adjusted and recovered. Such recovery and adjustment of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.
- 10.3.2 Any notice service pursuant to this Article 10, shall provide, amongst other things, precise details of the Change in Law and its effect on the Project Cost and computation of change in Tariff which shall be supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.
- 10.3.3 "Project Cost" wherever applicable under this Article, shall mean the cost incurred by the SPD towards supply and services only for the Project concerned, upto the Actual Commissioning Date of the last part capacity or Scheduled Commissioning Date or extended Scheduled Commissioning Date, whichever is earlier. For example, in case the Actual Commissioning Date of the last part capacity is 15.04.2024, Scheduled Commissioning Date is 15.03.2024 and extended Scheduled Commissioning Date is 01.04.2024, the Project Cost shall be determined as the cost incurred by the SPD upto 01.04.2024.

## ARTICLE 11: GENERAL COVENANTS

### 11.1. SPD's COVENANTS

The SPD covenants and agrees to the following;

- a) **Notice of Damage or Emergency:** The SPD shall (a) promptly notify BE if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (b) immediately notify BE once it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.
- b) **System Condition:** The SPD shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Power at a commercially reasonable continuous rate: Subject to there being no BE, the SPD shall provide 24 x 7 onsite / offsite monitoring and maintenance of the System throughout the period of this agreement at no additional cost.
- c) **Governmental Approvals :** While providing the Installation work, solar Power and System Operations, the SPD shall obtain and maintain and secure all Governmental Approval required to be obtained and maintained and secured by the SPD and to enable SPD to perform such obligations.
- d) The interconnection of the rooftop solar system with the network of the distribution licensee shall be made as per the technical standards for connectivity of distributed generated resources regulation's as may be notified by the competent authority. The interconnection of the rooftop solar system shall be as per the contracted load and / or respective voltage level applicable to the BE as per the provisions of the guidelines issued by the competent authority.
- e) **Health and Safety:** The SPD shall take all necessary and reasonable safety precautions with respect to providing the installation Work, Solar Power, and System Operations that shall comply with all Applicable Law pertaining-to the health and safety of persons and real and personal property.
- f) The SPD is satisfied that project building surveyed by SPD is capable of holding the intended load of Rooftop Solar Power Project.
- g) Unless otherwise agreed between the Parties, the SPD shall not do (a) chipping of rooftop; or (b) disturb water proofing of roof (c) carry out any other modification of the Premises without the written consent of the BE. One-time cost for strengthening of Premise to the extent required for setting up Solar PV Project before/during construction shall be borne by BE. Cost of repair or maintenance of Premise to the extent required for the Solar PV

Project only, during the O&M of Project, shall be the responsibility of SPD for the PPA tenure.

- h) The SPD shall maintain general cleanliness of area around the Project during construction and operation period, i.e. Term of the PPA of the Project. In case any damages is caused to the equipment / facilities owned by the BE due to the SPD, the same shall be made good / rectified by the SPD at its risk and cost.

### 11.2. SPD's REPRESENTATIVE

During the subsistence of this Agreement, the SPD undertakes to respond to all questions, concerns and complaints of the BE regarding the System in a prompt and efficient manner. The SPD designates the following individual as its representative pertaining to performance of this Agreement till the Scheduled Commissioning Date:

Name: \_\_\_\_\_

Designation \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

The SPD designates the following individuals as its representative and primary point of contact pertaining to performance of this Agreement following the Scheduled Commissioning Date till termination:

Name: \_\_\_\_\_

Designation \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

### 11.3. BE's COVENANTS

BE covenants and agrees to the following:

- a) **Notice of Damage or Emergency:** BE shall (a) promptly notify the SPD if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System; (b) immediately notify the- SPD once it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

- b) **Liens:** BE shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If BE breaches its obligations under this Clause, it shall immediately notify the SPD in writing, and shall promptly cause such Lien to be discharged and released of record without any cost to the SPD, and shall indemnify the SPD against all costs and expenses (including reasonable attorneys fees and court costs) incurred in discharging and releasing such Lien.
- c) **Consents and Approvals:** BE shall ensure that any authorizations required of BE under this Agreement, including those required for installation of System at the Premises and to drawl consume Solar Power are provided in a timely manner. The BE shall cooperate with the SPD to obtain such approvals, permits, rebates or other 'financial incentives.
- d) **Site availability & Access to Premises Grant of License:** BE hereby grant to the SPD the availability & possession of the hindrance free site to start the work at the time of signing of PPA and a license co-terminus with the Term, containing all the rights necessary for the SPD to use portions of the Premises for the installation, operation and maintenance of the System pursuant to the terms of this Agreement, including ingress and egress rights to the Premises for the SPD and its employees and authorized representatives and access to electrical panels and conduits to interconnect or disconnect the System with the Premises electrical wiring with the consent and approval of the BE's authorized representative identified by the BE. Photo IDs will be provided by the SPD. BE will assist in availing permissions to the site.
- e) **Security:** If any damages to the System takes place due to theft or vandalism then the same shall be claimed or reimbursed through insurances by SPD. In case of theft and vandalism acts, the BE will assist, the SPD in a best possible way in procedures of filing FIRs, insurance claims and any other related activities. SPD shall be entitled to any insurance proceeds received for damages in this clause. BE will not conduct activities on, in or about the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. If System is damaged due to any such activity or through any other agency contracted by the BE directly or indirectly, such damage will be borne by the BE.
- f) Regardless of whether BE is owner of the Premises or leases the Premises from a landlord, BE hereby covenants that (a) the SPD shall have access to the Premises and System during the Term of this Agreement, and (b) neither BE nor BE's landlord will interferer or handle any of the SPD's equipment or the System without written authorization from the SPD.

- g) **Temporary storage space during installation** : BE shall provide sufficient space at the Premises for the temporary storage and. staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary Construction, trailers and facilities reasonably necessary during the Installation Work, System Operations and access for rigging and material handling.
- h) The general maintenance of the Building & Roof shall be done by BE during term of the PPA of the Project.
- i) **Sunlight Easements**: BE will take all reasonable actions as necessary to prevent other building within premises, structures or flora from overshadowing or otherwise blocking access of 'sunlight to the System, including but not limited to-such actions as may be reasonably necessary to obtain a solar access easement for such purpose.
- j) **Evacuation** – BE shall off take 100% of the Solar Power generated from the Delivery Point, and pay all invoices raised by the SPD under this Agreement by the 'Due Date and pay interest on delayed payments, if any, as per this Agreement.
- k) **Water** - BE at zero cost shall arrange Raw Water at a given point as per the reasonable requirements of the SPD, for periodic cleaning of the solar panels.
- l) **Auxiliary Power** – The BE shall provide sufficient auxiliary power to the SPD for the maintenance and operation of its system, if available and possible, at the rate BE is paying to the DISCOM.
- m) **Relocation** - If one or more of the Solar Power Plant panels needs to be temporarily moved or its generation suspended, for any other reason requested by the BE, the BE will be responsible for mutually-agreed costs on actuals only, arising from moving, disassembling and re-installing/ commissioning the Solar Power Plant, as mutually agreed between the Parties. The SPD will be responsible for providing detailed documentary proof of the actual mutually-agreed costs borne for such relocation/disassembling. Within 30 days of these satisfactory documents being provided by the SPD, the BE shall reimburse these expenses in full, and delayed payment beyond the date mentioned above will attract Late Payment charges as 1.00 % per month. During any interruption in generation during such relocation, the BE will continue to be billed as per

Deemed Generation, during the period of interruption, for the affected Solar Power Plant(s). In case relocation of Solar Plant/Panel desired by SPD with the consent of BE, **NO relocation cost & Deemed generation** shall be payable.

**11.4. BE's REPRESENTATIVE**

During the subsistence of this Agreement, the BE undertakes to respond to all questions, concerns and complaints of the SPD & SJVN regarding the System in a prompt and efficient manner. The BE designates the following Engineer In Charge (EIC) of the project as its representative pertaining to performance of this Agreement till the Scheduled Commissioning Date:

Name: \_\_\_\_\_

Designation \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

The BE designates the following Engineer In Charge (EIC) of the project as its representative and primary point of contact pertaining to performance of this Agreement following the Scheduled Commissioning Date till termination:

Name: \_\_\_\_\_

Designation \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

## ARTICLE 12: EVENTS OF DEFAULT AND TERMINATION

### 12.1. SPD's Event of Default

12.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the BE of its obligations under this Agreement, shall constitute SPD's Event of Default:

- i. the failure to commence supply of power to BE up to the Contracted Capacity, by the end of the period specified in Article 5, or failure to continue supply of annual energy to BE after the commencement of supply of power, for any Contract Year (except for the first and final Contract Years), throughout the term of this Agreement, relevant to the SCD as revised / extended under the provisions of this agreement, or
- ii. non-supply of power by SPD to BE for a continuous period of 90 days or more; or if
  - a. the SPD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Project in contravention of the provisions of this Agreement; or
  - b. the SPD transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer
    - is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
    - is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee.
- iii. if (a) the SPD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain 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 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 continues to meet the financial & technical requirements and retains creditworthiness similar to SPD and expressly assumes all obligations of SPD under this Agreement and is in a position to perform them; or
- iv. SPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from the Buyer in this regard; or

- v. except where due to any BE'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 BE; or
- vi. change in shareholding of the SPD before the specified time frame as mentioned in Article 4.1.1 of this Agreement, without prior consent of BE; or ceding of control by the promoters of M/s ..... [Insert name of the bidding company which was issued LoA by SJVN under the RfS] within 1 year of SCD, without prior consent of BE; or
- vii. occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SPD; or

## **12.2. Procedure for cases of SPD's Event of Default**

- 12.2.1. Upon the occurrence and continuation of any SPD Event of Default under Article 12.1, BE shall have the right to deliver SPD a notice, with a copy to the representative of the lenders to the SPD with whom the SPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (BE Preliminary Default Notice), which shall specify reasonable detail, the circumstances giving rise to the issue of such notice.
- 12.2.2. Following the issue of Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 12.2.3. During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 12.2.4. 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 SPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Buying Entity may terminate this Agreement by giving a written Termination Notice of sixty (60) days to SPD.
- 12.2.5. Subject to the terms of this Agreement, upon occurrence of a SPD Event of Default under this Agreement, the SPD shall be liable to pay penalty to SJVNL, as provided in Article 4.8 of the PPA for failure to commence supply of power within the stipulated time and to BE as per Article 4.6.1 for failure to supply power in terms of the PPA. For other cases, the SPD shall be liable to pay to Buying Entity, damages, equivalent to 6 (six) months, or balance PPA period, whichever is less, of tariff for its Contracted Capacity, corresponding to the committed annual Energy Units.

- 12.2.6. SJVN in consultation with BE shall have the right to recover the said damages by way of forfeiture of bank guarantee/Payment on Order Instrument, if any, without prejudice to resorting to any other legal course or remedy.
- 12.2.7. In addition to the levy of damages as aforesaid, the lenders in concurrence with the Buying Entity, may exercise their rights, if any, under Financing Agreements, to seek substitution of the SPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the SPD and performing the obligations of the SPD. However, in the event the lenders are unable to substitute the defaulting SPD within the stipulated period, BE may terminate the PPA. Provided that any substitution under this Agreement can only be made with the prior consent of BE including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by SJVN and accepts the terms and conditions of this Agreement.
- 12.2.8. BE can own the Project assets on termination and or as case may be, by making a payment of Termination Payment as defined in Clause 12.4.4. In such case Termination Payment shall be deposited in the designation bank account. In situation BE does not Exercise, above option of purchase of Solar PV Plant, in such case SPD shall take the project from the premises of the BE and make the roof / premises in the original condition on existing before the start of this project. This has to be undertaken at SPDs Cost without any liability to BE.

### **12.3. BE's Event of Default**

- 12.3.1. The occurrence and 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 a BE Event of Default:
- i. BE fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 8.6 for a period of ninety (90) days after the Due Date; or
  - ii. The BE fails to evacuate power from the Delivery Points for a continuous period of ninety (90) days.
  - iii. Early termination of this Agreement or any other associated agreements (like water surface usage, land usage etc.) including invocation of any of the permits, approval or clearances for reasons not attributable to SPD.
  - iv. if (a) the BE becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of sixty (60) days, or (b) any winding up or bankruptcy or insolvency order is passed against BE, or (c) the BE 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 BE will not be a BE 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 BE and expressly assumes all obligations of the BE under this Agreement and is in a position to perform them; or
- v. the BE repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from SPD in this regard; or
  - vi. except where due to any SPD's failure to comply with its material obligations, the BE is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the BE within sixty (60) days of receipt of first notice in this regard given by SPD to BE,
  - vii. Occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Buying Entity.
  - viii. In case SPD could not sign PPA due to reason attributed to BE within 45 days from issuance of LOA or mutually agreed extended date, the LOA will be cancelled without any financial implication to the SPD/SJVN/BE.

#### **12.4. Procedure for cases of BE's Event of Default**

- 12.4.1. Upon the occurrence and continuation of any BE's Event of Default specified in Article 12.3, SPD shall have the right to deliver to the BE a notice, an SPD Preliminary Default Notice, which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 12.4.2. Following the issue of BE Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 12.4.3. During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 12.4.4. After following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, then the SPD may terminate the PPA and BE shall be required to take over the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and 110% (one hundred and ten per cent) of the adjusted equity. In the event of termination of PPA for reasons not attributable to SPD, any damages or charges payable by the SPD to BE and Administration of UT / State of (Insert State Name ), shall be borne by the BE.

## **12.5. Termination due to Force Majeure**

12.5.1. 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 without any further liability to either Party from the date of such termination.

## **ARTICLE 13: LIABILITY AND INDEMNIFICATION**

### **13.1. Indemnity**

13.1.1. The SPD shall indemnify, defend and hold SJVN/BE harmless against:

- a. any and all third party claims against SJVN/BE 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 or due to the SPD's willful misconduct, gross negligence or fraudulent behavior or violations of Applicable Law; and
- b. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by SJVN/BE from third party claims arising by reason of a breach by the SPD of any of its obligations under this Agreement, (provided that this Article 13 shall not apply to such breaches by the SPD, for which specific remedies have been provided for under this Agreement).

13.1.2. BE 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 BE of any of their obligations under this Agreement; and
- b. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the SPD from third party claims arising by reason of a breach by BE of any of its obligations. In so far as indemnity to SPD is concerned, BE shall be the indemnifying party and not SJVN.

### **13.2. Procedure for claiming Indemnity**

13.2.1. Third Party Claims

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 13.1.1(a) or 13.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 13.1.1(a) or 13.1.2(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 in accordance with Article 14; 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 Appropriate Commission for which it is entitled to be Indemnified under Article 13.1.1(a) or 13.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

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

### **13.3. Indemnifiable Losses**

- 13.3.1. Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 13.1.1(b) or 13.1.2(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 nonpayment of such losses after a valid notice under this Article 13.3, such event shall constitute a payment default under Article 12.

### **13.4. Limitation on Liability**

- 13.4.1. Except as expressly provided in this Agreement, neither the SPD nor SJVN nor BE 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 Buying Entity , the SPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

13.4.2. SJVN 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 Buyer or Buying Entity, or any affiliate of Buyer or any of its officers, directors or shareholders for such claims excluded under this Article.

### **13.5. Duty to Mitigate**

13.5.1. The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 13.

## ARTICLE 14: ASSIGNMENT AND NOVATION

### 14.1 Assignment:

Notwithstanding anything contained herein, the SPD has the right to assign all or any of its rights under this Agreement (including rights over any assets hereunder), to any third party including, though not restricted to any lender, equipment lessor or other party (“Assignment”), with the consent of the BE. The BE shall not unreasonably withhold such consent. In the event of such assignment, the BE will be able to hold the SPD as well as the party to whom the benefits under this contract are assigned, to be jointly and severally responsible for performing the obligations under this contract. Further, in the event of assignment, the BE agrees to make the payments due to the SPD under this agreement, directly to the assignee, upon receipt of such notice by the SPD. If the SPD were to sell the Rooftop Solar Power Project, then the new buyer(s) would need to abide by this Agreement. Further, the SPD reserves the right to assign whole or part of the assets to lenders/ leasing companies. BE may assign its rights under this Agreement, without the prior consent of SPD, to an Affiliate or any successor in interest to BE, whether by way of merger, reorganization or sale of assets (including any sale of a line of business). This Agreement shall insure to the benefit of and be binding upon BE and its successors or assigns. However, any such actions as intended by the SPD under Article 14.1 and Article 14.2 shall be binding on BE, if there are zero material inconsistencies present in the contract provisions during the time of assignment/novation, else, it shall be construed as default in contract and appropriate actions shall be taken as deemed fit.

### 14.2 Novation:

The Parties agree and acknowledge that the SPD may intend to novate the Agreement to a party, and has the right to transfer any or all of its rights and obligations under this Agreement to a party or any other third party (“New Party”), with the consent of the BE. The BE shall not unreasonably withhold such consent. Upon Novation, the New Party shall automatically and without any further action be entitled to all the same rights and assume the same obligations, under this Agreement, as if it were originally a party to this Agreement. Further, the BE hereby agrees and undertakes that, promptly upon receiving a request from the SPD, the BE shall execute such further writings, deeds and/or agreements and take all such further actions as may be necessary for effecting or implementing the transfer of any or all of the SPD’s rights and/or obligations under this Agreement to the New Party. If the parties agree to do Novation then separate Novation agreement shall be executed.

**ARTICLE 15: GOVERNING LAW, JURISDICTION & ARBITRATION PROCEDURE**

**15.1. Governing Law**

15.1.1. 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 arising out of or in connection with this Agreement shall be under the jurisdiction of appropriate courts of \_\_\_\_\_ ( State name as per BE's Address).

15.1.2. In the event of any Dispute, difference of opinion or dispute or claim arising out of or relating to this Agreement or breach, termination or the invalidity thereof, shall firstly be attempted to be resolved by conciliation.

15.1.3. All Disputes relating to this Agreement or any issue whether arising during or after the completion thereof or any matter directly or indirectly connected with this Agreement shall in the first place be referred to a sole conciliator appointed/ nominated by Buying Entity on receipt of such requests from either party. The conciliator shall make the settlement agreement after the Parties reach agreement and shall give an authenticated copy thereof to each of the Parties.

15.1.4. The settlement agreement shall be final and binding on the Parties. The settlement agreement shall have the same status and effect of an arbitration award. The views expressed or the suggestions made or the admissions made by either Party in the course of conciliation proceedings shall not be introduced as evidence in any arbitration proceedings.

15.1.5. Any Dispute that cannot be settled through conciliation procedure shall be referred to arbitration in accordance with the procedure given below. The Parties agree to comply with the awards resulting from arbitration and waive their rights to any form of appeal insofar as such waiver can validly be made. Cost of conciliation shall be equally shared by both the parties.

**15.2. Arbitration Procedure:**

15.2.1. If the efforts to resolve all or any of the Disputes through conciliation fails, then such disputes shall be referred to a sole arbitrator if the total value of the claim is up to Rs. 50 Lakhs; and to a panel of three arbitrators if total value of claims is more than Rs. 50 Lakhs. For this purpose, Buying Entity will make out a panel of engineers with the requisite qualification and professional experience relevant to the field to which the Agreement relates. This panel will be from among serving or retired government employees or of public sector. Buying Entity provide a panel of three arbitrators for claims up to Rs. 50 Lakhs and a panel of

five arbitrators for claims of more than Rs. 50 Lakhs. SPD shall choose the sole arbitrator from the panel of three and/ or one arbitrator from the panel of five in case three arbitrators are to be appointed. Buying Entity shall also choose one arbitrator from this panel of five and the two so chosen will choose the third arbitrator from the panel only. The arbitrator(s) shall be appointed within a period of 30 days from the date of receipt of written notice/ demand of appointment of arbitrator from either Party.

15.2.2. The venue of such arbitration shall be\_\_\_\_\_ The arbitral award shall be binding on both Parties. The cost of arbitration shall be equally shared by both Parties.

15.2.3. The arbitration proceedings shall be governed by the Indian Arbitration and Conciliation Act, 1996, as amended from time to time including provisions in force at the time the reference is made.

15.3. During the dispute resolution period, both the Parties shall continue to perform their respective obligations as per provisions of the Agreement.

15.4. This Section 15 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason

## **ARTICLE 16: INSURANCES**

### **16.1 Insurance**

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

### **16.2. Application of Insurance Proceeds**

16.2.1. In case of the Project not being implemented through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be first applied to reinstatement, replacement or renewal of such loss or damage. In case of the Project being financed through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be applied as per such Financing Agreements.

16.2.2. If a Force Majeure Event renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, BE shall have claim on such proceeds of such Insurance limited to outstanding dues of the Buying Entity against SPD.

### **16.3. Effect on liability of BE**

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

## **ARTICLE 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 assignees 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. INDUSTRY STANDARD**

17.3.1. Except as otherwise set forth herein, for the purpose of the PPA the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a party's performance is reasonably and timely. Unless expressly defined herein, words having well-known technical or trade meaning or under popular market practice at the time of execution of PPA or meaning under Law shall be so construed.

### **17.4. Waiver**

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

17.4.2. 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

### **17.5. Confidentiality**

#### **17.5.1. Confidentiality obligation**

- a) If the SPD provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copy righted or trademarked information, and / or technical information regarding the , design, operation and maintenance of the System ("Confidential Information") to BE or, if in the course of performing under the Agreement or negotiating the Agreement BE

learns Confidential Information regarding the facilities or plans of the SPD, BE shall (a) protect the Confidential information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, BE may provide such Confidential Information to its officers, directors, manager, employees and Affiliates (collectively "Representatives"), in each case whose access is reasonably necessary for purposes of the Agreement. Each such recipient of confidential information shall be informed by BE of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. BE shall be liable for any breach of this provision by any entity to whom it improperly discloses Confidential Information. All Confidential Information shall remain the property of the SPD and shall be returned to it after BE's need for it has expired or upon the request of the SPD.

- b) If the BE provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copy righted or trademarked information, ("Confidential Information") to the SPD or, if in the course of performing under the Agreement or negotiating the Agreement the SPD learns Confidential Information regarding the facilities or plans of the BE, the SPD shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, the SPD may provide such Confidential Information to its officers, directors, managers, employees and Affiliates (collectively, "Representatives"), in each case whose access is reasonably necessary for purposes of the Agreement. Each such recipient of Confidential Information shall be informed by the SPD of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. The SPD shall be liable for any breach, of this provision by any entity to whom it improperly discloses Confidential Information. All Confidential Information shall remain the property of the BE and shall be returned to it after the SPD's need for it has expired or upon the request of the BE.

#### **17.5.2. Permitted Disclosures**

Notwithstanding any other provision contained herein, neither Party shall be required to hold confidential any information that;

- a) Becomes publicity available other than through the receiving Party.
- b) Is required to be disclosed under Applicable Law or pursuant to a validity issued notice or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement
- c) Is independently developed by the receiving Party ; or
- d) Becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

**17.6. AFFIRMATION**

17.6.1. The SPD and BE, each affirm that:

- a) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay- off or kick-back; and
- b) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this PPA, and the SPD and BE hereby undertake not to engage in any similar acts during the Term of PPA.

**17.7. Severability**

17.7.1. 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.

**17.8. Notices**

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

17.8.2. 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:

e-mail:

Fax. No.:

Telephone No.:

17.8.3. If to BE, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the

address(es) below:

Address:

Attention:

e-mail:

Fax. No.:

Telephone No.:

- 17.8.4. 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.
- 17.8.5. 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.

#### **17.9. Language**

- 17.9.1. 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.
- 17.9.2. 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.

#### **17.10. Restriction of Shareholders / Owners' Liability**

- 17.10.1. Parties expressly agree and acknowledged 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 or the Indian Companies Act 2013 as applicable.

**17.11. Taxes and Duties**

17.11.1. The BE shall pay for any taxes, fees or charges imposed or authorized by any Governmental Authority in future on sale of the solar power to BE pursuant to clause 10.

**17.12. No Consequential or Indirect Losses**

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

**17.13. Order of priority in application**

17.13.1. 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;

**17.14. Independent Entity**

17.14.1. The BE shall be an independent entity performing its obligations pursuant to the Agreement.

17.14.2. Subject to the provisions of the Agreement, the BE shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the BE in connection with the performance of the Agreement shall be under the complete control of the BE and shall not be deemed to be employees, representatives, of SPD and nothing contained in the Agreement or in any agreement or contract awarded by the BE shall be construed to create any contractual relationship between any such employees, representatives or contractors and SPD.

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

17.14.4. 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 BE 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 BE.

**17.15. Compliance with Law**

17.15.1. 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.

**17.16. Breach of Obligations**

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

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

For and on behalf of  
**[SPD]**

For and on behalf of  
**[Buying Entity]**

Name, Designation and Address

Name, Designation and Address

(Signature with Seal)

(Signature with Seal)

Witness

Witness

:

:

1.

1.

2

2.

**Schedule-A:**

**FORMULA FOR DETERMINATION OF IMPACT IN TARIFF OR CHARGES  
DUETO CHANGE IN LAW:**

The amount of the impact of change in law to be adjusted and recovered, shall be calculated in accordance with the formula given here under to calculate adjustment in the monthly tariff due to impact of change in law, which is non-recurring in nature.

Let financial impact of change in law=P

Then the modification in the monthly tariff (MT) for compensating the financial impact is given by  $MT=(Y/X)$

Where X= estimated monthly electricity generation in kWh =  $(1/12) \times$  [Contracted Capacity of the power plant as per the Agreement (in MW)  $\times$  Capacity Utilization Factor (CUF), as per the Agreement (in %)  $\times$  8760 hours  $\times$  10];

(\*in case CUF is not provided, the availability factor mentioned in the agreement may be considered. However, it will be trued up with reference to the actual generation on annual basis.)

$$Y=\{(P \times Mr)(1 + Mr)^n\} / \{(1 + Mr)^n - 1\}$$

Where, -

n=No. of months over which the financial impact has to be paid (subject to maximum of 180 months in case of the non-recurring fixed amount but in case of recurring impact it will be till the impact persists);

Mr =monthly rate of interest =  $R / (12 \times 100)$  and

R = annual rate of interest on loan component (in %) as considered by the CERC in its order for Tariff Determination from Renewable Energy Sources for the year in which the Project is commissioned. In absence of relevant orders of CERC for the concerned year, the interest rate shall be average interest rate plus 200 basis points above the average State Bank of India marginal cost of funds based leading rate, of one-year tenor, prevalent during the last available six months for such period.

Further, generating company or intermediary procurer/BE or the trading licensee shall true up the MT annually based on actual generation of the year so as to ensure that the payment to the affected party is capped at the yearly annuity amount.

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

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

*SCHEDULE-1: LOCATION DETAILS OF THE PROJECT*

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**SCHEDULE-2**

**Deleted**

SCHEDULE -3  
Deleted

## **SCHEDULE-4: COMMISSIONING PROCEDURE**

### **1. Capacity of Solar PV Projects:**

- a. The SPD shall be required to demonstrate compliances with the “Annexure-B: Technical specifications for grid connected rooftop solar plants” as mentioned in the RfS.
- b. For commissioning of the Project, cumulative capacity of AC /DC arrays and cumulative capacity of the inverters installed shall be considered.

### **2. Commissioning Procedure**

The Solar PV Project will be declared as commissioned when all equipment as per rated project capacity has been installed and energy from the Project has flown into the DISCOM grid, which will be verified by a committee/agency identified by SJVN/BE to witness the Commissioning of the Project.

Following is the chronology of the procedure to be followed for commissioning of the Project.

- i. SPDs shall give BE and SJVN at least forty five (45) days advance written notice, of the date on which it intends to synchronize the Power Project to the DISCOM System. The SPD shall be solely responsible for any delay or non-receipt of the notice by the concerned agencies, which may in turn affect the Commissioning Schedule of the Project.
- ii. Not more than 30 days prior to the proposed commissioning date, the SPD shall give the final written notice to BE and SJVN. Following documents are required to be submitted by the SPD, physically in the office of SJVN, within 30 days prior to Proposed/ Scheduled Date of Commissioning, along with the above notice, duly stamped and signed by the Authorized Signatory (scanned copies may also be allowed):
  - a. Covering Letter
  - b. POA from authorized signatory for signing the documents related to commissioning of the Project and witnessing the commissioning.
  - c. Installation report duly signed by the authorized signatory. The SPD is advised to take due care in furnishing such Installation Report. Discrepancy (if any) if observed by SJVN/BE, may be construed as misrepresentation of information by the SPD and SJVN/BE may take appropriate action as per this Agreement.

- d. Invoices against purchase of the solar modules, Inverters/PCUs along with the summary sheet containing the list of all the invoices, inverters including details and number of items.
  - e. All supporting documents towards meeting the technical compliance along with datasheet/ warranty certificates/ contract agreement etc. as mentioned in Annexure-\_\_ of the RfS.
  - f. Snap shots (with timestamp) of the plant, including but not limited to, solar PV modules, all inverters (showing instantaneous and total generation of a particular date), , metering (as per applicable regulations) at delivery point etc. along with the Installation Report.
  - g. Plant Layout, Plant (AC & DC) SLD, along with Inverter-wise module details.
  - h. CEI/CEIG (as applicable) report containing approval for all the components, including modules, inverters, and protection system, along with all annexures/attachments. It would be the responsibility of the SPD to obtain the certificate.
  - i. Confirmation of compliance to all requirements of grid by concerned DISCOM.
- iii. The System shall meet minimum guaranteed generation with Performance Ratio (PR) at the time of commissioning and related Capacity Utilization Factor (CUF) as per the daily normalized irradiance levels of the location during the O&M period. PR shall be minimum of 75% at the time of inspection for initial Project acceptance.
  - iv. BE/SJVN may issue the Commissioning Certificate based on compliance with aforesaid points.

### **SCHEDULE- 5- Installation Report**

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

This is to certify that, Solar Power Developer has installed a \_\_\_kW,PPA Capacity of Project on the Premise of the BE in accordance with the RFS No. dated \_\_\_\_\_ and executed PPA dated \_\_\_\_\_. The key features of the Project are as follows:

SR. No.	DESCRIPTION	
I.	Capacity of the Project (kW)	
II.	Capacity proposed to be commissioned (kW)	
III.	Total AC /DC capacity of Modules Installed(kWp)	
IV.	Expected Annual Energy Generation(kWh)	
V.	Technology used (Mono/Multi Crystalline / thin film / Others; please specify along with capacity of each type)	
VI.	Type of Tilt (Fixed Tilt/Seasonal Tilt/Tracking) , if applicable	
VII.	Rating of each module (Wp)	
VIII.	Number of modules installed of each type (along with Serial Nos. of all the modules installed)	
IX.	Make of Module(s) installed of each type (including name of the Supplier and country of origin)	
X.	Number of PCUs / Inverters installed (along with Serial Nos. of all the PCUs/Inverters installed)	
XI.	Make of the PCUs / Inverters (including name of supplier and country of origin)	
XII.	Rating of PCUs / Inverters	
XIII.	Net Metering (Make)	
XIV	Sign and Danger Board	

XV	Date of installation of full capacity (as per capacity proposed to be commissioned)	
	PV arrays	
	PCUs / Inverters	

## SCHEDULE-6- SCD SCHEDULE

SCD Schedule from the Effective Date of PPA

S. NO.	MILESTONE (ACTIVITY TO BE PERFORMED)	DAY
1.	PPA EFFECTIVE DATE	T
2.		T + [1 MONTH]
3.		T + [2 MONTH]
4.		T + [3 MONTH]
5.		T + [4 MONTH]
6.		T + [5 MONTH]
7.	SCD	T + [6 MONTH]