

# **VOLUME - II**

**POWER PURCHASE AGREEMENT (PPA)**

**BETWEEN**

**ASSAM POWER DISTRIBUTION COMPANY  
LIMITED (APDCL)**

**AND**

***[Insert the name of Solar Power Developer]***

**FOR**

Procurement of \_\_\_\_\_ **MW<sub>AC</sub>** Solar Power from Grid Connected  
Solar PV Project in the State of Assam under BOO Mode.

## **ISSUED BY**

**OFFICE OF THE CHIEF GENERAL MANAGER (NRE)  
ASSAM POWER DISTRIBUTION COMPANY LTD.  
BIJULEE BHAWAN (ANNEX BUILDING), PALTANBAZAR,  
GUWAHATI-1**

E-mail: [gmnre.apdcl@gmail.com](mailto:gmnre.apdcl@gmail.com)

## **November, 2022**

**POWER PURCHASE AGREEMENT**

This Power Purchase Agreement (PPA) (hereinafter shall be referred to as “**Agreement**”) is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ month, of \_\_\_\_\_ year

**BETWEEN**

1. Assam Power Distribution Company Limited, a Company incorporated under the Indian Companies Act, 1956 having its registered office at Bijulee Bhawan, Paltanbazar, Guwahati – 01 (hereinafter shall be referred to as “**APDCL**”, which expression shall, unless it be repugnant to the context or meaning thereof, include it’s administrators, successors, and assigns);

**AND**

2. \_\_\_\_\_, a company incorporated under the provisions of the Companies Act, [1956/2013] and having its registered office at \_\_\_\_\_, (hereinafter shall be referred to as “**Solar Power Developer**”) which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

**WHEREAS:**

- A. **APDCL** is nominated as a Nodal Agency for Implementation of Solar Power Projects in Assam under Assam Solar Energy Policy, 2017.
- B. Pursuant thereto, APDCL had accordingly invited proposals by its “**Request for Proposal (RFP) No. [RFP No.....]**” dated \_\_\_\_\_ prescribed the technical, commercial terms and conditions for selection of Bidders for undertaking [RFP Name]. In this regard, APDCL had received proposals from certain bidders including, inter alia, the {the single business entity/ consortium comprising \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ (collectively the “**Consortium**”) with \_\_\_\_\_ as its lead member (the “**Lead Member**”)}.  
C. After evaluation of the Proposal received, APDCL had accepted the bid of the {single business entity/ Consortium} for development of \_\_\_\_\_ MW<sub>AC</sub> capacity of Solar PV ground mount Project and issued its Letter of Award No \_\_\_\_\_, dated \_\_\_\_\_ (herein after called the “**LOA**”) [and an Allotment Letter No. \_\_\_\_\_ dated \_\_\_\_\_] to the {single business entity/ Consortium} [“**Selected Bidder**”] requiring, inter alia, the execution of this Agreement.
- D. {The single business entity/ Consortium has since promoted and incorporated the Solar Power Developer (“**Special Purpose Vehicle**” or “**SPV**”), in accordance with the terms of RFP and has requested APDCL through a letter bearing number \_\_\_\_\_ dated \_\_\_\_\_ to accept the Solar Power Developer as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.
- E. {By its letter dated \_\_\_\_\_ the Solar Power Developer has also joined in the said request of the single business entity/ Consortium to APDCL to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the single business entity/ Consortium including the obligation to enter into this Agreement pursuant to the LOA. The Solar Power Developer has further represented to the effect that it has been promoted by the single business entity/ Consortium for the purposes hereof}.
- F. APDCL has agreed to the said request of the {single business entity/ Consortium and the} Solar Power Developer, and has accordingly agreed to enter into this Agreement with the Solar Power Developer for execution of the Project, subject to and on the terms and conditions set forth hereinafter.
- G. APDCL acknowledges that simultaneously with the execution of this Agreement, the Solar Power Developer has submitted three (3) Bank Guarantees towards Performance Security for the amount and in the manner set out in Clause 4.4(a).

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE 1: DEFINITION AND INTERPRETATION

### 1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 21) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

### 1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to laws of Assam, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c) references to a **"person"** and words denoting a natural person shall be construed as a reference to any individual, 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 shall include successors and assigns;
- d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e) the words **"include"** and **"including"** are to be construed without limitation and shall be deemed to be followed by **"without limitation"** or **"but not limited to"** whether or not they are followed by such phrases;
- f) references to **"construction"** or **"building"** or **"installation"** include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **"construct"** or **"build"** or **"install"** shall be construed accordingly;
- g) references to **"development"** include, unless the context otherwise requires, construction, augmentation, up-gradation and other activities incidental thereto, and **"develop"** shall be construed accordingly;
- h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i) any reference to day shall mean a reference to a calendar day;
- j) references to a **"business day"** shall be construed as a reference to a day (other than a Sunday) on which banks in Guwahati generally open for business;
- k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- l) references to any date or period shall mean and include such date, period as may be extended pursuant to this Agreement;
- m) any reference to any period commencing **"from"** a specified day or date and **"till"** or **"until"** a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- n) the words importing singular shall include plural and vice versa;
- o) references to any gender shall include the other and the neutral gender;
- p) **"lakh"** means a hundred thousand (100,000) and **"crore"** means ten million (10,000,000);

- q) **"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;
  - r) references to the **"winding-up"**, **"dissolution"**, **"insolvency"**, or **"reorganisation"** 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;
  - s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of APDCL hereunder or pursuant hereto in any manner whatsoever;
  - t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
  - u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
  - v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
  - w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the **"Damages"**); and
  - x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2** Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Solar Power Developer to APDCL shall be provided free of cost and in three copies, and if APDCL is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3** The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4** Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### **1.3 Measurements and arithmetic conventions**

All measurements and calculations shall be in the metric system and calculations done to two (2) decimal places, with the third digit of five (5) or above being rounded up and below five (5) being rounded down.

#### 1.4 Priority of agreements, clauses and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order.

- a) this Agreement; and
- b) all other agreements and documents forming part hereof or referred to herein; i.e the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to provisions of Clause 1.4.1 in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- d) between any value written in numerals and that in words, the latter shall prevail.

### 2. ARTICLE 2: SCOPE OF THE PROJECT

#### 2.1 Scope of the Project

The scope of the Project (the "**Scope of the Project**") shall mean and include, during the term of this Agreement:

- a) Designing, constructing, erecting, testing, commissioning and completing the \_\_\_\_\_ MW<sub>AC</sub> Solar PV **ground mount Project** and supply of Contracted Capacity;
- b) Operation and maintenance of the \_\_\_\_ MW<sub>AC</sub> Solar PV **ground mount Project** in accordance with the provisions of this Agreement; and
- c) Performance and fulfillment of all other obligations of the Solar Power Developer in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Solar Power Developer under this Agreement.

### 3. ARTICLE 3: TERM OF AGREEMENT

#### 3.1 Effective Date

This Agreement shall come into effect from the date of **execution of PPA** and such date shall be referred to as the Effective Date.

#### 3.2 Term of Agreement

This Agreement shall subject to Clauses 3.2, 3.3 and 3.4 be valid for a term of twenty five (25) years commencing from the Effective Date and ending on the Expiry Date. However, the Parties may, 180 (one hundred eighty) days prior to the Expiry Date, decide to extend the term of this Agreement on mutually agreed terms and conditions. .

#### 3.3 Early Termination

This Agreement shall terminate before the Expiry Date if either APDCL or Solar Power Developer terminates the Agreement, pursuant to Article 16 of this Agreement.

### 3.4 Survival

The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 14 (Force Majeure), Article 16 (Events of Default and Termination), Article 17 (Liability and Indemnification), Article 18 (Governing Law and Dispute Resolution), Article 20 (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.

## 4. ARTICLE 4: CONDITION PRECEDENT

### 4.1 Conditions Precedent

Save and except as expressly provided in Articles 14 or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4 (the "**Conditions Precedent**") by the Solar Power Developer prior to the COD, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by APDCL.

### 4.2 Conditions Precedent for the Developer

The Conditions Precedent is required to be satisfied by the Solar Power Developer shall be deemed to have been fulfilled when the Solar Power Developer shall have:

- a) **achieved Financial Closure within 12 (twelve) months from the date of execution of the Power Purchase Agreement and provided a certificate to APDCL from the lead banker to this effect;**
- b) fulfilled Technical Requirements for [Solar PV ground mount Project] as per the format provided in Schedule 2 and also provides the documentary evidence for the same;
- c) delivered to APDCL from {the Consortium Members, their respective} confirmation, in original, of compliance with the equity lock-in condition set out in 5.2; and
- d) delivered to APDCL a legal opinion from the legal counsel of the Solar Power Developer with respect to the authority of the Solar Power Developer to enter into this Agreement and the enforceability of the provisions thereof.

4.2.1 Solar Power Developer shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and APDCL shall provide to the Solar Power Developer all the reasonable cooperation as may be required to the Solar Power Developer for satisfying the Conditions Precedent.

4.2.2 The Solar Power Developer shall notify APDCL in writing at least once a month on the progress made in satisfying the Conditions Precedent. Solar Power Developer shall promptly inform the APDCL when any Conditions Precedent is satisfied by it.

### 4.3 Damages for delay by the Solar Power Developer (SPD)

In the event that the Solar Power Developer does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.2 prior to the COD, and the delay has not occurred for any reasons attributable to APDCL or due to Force Majeure, the Solar Power Developer shall pay to APDCL Damages in an amount calculated at the rate of **0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum period of 30 (thirty) days. On expiry of the said 30 (thirty) days, APDCL shall encash 100% Performance Bank Guarantee (PBG) and terminate this Agreement.**

An extension for the attainment of the financial closure can however be considered by APDCL, on the sole request of the Solar Power Generator, upon submission of a fresh Performance Bank Guarantee (PBG) with

the same conditions, value and validity as the original Performance Bank Guarantee as also stated in the RfS. This extension will not have any impact on the SCD. Any penalty paid so, shall be returned to the SPD without any interest on achievement of successful commissioning within the SCD.

#### 4.4 Performance Security

a) For due and punctual performance of its obligations under this Agreement, relating to the Project, the Solar Power Developer has delivered to APDCL, simultaneously with the execution of this Agreement, an irrevocable and unconditional bank guarantees from a scheduled bank acceptable to APDCL for an amount of INR \_\_\_\_\_ (Rupees \_\_\_\_\_ only] ("**Performance Security**"), calculated as INR **22,37,000/- (Indian Rupees Twenty Two Lakh Thirty Seven Thousand only)** per MW basis. **The Performance Security is furnished to APDCL in the form of three (3) Bank Guarantees in favor of "Chief General Manager (NRE)" of APDCL as per the format provided in Schedule 3 and having validity up to twenty two (22) months from the Date of Signing of PPA.** The details of the bank guarantees furnished towards the Performance Security are given below;

- (i) Bank Guarantee No. \_\_\_\_\_ dated \_\_\_\_\_ for an amount of INR \_\_\_\_\_ (Rupees \_\_\_\_\_) [This amount shall be equivalent to 20% of total Performance Security]
- (ii) Bank Guarantee No. \_\_\_\_\_ dated \_\_\_\_\_ for an amount of INR \_\_\_\_\_ (Rupees \_\_\_\_\_) [This amount shall be equivalent to 40% of total Performance Security]
- (iii) Bank Guarantee No. \_\_\_\_\_ dated \_\_\_\_\_ for an amount of INR \_\_\_\_\_ (Rupees \_\_\_\_\_) [This amount shall be equivalent to 40% of total Performance Security]

#### b) Appropriation of Performance Security

Upon occurrence of a Solar Power Developer Default or failure to meet the Conditions Precedent by the Solar Power Developer, APDCL shall, without prejudice to its other rights and remedies hereunder or in law, shall be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Solar Power Developer Default or Conditions Precedent. Upon such encashment and appropriation from the Performance Security, the Solar Power Developer shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Solar Power Developer shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which APDCL shall be entitled to terminate this Agreement in accordance with Article 16. Any penalty paid so, shall be returned to the SPD without any interest on achievement of successful commissioning within the SCD.

#### c) Release of Performance Security

Subject to other provisions of this Agreement, APDCL shall release the Performance Security, if any after eighteen (18) months from the Scheduled Commissioning Date.

The release of the Performance Security shall be without prejudice to other rights of APDCL under this Agreement.

### 5. ARTICLE 5: OBLIGATION OF THE SOLAR POWER DEVELOPER

#### 5.1 Obligations of the Solar Power Developer

5.1.1 Subject to and on the terms and conditions of this Agreement, the Solar Power Developer shall at its own cost and expense;

- a) procure finance for and undertake the designing, constructing, erecting, testing, commissioning and completing of the Power Project in accordance with the Applicable Law and Grid Code observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder;

- b) comply with all Applicable Laws and obtain applicable Consents, Clearances and Permits (including renewals as required) in the performance of its obligations under this Agreement and maintaining all Applicable Permits in full force and effect during the Term of this Agreement;
  - c) commence supply of power up to the Contracted Capacity to APDCL no later than the Scheduled Commissioning Date and continue the supply of power throughout the term of the Agreement
  - d) connect the Power Project switchyard with the Interconnection Facilities at the Delivery Point
  - e) own the Power Project throughout the Term of Agreement and keep it free and clear of encumbrances, except those expressly permitted under Article 19;
  - f) Comply with the equity lock-in conditions set out in Clause 5.2; and
  - g) be responsible for all payments related to any taxes, cesses, duties or levies imposed by the Government Instrumentalities or competent statutory authority on land, equipment, material or works of the project to or on the electricity consumed by the Project or by itself or on the income or assets owned by it.
- 5.1.2 The Solar Power Developer shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person
- 5.1.3 **The Solar Power Developer shall obtain the financial closure within Twelve (12) months from the date of execution of this PPA.** At this stage, the SPD shall report tie-up of Financing Arrangements for the Project. In this regard the SPD shall submit a certificate from all financing agencies regarding the tie-up of funds indicated for the Project. Additionally, the SPD shall furnish documentary evidence towards the following:
- I. The requisite technical criteria have been fulfilled and orders placed / agreements entered into for supply of plants and equipment for the project.
  - II. Detailed Project Report for the project
  - III. The details of all planned/proposed Inverters and modules (manufacturer, model number, datasheet, all technical certificates as mentioned in the RFS along with the link of the certifying authority with ILAC member accredited lab/NABL accredited lab) for the project at least 14 days prior to the scheduled financial closure date.
  - IV. Required land/plot for project development is under possession of the SPD. In this regard the SPD shall be required to furnish the documentary evidences to establish the possession of the required land/lease agreement in the name of the SPD
- 5.1.4 The Solar Power Developer shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a) make, or cause to be made, necessary applications to the relevant government agencies with such particulars and details, as may be required for obtaining Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
  - b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Power Project
  - c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
  - d) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Solar Power Developer's obligations under this Agreement; and



- e) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement.

**5.2 Equity Lock-in Conditions**

- a) The shareholding as on the Effective Date is as follows:

Names of Shareholders	Description of Shareholding

- b) The Solar Power Developer having been set up for the sole purpose to exercise the rights and observing and performing its obligations and liabilities under this Agreement, the Solar Power Developer hereby undertakes and agrees to comply with the following lock-in conditions:

In case the Selected Bidder is a Consortium then,

- (i) Members of the Consortium shall collectively hold at least 51% of subscribed and paid up equity share capital of the Solar Power Developer at all times until first anniversary of the commercial operations date of the Project.
- (ii) Lead Member shall have 26% shareholding of the SPV until first anniversary of the commercial operations date of the Project.

**OR**

In case the Selected Bidder is a single entity,

The Selected Bidder shall hold at least 51% (fifty one percent) of subscribed and paid up equity share capital of the Solar Power Developer, until first anniversary of the commercial operations date of the Project. This condition is applicable only in case the single business entity incorporates an SPV to execute the PPA and implement the Project

**5.3 Information regarding Interconnection Facilities**

The Solar Power Developer shall be required to obtain all information with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the Solar Power Developer’s side of the Delivery Point to enable delivery of electricity at the Delivery Point.

**5.4 Connectivity to the grid**

- i. The Solar Power Developer (SPD) shall be responsible for power evacuation from the Power Project to the nearest designated Delivery Point. The SPD shall construct, operate and maintain the Project during the term of PPA at his cost and risk including the required Interconnection Facilities and in close co-ordination with CTU/STU/DISCOM’s feasibility.
- ii. The SPD shall seek approval of CTU/STU/DISCOM in respect of interconnection facilities
- iii. The SPD shall undertake at its own cost construction/ upgradation of (a) the Interconnection Facilities, (b) the Transmission Lines and as per the specifications and requirements of CTU/STU/DISCOM.
- iv. The SPD shall undertake at its own cost maintenance of the Interconnection Facilities, excluding the transmission line beyond the Sending Station as per the specifications and requirements of CTU /STU/ DISCOM, as notified to the SPD, in accordance with Prudent Utility Practices.
- v. The SPD shall operate and maintain the Project in accordance with Prudent Utility Practices
- vi. For evacuation facility and maintenance of the transmission, the SPD shall enter into separate agreement with CTU/STU/DISCOM, if applicable

**5.5 Purchase and sale of Contracted Capacity**

Subject to the terms and conditions of this Agreement, the Solar Power Developer undertakes to sell to APDCL and APDCL subject to Clause 5.6 below, undertakes to purchase all the powers supplied at the Delivery Point corresponding to the Contracted Capacity.

**5.6 Right to Contracted Capacity & Energy**

APDCL, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the Solar Power Developer beyond ..... Million kWh (MU) [*Insert value of energy generated corresponding to a maximum CUF for solar PV (new projects)*] at maximum CUF of .....%.

If for any Contract Year, it is found that the Solar Power Developer has not been able to generate minimum energy of 1.278 Million kWh (MU) at a CUF of 14.59% [i.e., CUF 16.21% - 10% of 16.21%], on account of reasons solely attributable to the Solar Power Developer, the noncompliance by Solar Power Developer shall make Solar Power Developer liable to pay the compensation provided in the Agreement as payable to APDCL. **This compensation shall be applied to the amount of shortfall in generation during the Contract Period.** The amount of compensation shall be computed at the rate equal to the compensation payable by the SPD, subject to a minimum of 25% of the PPA tariff. This compensation shall be applied to the amount of shortfall in generation during the year. However, this compensation shall not be applicable in events of Force Majeure identified under PPA.

**5.6.1 In case of purchase of any excess energy**

Purchase of any excess energy, beyond the energy generated corresponding to a maximum CUF as mentioned by the Solar Power Developer during the signing of PPA for solar PV, shall be charged at a rate equivalent to 75% of PPA tariff, provided first right of refusal will vest with APDCL

**5.6.2 In case of repowering,**

The Solar Power Developer shall be free to re-power their plants from time to time during the PPA duration. For repowering, the purchase of any excess energy, beyond the energy generated corresponding to a maximum CUF as mentioned by the Solar Power Developer during the signing of PPA for solar PV project, shall be charged at a rate equivalent to 75% of PPA Tariff, provided first right of refusal will vest with APDCL.

**5.6.3 In case of off-take constraint due to transmission infrastructure or grid unavailability,**

- a) **Generation compensation in off-take constraint due to Transmission Infrastructure not complete / ready (Transmission constraint):** After the scheduled commissioning date, if the plant is ready but necessary power evacuation / transmission infrastructure is not ready, for reasons not attribute to the SPD, leading to off-take constraint, the provision for generation compensation shall be as follows:

“The normative CUF of 19% (nineteen per cent) or committed CUF whichever is lower, for a period of grid unavailability shall be taken for the purpose of calculation of generation loss. Corresponding to this generation loss, the excess generation by the SPD in the succeeding 3 (three) Contract Year, shall be procured by APDCL at the PPA tariff so as to offset this loss”.

- b) **Generation Compensation in off – take constraint due to Grid Unavailability:** During the operation of the plant, the plant can generate power but due to temporary transmission unavailability the power is not evacuated, the reasons not attributable to the SPD. In such cases, provision for generation compensation shall be as follows:

During of Grid unavailability	Generation Compensation
Grid unavailability in a contract year (only period from 8 am to 5 pm to be counted)	Generation loss = [(Average generation per hour during the contract year)x(number of hours of grid unavailability during the contract year)] Where, Average Generation per hour during the contract year (kWh) = Total generation in the contract year (kWh) /total hours of

	generation in the contract year
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5.6.4 For part commissioning,

Part commissioning shall mean commissioning of a threshold capacity of 25 MW and can achieve further Part Commissioning in minimum steps of 5 MW till full Commissioning of the Project is achieved, subject to the acceptance by the APDCL. However, the Scheduled Commissioning Date shall not get altered due to Part Commissioning of the Project. Irrespective of dates of Part Commissioning, the PPA shall remain in force for the Contract Year only. The Solar Power Developer shall be permitted to achieve the Part Commissioning for the Project only prior to the Scheduled Commissioning Date.

For part commissioning, the purchase of such generation shall be settled at a rate equivalent to 75% of PPA tariff, provided first right of refusal will vest with APDCL. However, the SCD will not get altered due to part-commissioning. Irrespective of dates of part commissioning or full commissioning, the PPA will remain in force for a period of 25 (twenty-five) years from the date of signing of PPA.

In the case of part commissioning, the Bidder may have the opportunity to submit a revised Performance Security equivalent to the remaining un-commissioned capacity. On submission of revised Performance Security from the successful Bidder, the previous Performance Security will be returned within thirty (30) days from the date of submission of revised Performance Security. In case the Bidder is unable to commission the balance capacity within the COD, then APDCL shall en-cash and invoke the revised Performance Security as per the procedure mentioned in clause 1.3.3 of the RFP and clause 5.8 of the draft PPA, and recover the balance amount from payment of Monthly Bills/ Supplementary Bill payable by APDCL to the Solar Power Developer to the extent of allotted full/ entire capacity. In this regard, the successful Bidder shall provide an undertaking on 200 INR (Indian Rupees Two Hundred only) non-judicial stamp paper while submitting revised Performance Security for the un-commissioned capacity for deduction of amount equivalent to the Performance Security for the part-commissioned capacity in relation to clause 1.3.3 of the RFP and clause 5.8 of the draft PPA. However, APDCL's decision shall be final and binding on the Solar Power Developer.

5.6.5 For Early commissioning,

The SPD shall be permitted for full commissioning as well as part commissioning of the Project even prior to the SCD. In case of early part – commissioning, till SCD, APDCL may purchase generation till SCD, at 75% of PPA tariff. However, in case the entire capacity is commissioned prior to SCD, APDCL may purchase generation at PPA tariff.

5.6.6 In case of any off-take constraints due to Back down by Load Dispatch Center (LDC)

The Solar Power Developer shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), encourages a status of "must-run" to solar power projects. Provision for generation compensation in the event of back down by LDC shall be provided as the solar power plant has been declared as must run plants in the IEGC.

The Solar Power Developer and APDCL shall follow the forecasting and scheduling process as per the regulations in this regard by AERC.

5.7 **Extensions of Time**

5.7.1 In the event that the Solar Power Developer is prevented from achieving the progress in fulfilling the Conditions Precedent within the time stipulated in the PPA, APDCL may grant extension of time, not more than 4 (four) months for fulfilling the Conditions Precedent. Such extension of time by APDCL shall not affect the Commissioning of the Project within the Scheduled Commissioning Date.

In the event that the Solar Power Developer is prevented from commissioning of the Project within the time stipulated in the PPA due to:

- a) any Event of Default by APDCL; or
- b) Force Majeure Events affecting APDCL; or

- c) Force Majeure Events affecting the Solar Power Developer,

The Solar Power Developer shall commission the Project and thereafter may file a petition before AERC, seeking approval for condoning the delay in commissioning the Project urging any of the grounds mentioned in (a), (b), (c) above. Such petition shall be deemed to be a dispute under Article 18.3.

- 5.7.2 After hearing the Parties and considering the merits of the grounds urged, AERC may condone the delay in commissioning of the Project on any of the grounds stated by the Solar Power Developer.
- 5.7.3 In case AERC condones the delay, the scheduled commissioning date and the expiry date shall be deemed to be extended by the period for which the delay is condoned by AERC
- 5.7.4 In the event that the Solar Power Developer is prevented from achieving the progress in fulfilling the Condition Precedent or commissioning the Project for the reasons specified in the Article 5.7.1 (a), (b), (c) and if such events continue even after a maximum period of 4 (four) months, any of the Parties may terminate the agreement as per the provisions of Article 16.

## 5.8 Liquidated Damages for delay in commencement of supply of power to APDCL

- 5.8.1 If the Solar Power Developer is unable to commence supply of power to APDCL by the Scheduled Commissioning Date other than for the reasons specified in Clause 5.7.1, the Solar Power Developer shall pay to APDCL, Liquidated Damages for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following
- For the delay up to one month an amount equivalent to 20% of the Performance Security.
  - For the delay of more than one (1) month and upto two months an amount equivalent to 40% of the total Performance Security.
  - For the delay of more than two and up to three (3) months an amount equivalent to 40% of the Performance Security.

For avoidance of doubt, in the event of failure to pay the above mentioned damages by the Solar Power Developer entitles APDCL to encash the Performance Security.

- 5.8.2 In case the achievement of Project COD is delayed beyond three (3) Months from the date of Scheduled COD; the tariff discovered after reverse auction shall be reduced at the rate of INR 0.0015 / kWh (0.15 Paisa per unit) per day of delay for **in such remaining capacity which is not commissioned subject to a maximum period of 30 days**. The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and reduction in the fixed tariff shall be limited to 22 months from the Effective Date of the PPA (as defined in the Draft PPA); in case of further delay in achieving the Project COD beyond twenty two (22) Months period from Effective Date would amount to termination of PPA. **The normative CUF of 19% (nineteen per cent) or committed CUF, whichever is lower shall be taken for the purpose of calculation of generation loss as well as reduced tariff.**
- 5.8.3 The maximum time period allowed for achievement of Commercial Operation Date with payment of Liquidated Damages shall be limited to twenty two (22) months from the Effective Date. In case, the achievement of COD is delayed beyond twenty two (22) months from the Effective Date, it shall be considered as a Solar Power Developer's Event of Default and provisions of Article 16 shall apply and the Power Project shall be removed from the list of selected projects in the event of termination of this Agreement.

## 5.9 Acceptance/Performance Test

- 5.9.1 Prior to synchronization of the Power Project, the Solar Power Developer shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or Chief Electrical Inspectorate, Government of Assam to carry out testing and certification for the solar power projects.

### 5.10 Third Party Verification

- 5.10.1 The Solar Power Developer shall be further required to provide entry to the site of the Power Project free of all encumbrances at all times during the Term of the Agreement to APDCL, its authorised representatives including representatives from AEGCL and a third Party nominated by any Governmental Instrumentality for inspection and verification of the works being carried out by the Solar Power Developer at the site of the Power Project. The Solar Power Developer shall bear the cost of appointment of Third Party verification.
- 5.10.2 The third party may verify the construction works/operation of the Power Project being carried out by the Solar Power Developer 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 Solar Power Developer or require the works to be stopped or to comply with the instructions of such third party.
- 5.10.3 The third party may carry out checks for testing the CUF of the Power Project. During a Contract Year, if the CUF of the Power Project is found to be below the minimum CUF with respect to Solar PV technology on account of reasons solely attributable to Solar Power Developer, the Solar Power Developer shall be liable for non fulfillment of its obligation. The liability, shall be levied by APDCL for non supply of Power by the Solar Power Developer

## 6. ARTICLE 6: OBLIGATION OF APDCL

### 6.1 Obligations of APDCL

- 6.1.1 APDCL shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder;
- 6.1.2 APDCL shall make timely payments of Tariff to the Solar Power Developer as per the procedure set out in Article 12
- 6.1.3 APDCL agrees to provide support to the Solar Power Developer and undertake to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- a) upon written request from the Solar Power Developer, and subject to the Solar Power Developer complying with Applicable Laws, provide reasonable support and assistance to the Solar Power Developer in procuring Applicable Permits required from any government agencies for implementation and operation of the Project;
  - b) not do or omit to do any act, deed or thing which may in any manner be volatile of any of the provisions of this Agreement;
  - c) act reasonably, while exercising its discretionary power under this Agreement; and
  - d) support, cooperate with and facilitate the Solar Power Developer in the implementation and operation of the Project in accordance with the provisions of this Agreement;

## 7. ARTICLE 7: REPRESENTATIONS AND WARRANTIES

### 7.1 Representations and warranties of the Solar Power Developer

- a) it is duly organized, validly existing and in good standing under the laws of India;
- b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;

- d) it has the financial standing and capacity to undertake the Project;
- e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Solar Power Developer's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- g) there are no actions, suits, proceedings or investigations pending or to the Solar Power Developer's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Solar Power Developer Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- j) no representation or warranty by the Solar Power Developer contained herein or in any other document furnished by it to APDCL or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- k) Without prejudice to any express provision contained in this Agreement, the Solar Power Developer acknowledges that prior to the execution of this Agreement, the Solar Power Developer has after a complete and careful examination made an independent evaluation of the Project, and the information provided by APDCL, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Solar Power Developer in the course of performance of its obligations hereunder.

The Solar Power Developer also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that APDCL shall not be liable for the same in any manner whatsoever to the Solar Power Developer.

## **7.2 Representations and Warranties of APDCL**

APDCL represents and warrants to the Solar Power Developer that:

- a) APDCL has full power and authority to enter into this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement; and
- b) This Agreement constitutes APDCL's legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

## **7.3 Obligation to Notify Change**

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

## **8. ARTICLE 8: SYNCHRONIZATION, COMMISSIONING AND COMMERCIAL OPERATION**

- 8.1 The Solar Power Developer shall provide at least forty (40) days advanced preliminary written notice and at least twenty (20) days advanced final written notice to APDCL of the date on which it intends to synchronize the Power Project to the Grid System.
- 8.2 Subject to Clause 8.1, the Power Project shall be synchronized by the Solar Power Developer with 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
- 8.3 The synchronization equipment shall be installed by the Solar Power Developer at its generation facility of the Power Project at its own cost. The Solar Power Developer shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned sub-station/Grid System and checking/verification is made by the concerned authorities of the Grid System
- 8.4 The Solar Power Developer shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code
- 8.5 The Solar Power Developer shall commission the Project within **18 (eighteen)** months from the Effective Date as per PPA

## **9. ARTICLE 9: DISPATCH**

### **9.1 Dispatch**

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

## **10. ARTICLE 10: METERING**

### **10.1 Metering**

- 10.1.1 For installation of meters, meter testing, meter calibration and meter reading and all matters incidental thereto, the Solar Power Developer and APDCL shall follow and be bound by the Applicable Laws including Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.
- 10.1.2 For the purpose of energy accounting, the ABT compliant meter shall be installed by SPD at the metering point. Further, SPD shall have to provide ABT Compliant Meters. Interface metering shall conform to the Central Electricity Authority (Installation and Operation of Meters) Regulations 2014 and amendment thereto. CTU/ STU /DISCOM shall stipulate specifications in this regard
- 10.1.3 In the event that the Main Metering System is not in service as a result of maintenance, repairs or testing, then the Backup Metering System/Check Meter shall be used during the period the Main Metering System is not in service and the provisions above shall apply to the reading of the Backup Metering System
- 10.1.4 The Solar Power Developer shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at Solar Power Developer's side of Delivery Point

### **10.2 Measurement of Energy:**

Measurement of electrical energy shall be done at the Interconnection point or points by the metering system. The metering point will be at the receiving end of STU/DISCOM substation. For the purpose of energy accounting the SPD shall install ABT compliant meter at the metering point.

### **10.3 Sealing and Maintenance of the Meter:**

- 10.3.1 The Main Metering System and Backup Metering system shall be sealed in the presence of representatives of SPD, STU and DISCOM.

- 10.3.2 When the Main Metering System and / or Backup Metering System / Check Metering System and /or any component thereof is found to be outside the acceptable limits of accuracy or otherwise not functioning properly, it shall be repaired, re-calibrated, or replaced by the SPD and /or STU/DISCOM at the cost of SPD as soon as possible.
- 10.3.3 Any meter seal(s) shall be broken only by STU/DISCOM's representative in the presence of SPD's representative whenever the Main Metering System or the Backup Metering System is to be inspected, tested, adjusted, repaired or replaced
- 10.3.4 All the Main and Check Meters shall be calibrated at least once in a period of one year.
- 10.3.5 In case, both the Main Meter and Check Meter are found to be beyond permissible limit of error, both the meters shall be calibrated immediately and the correction applicable to main meter shall be applied to the energy registered by the Main Meter at the correct energy for the purpose of energy accounting / billing for the actual period during which inaccurate measurements were made, if such period can be determined or, if not readily determinable, shall be the shorter of:
- a) the period since immediately preceding test of the relevant Main meter or
  - b) one hundred and eighty (180) days immediately preceding the test at which the relevant Main Meter was determined to be defective or inaccurate

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

- 10.4.1 The grid connected Solar PV **ground mount** Power Project will install necessary equipment for regular monitoring of solar irradiance (including DNI), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power generated from the plant.
- 10.4.2 Online arrangement would have to be made by the Solar Power Developer for submission of above data regularly for the entire period of this Power Purchase Agreement to SLDC, APDCL.
- 10.4.3 Reports on above parameters on monthly basis shall be submitted by the Solar Power Developer to SLDC, APDCL for entire period of this Agreement.
- 10.4.4 The Solar Power Developer and APDCL shall follow the forecasting and scheduling process as per the regulations in this regard by AERC.
- 10.4.5 Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement and the operation of the Power Plant. Among such other records and data, the SPD shall maintain an accurate and up-to-date operating log at the Power Plant with records of:
- a) Fifteen (15) minutes logs of real and reactive power generation, frequency, transformer tap position, bus voltage(s), Main Meter and Back up Meter Readings and any other data mutually agreed;
  - b) any unusual conditions found during operation / inspections;
  - c) chart and printout of event loggers, if any, for system disturbances/ outages;
  - d) All the records will be preserved for a period of 36 months.

### **11. ARTICLE 11: INSURANCES**

#### **11.1 Insurance**

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



**11.2 Application of Insurance Proceeds**

- 11.2.1 Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.
- 11.2.2 If a Force Majeure Event renders the Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, APDCL shall have no claim on such proceeds of such Insurance.

**11.3 Effect on liability of APDCL**

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 Solar Power Developer can claim compensation, under any Insurance shall not be charged to or payable by APDCL

**12. ARTICLE 12: APPLICABLE TARIFF AND SHARING OF CDM BENEFITS**

- 12.1 The Solar Power Developer shall be entitled to receive the Tariff of INR..... / kWh of energy supplied by it to APDCL in accordance with the terms of this Agreement during the period between COD and the Expiry Date

**12.2 Sharing of Clean Development Mechanism (CDM) Benefits**

The Power Project can be compatible to CDM claims and all such CDM claims shall be reported to APDCL periodically by the Solar Power Developer. The proceeds of carbon credit from approved CDM project shall be shared between the Parties in the following manner:

- a. 100% of the gross proceeds of CDM benefit accrued in the first year following the date of Commercial Operation Date shall be retained by the Solar Power Developer;
- b. In the second year following the Commercial Operation Date, the Solar Power Developer shall give 10% share in the gross proceeds of the CDM benefit to APDCL and the share of benefit to APDCL shall be progressively increased by 10% every year thereafter till it reaches 50%, where after the proceeds shall be shared in equal proportion between the Parties.

**12.3 Import Billing**

The Solar Power Developer shall be permitted to use ten percent (10%) of the installed capacity for startup after inspection by the concerned officer of APDCL and one hundred and fifteen percent (115%) of such energy provided by APDCL for startup power shall be deducted from the energy pumped in to the grid by the Solar Power Developer for determining the amount payable by APDCL to the Solar Power Developer. If energy other than the above requirement is drawn from the grid, the same shall be billed under the tariff applicable to HT industries including demand charges.

**12.4 Reactive Energy Billing**

The Solar Power Developer shall pay at the rate of 40 paisa or any other rate fixed by the Commission, for each kVARh drawn.

**13. ARTICLE 13: BILLING AND PAYMENT**

**13.1 General**

- 13.1.1 On achievement of COD and thereon commencement of supply of power, APDCL shall pay to the Solar Power Developer the monthly Tariff Payments, on or before the Due Date, in accordance with Article 12. All Tariff Payments by APDCL shall be in Indian Rupees.

**13.2 Delivery and Content of Monthly Bills/Supplementary Bills**

13.2.1 The Solar Power Developer shall issue to APDCL a signed monthly bill/Supplementary Bill for the immediately preceding Month between the 5<sup>th</sup> day upto the 15<sup>th</sup> day of the next Month. In case the monthly bill/Supplementary Bill for the immediately preceding Month is issued after the 15<sup>th</sup> day of the next Month, the Due Date for payment of such monthly bill/ Supplementary Bill shall be as detailed of Article 13.3.1 below.

13.2.2 Each monthly bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RLDC/SLDC or any other competent authority which shall be binding on both the Parties. The monthly bill amount shall be the product of the energy metered and the applicable Tariff.

**13.3 Payment of Monthly Bills**

13.3.1 APDCL shall pay the amount payable under the monthly bill/Supplementary Bill by the (fifth) 5<sup>th</sup> day of the immediately succeeding Month (the Due Date) in which the monthly bill/ Supplementary Bill is issued by the Solar Power Developer to APDCL to such account of the Solar Power Developer, as shall have been previously notified by the Solar Power Developer in accordance with article (c) of Clause 13.3.2 below. In case the monthly bill or any other bill, including a Supplementary Bill is issued after the 15<sup>th</sup> (fifteenth) day of the next month, the Due Date for payment would be 5<sup>th</sup> (fifth) day of the next month to the succeeding Month.

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

- c) deductions required by the Law; and
- d) amounts claimed by APDCL, if any, from the Solar Power Developer, through an invoice to be payable by the Solar Power Developer, and not disputed by the Solar Power Developer within fifteen (15) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that APDCL shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period

The Solar Power Developer shall open a bank account at ..... [Insert name of place] (the "**Solar Power Developer's Designated Account**") for all Tariff Payments (including Supplementary Bills) to be made by APDCL to the Solar Power Developer, and notify APDCL of the details of such account at least 90 (ninety) days before the dispatch of the first monthly bill

**13.4 Late Payment Surcharge**

In the event of delay in payment of a monthly bill by APDCL within 30 (thirty) days beyond its Due Date, a late payment surcharge shall be payable to the Solar Power Developer at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis ("**Late Payment Surcharge**"). The Late Payment Surcharge shall be claimed by the Solar Power Developer through the Supplementary Bill.

**13.5 Rebate**

For payment of Monthly Bill by APDCL, if paid on or before Due Date of Payment, a Rebate shall be deducted by APDCL at the rate of 1.25% (percent) in excess of the SBI, 1 year Marginal Cost of Funds Based Lending Rate (MCLR) per annum / any replacement thereof by SBI on the bill amount.

**13.6 Payment Security Mechanism  
Letter of Credit (LOC):**

13.6.1 APDCL shall establish and maintain irrevocable and unconditional revolving **Letter of Credit** in favour of, and for the sole benefit of, the Power Producer for the contracted capacity. All the cost incurred by APDCL for opening, maintenance and other cost related to establishment of Letter of Credit shall be borne by APDCL

13.6.2 The **Letter of Credit** shall be established in favour of, and issued to, the SPD on the date hereof and made operational thirty (30) days prior to due date of first invoice and shall be maintained consistent herewith by APDCL and all times during the Term of the Agreement

- 13.6.3 Such Letter of Credit shall be in form and substance acceptable to both the Parties and shall be issued by any Scheduled Bank and be provided on the basis that:
- i. In the event a Tariff Invoice or any other amount due and undisputed amount payable by APDCL pursuant to the terms of this Agreement is not paid in full by APDCL as and when due, the Letter of Credit may be called by the SPD for payment of undisputed amount
  - ii. The amount of the Letter of Credit shall be equal to one month's projected payments during first contract year and thereafter during each contract year, the amount of Letter of Credit shall be equal to one month's average billing of previous contract year
  - iii. The APDCL shall replenish the Letter of Credit to bring it to the original amount within 30 days in case of any valid drawdown
- 13.6.4 The Letter of Credit shall be renewed and/or replaced by the APDCL not less than 30 days prior to its expiration
- 13.6.5 Payment under the Letter of Credit: The drawl under the Letter of Credit in respect of a Tariff Invoice (excluding supplementary bills) shall require:
- i. a copy of the metering statement jointly signed by the official representatives of both the Parties, supporting the payments attributable to the Delivered Energy in respect of such Tariff Invoice
  - ii. a certificate from the Power Producer stating that the amount payable by APDCL in respect of such Tariff Invoice has not been paid and disputed by APDCL till the Due Date of Payment of the Tariff Invoice

### 13.7 Disputed Bill

In the event of a dispute as to the amount of any Tariff Invoice, APDCL shall notify the SPD of the amount in dispute and APDCL shall pay the SPD 100% of the undisputed amount within the due date provided either party shall have the right to approach the AERC to effect a higher or lesser payment on the disputed amount. The Parties shall discuss within a week from the date on which APDCL notifies the SPD of the amount in dispute and try and settle the dispute amicably. Where any dispute arising out of or in connection with this agreement is not resolved mutually then such dispute shall be submitted to adjudication by the AERC under Section 79 or 86 of Electricity Act 2003 and the AERC may refer the matter to Arbitration as provided in the said provision read with Section 158 of Electricity Act 2003. For dispute beyond the power conferred upon the AERC, such dispute shall be subject to jurisdiction of High Court at Guwahati. If the dispute is not settled during such discussion, then the payment made by APDCL shall be considered as a payment under protest. Upon resolution of the dispute, in case the SPD is subsequently found to have overcharged, then it shall return the overcharged amount with an interest of SBI 1-year Marginal Cost of Funds Based Lending Rate (MCLR) per annum plus 1.25% for the period it retained the additional amount. APDCL / SPD shall not have the right to challenge any Tariff Invoice, or to bring any court or administrative action of any kind questioning/modifying a Tariff Invoice after a period of three years from the date of the Tariff Invoice is due and payable.

### 13.8 Quarterly and Annual Reconciliation

- 13.8.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment payments, Tariff rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.
- 13.8.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Solar Power Developer and APDCL shall jointly sign such reconciliation statement. Within fifteen (15) days

of signing of a reconciliation statement, the Solar Power Developer shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 18

### 13.9 Payment of Supplementary Bill

- 13.9.1 Solar Power Developer may raise a ("**Supplementary Bill**") for payment on account of.
- a) Adjustments required by the Energy Accounts (if applicable); or
  - b) Tariff payment for change in parameters, or
  - c) Change in Law as provided in Article 15, or
- 13.9.2 APDCL shall remit all amounts due under a Supplementary Bill raised by the Solar Power Developer to the Solar Power Developer's Designated Account by the Due Date. For such payments by APDCL, Rebate as applicable to Monthly Bills pursuant to Article 13.5 shall equally apply.
- 13.9.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 13.4.

## 14. ARTICLE 14: FORCE MAJEURE

### 14.1 Definitions

- 14.1.1 In this Article, the following terms shall have the following meanings.

### 14.2 Affected Party

- 14.2.1 An Affected Party means APDCL or the Solar Power Developer whose performance has been affected by an event of Force Majeure.

### 14.3 Force Majeure

- 14.3.1 A '**Force Majeure**' means any event or circumstance or combination of events those stated below which 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, epidemic, extremely adverse weather conditions, lightning, act earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
  - b) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
  - c) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Solar Power Developer or of the Contractors;
  - d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Solar Power Developer in any proceedings for reasons other than (i) failure of the Solar Power Developer to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii)

enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Government or

- e) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Solar Power Developer or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Solar Power Developer's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit.

#### **14.4 Force Majeure Exclusions**

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

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

#### **14.5 Notification of Force Majeure Event**

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

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed.

The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

14.5.2 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.

#### **14.6 Duty to Perform and Duty to Mitigate**

14.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 14.3, 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.

#### 14.7 Available Relief for a Force Majeure Event

Subject to this Article 14:

- a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 5.7.1;
- c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
- 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.

### 15. ARTICLE 15: CHANGE IN LAW

#### 15.1 Definitions

In this Article 15, the following terms shall have the following meanings

- 15.1.1 "**Change in Law**" means the occurrence of any of the following events after the submission of online Techno-Commercial Bid resulting into any additional recurring/ nonrecurring expenditure by the Solar Power Developer or any income to the Solar Power Developer:
- a. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
  - b. a change in the interpretation or application of any law by any Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
  - c. the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
  - d. a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Solar Power Developer;
  - e. any change in the rates of taxes, duties and cess or introduction of any taxes, duties and cess which have a direct effect on the Project as per the terms of this Agreement. The Bidder shall consider all the prevailing taxes, duties and cess applicable on the last date of submission of Technical Bid while submitting the Bid for the Project. If any such above prevailing taxes, duties and cess are not considered or omitted or ignored, then it shall be accepted that the Bidder has considered all such taxes, duties and cess in its Bid. Any change in law pertaining to taxes, duties and cess after the date of submission of Technical Bid shall be to the account of the APDCL and appropriate change in tariff, either increase or decrease in proportionate, due to the change in taxes, duties and cess shall be as per clause 15.2 (Relief for Change in Law) of PPA. but shall not include (i) any change in taxes on corporate income or any change in any withholding tax on income or dividends, or (ii) any change on account of regulatory measures by the AERC, or (iii) any change in the AERC approved Tariff as compared to the approved tariff exist as on the Bid Due Date.

#### 15.2 Relief for Change in Law

- 15.2.1 The aggrieved Party shall be required to approach the AERC for seeking approval of Change in Law:
- 15.2.2 The decision of the AERC to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties

## 16. ARTICLE 16: TERMINATION

### 16.1 Termination for Solar Power Developer Default

- 16.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Solar Power Developer fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Solar Power Developer shall be deemed to be in default of this Agreement (the "**Solar Power Developer Default**"), unless the default has occurred solely as a result of any breach of this Agreement by APDCL or due to Force Majeure. The defaults referred to herein shall include the following:
- a) The Solar Power Developer has failed to achieve the Financial Closure beyond **twelve (12)** months from the Effective Date for any reason whatsoever;
  - b) The Solar Power Developer has failed to achieve the COD beyond **eighteen (18)** months from the Effective Date for any reason whatsoever;
  - c) The condition relating to equity lock-in period specified in Clause 5.2 of this Agreement is not complied with;
  - d) the Performance Security has been encashed and appropriated in accordance with Clause 4.4(b) and the Solar Power Developer fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
  - e) The Solar Power Developer has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
  - f) The Solar Power Developer is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by the Solar Power Developer within thirty (30) days of receipt of first notice in this regard given by APDCL.
  - g) The Solar Power Developer is in material breach of any of its obligations under this Agreement and the same has not been remedied for more than Thirty (30) days;
  - h) Any representation made or warranty given by the Solar Power Developer under this Agreement is found to be false or misleading;
  - i) A resolution has been passed by the shareholders of the Solar Power Developer for voluntary winding up of the Developer;
  - j) Any petition for winding up of the Solar Power Developer has been admitted and liquidator or provisional liquidator has been appointed or the Solar Power Developer has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of APDCL, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Solar Power Developer under this Agreement;
  - k) A default has occurred under any of the Financing Documents and any of the lenders to the Project has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable; and

- l) The Solar Power Developer has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 120 days.

#### 16.2 Termination for APDCL's Event of Default

Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and APDCL fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 30 (thirty) days, APDCL shall be deemed to be in default of this Agreement (a "**APDCL's Event of Default**"), unless the default has occurred solely as a result of any breach of this Agreement by Solar Power Developer or due to Force Majeure. The defaults referred to herein shall include the following:

- a) APDCL has unreasonably withheld or delayed grant of any approval or permission which the Solar Power Developer is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;
- b) APDCL is in material breach of any of its obligations, under this Agreement and has failed to cure such breach within 90 (Ninety) days of receipt of notice thereof issued by the Solar Power Developer and which has led to the Project forfeiting the benefits accruing under Applicable Law;
- c) APDCL has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;

#### 16.3 Procedure for cases of Solar Power Developer's Event of Default

- 16.3.1 Upon the occurrence and continuation of any Solar Power Developer Event of Default under Article 16.1, APDCL shall be entitled to terminate this Agreement by issuing a notice stating its intention to terminate this Agreement (APDCL Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 16.3.2 Following the issue of a APDCL Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances
- 16.3.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement
- 16.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Solar Power Developer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, APDCL shall be entitled to terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Solar Power Developer.

#### 16.4 Procedure for cases of APDCL's Event of Default

- 16.4.1 Upon occurrence and continuation of any APDCL's Event of Default specified in Article 16.2 the Solar Power Developer shall have the right to deliver to APDCL, a Solar Power Developer Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue
- 16.4.2 Following the issue of a Solar Power Developer Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 16.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 16.4.4 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or APDCL Event of Default giving rise to the



Consultation Period shall have ceased to exist or shall have been remedied, the Solar Power Developer shall be entitled to sell the Contracted Capacity to any third party of the Solar Power Developers choice

Provided further that at the end of three (3) months period from the period mentioned in this Article 16.4.4, this Agreement may be terminated by the Solar Power Developer.

## **17. ARTICLE 17: LIABILITY AND INDEMNIFICATION**

### **17.1 Indemnity**

17.1.1 The Solar Power Developer shall indemnify, defend and hold APDCL harmless against:

- a) any and all third party claims against APDCL 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 Solar Power Developer of any of its obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by APDCL from third party claims arising by reason of a breach by the Solar Power Developer of any of its obligations under this Agreement, (provided that this Article 17 shall not apply to such breaches by the Solar Power Developer, for which specific remedies have been provided for under this Agreement)

17.1.2 APDCL shall indemnify, defend and hold the Solar Power Developer harmless against:

- a) any and all third party claims against the Solar Power Developer, 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 APDCL 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 Solar Power Developer from third party claims arising by reason of a breach by APDCL of any of its obligations.

### **17.2 Procedure for claiming Indemnity**

17.2.1 Third party claims

- a) Where the indemnified party is entitled to indemnification from the indemnifying party pursuant to Article 17.1.1(a) or 17.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 17.1.1(a) or 17.1.2(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 contest the claim of third party; and
  - ii. the claim amount is not required to be paid/ deposited to such third party pending the resolution of the third party claim, 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 third party claim, if such claim is settled in favour of the third party.
- b) The Indemnified Party may contest the claim of the third party for which it is entitled to be Indemnified under Article 17.1.1(a) or 17.1.2(a) and the indemnified 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.

### 17.3 Indemnifiable Losses

17.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the indemnifying party pursuant to Article 17.1.1(b) or 17.1.2(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 17, such event shall constitute a payment default under Article 16

### 17.4 Limitation on Liability

17.4.1 Except as expressly provided in this Agreement, neither the Solar Power Developer nor APDCL 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 APDCL, the Solar Power Developer or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

17.4.2 APDCL shall have no recourse against any officer, director or shareholder of the Solar Power Developer or any Affiliate of the Solar Power Developer or any of its officers, directors or shareholders for such claims excluded under this Article. The Solar Power Developer shall have no recourse against any officer, director or shareholder of APDCL, or any affiliate of APDCL or any of its officers, directors or shareholders for such claims excluded under this Article.

### 17.5 Duty to Mitigate

17.5.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 17.

## 18. ARTICLE 18: GOVERNING LAW AND DISPUTE RESOLUTION

### 18.1 Governing Law

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

### 18.2 Amicable Settlement and Dispute Resolution

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ( "Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:
  - a. a description of the Dispute;
  - b. the grounds for such Dispute; and
  - c. all written material in support of its claim.

- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article (i), furnish:
  - a. counter-claim and defences, if any, regarding the Dispute; and
  - b. all written material in support of its defences and counter-claim.
- iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 18.2.1(i) if the other Party does not furnish any counter claim or defense under Article 18.2.1(ii) or thirty (30) days from the date of furnishing counter claims or defense by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 18.2.1 (iii), the Dispute shall be referred for dispute resolution in accordance with Article 18.3.

### **18.3 Dispute Resolution**

#### **18.3.1 Dispute Resolution by AERC.**

- a. If any dispute is not settled amicably under Article 18.2, the same shall be referred by any of the Parties to AERC for dispute resolution in accordance with the provisions of the Electricity Act 2003.

### **18.4 Arbitration – Deleted**

### **18.5 Performance during Dispute**

- 18.5.1 Pending the submission of and/or decision on a Dispute by AERC, the Parties shall continue to perform their respective obligations under this Agreement, subject to any interim order that may be passed by AERC, without prejudice to a final adjustment in accordance with such decision by AERC.

## **19. ARTICLE 19: ASSIGNMENT AND CHARGES**

### **19.1 Assignments**

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

Provided that, APDCL shall permit assignment of any of Solar Power Developer rights and obligations under this agreement in favor of the lenders to the Solar Power Developer, if required under the financing agreements.

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement

## **20. ARTICLE 20: MISCELLANEOUS**

### **20.1 Interest and Right of Set Off**

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at prevailing medium term prime lending rate of State Bank of India per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Article 20.1 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations

**20.2 Confidentiality**

- 20.2.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:
- a. to their professional advisors;
  - b. to their officers, Contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
  - c. disclosures required under Law.
  - d. without the prior written consent of the other Party.

**20.3 Waiver of immunity**

Each Party unconditionally and irrevocably:

- a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

**20.4 Waiver**

20.4.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement
- b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- c) shall not affect the validity or enforceability of this Agreement in any manner.

20.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

**20.5 Exclusion of implied warranties etc**

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

**20.6 Survival**

**20.6.1 Termination shall;**

- a) not relieve the Solar Power Developer or APDCL, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

**20.6.2** All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

**20.7 Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

For the avoidance of doubt, the Parties hereto agree that any obligations of the Solar Power Developer arising from the Request for Proposal shall be deemed to form part of this Agreement and treated as such.

**20.8 Severability**

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

**20.9 No partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

**20.10 Third Parties**

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

**20.11 Successors and assigns**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

**20.12 Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- a) in the case of the Solar Power Developer, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Solar Power Developer may from time to time designate by notice to APDCL; provided that notices or other communications to be given to an address outside ..... [insert location of APDCL] may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Solar Power Developer may from time to time designate by notice to APDCL;
- b) in the case of APDCL, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the \_\_\_\_\_ with a copy delivered to APDCL Representative or such other person as APDCL may from time to time designate by notice to the Solar Power Developer; provided that if the Solar Power Developer does not have an office in [insert location of APDCL] it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery, provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

**20.13 Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language. .

**20.14 Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement

## 21. ARTICLE 21: DEFINITIONS

### 21.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

1. **"Accounting Year"** means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year.
2. **"Act" or "Electricity Act, 2003"** shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time.
3. **"AERC"** shall mean the Assam Electricity Regulatory Commission
4. **"Affected Party"** shall have the meaning set forth in Clause 14.2.
5. **"Agreement" or "Power Purchase Agreement" or "PPA"** shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof.
6. **"Appropriate Commission"** shall mean the Central Electricity Regulatory Commission referred to in sub- section (1) of section 76 or AERC.
7. **"Applicable Laws"** means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;
8. **"Applicable Permits"** means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project Facilities during the subsistence of this Agreement;
9. **"Arbitration Act"** means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;
10. **"Bill Dispute Notice"** shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
11. **"Business Day"** shall mean with respect to Solar Power Developer and APDCL, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Assam;
12. **"Capacity Utilization Factor" or "CUF"** Shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time.
13. **"Change in Law"** shall have the meaning ascribed thereto in Article 15 of this Agreement.
14. **"CERC"** shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors.
15. **"COD" or "Commercial Operation Date"** Shall mean the actual commissioning date of respective units of the Power Project where upon the Solar Power Developer starts injecting power from the Power Project to the Delivery Point. COD with respect to the Project / unit shall mean the date on which the project / unit is commissioned (certified by RLDC / SLDC / DISCOM) and available for commercial operation and such date as specified in a written notice given at least 10 days in advance by the power producer to APDCL.
16. **"Company"** means the Company acting as the Solar Power Developer under this Agreement;

17. **"Competent Court of Law"** shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement
18. **"Conditions Precedent"** shall have the meaning set forth in Clause 4.2.
19. **"Consents, Clearances and Permits"** shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power.
20. **"Consultation Period"** shall mean the period of sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Solar Power Developer Preliminary Default Notice or APDCL Preliminary Default Notice as provided in Article 16 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances.
21. **"Consortium"** shall have the meaning set forth in Recital (B);}
22. **"Consortium Member"** means a company specified in Recital (B) as a member of the Consortium;}
23. **"Construction Works"** means all works and things necessary to complete the Project Facilities in accordance with this Agreement;
24. **"Contracted Capacity"** shall mean \_\_\_\_ MW<sub>AC</sub> contracted with APDCL for supply by the Solar Power Developer to APDCL at the Delivery Point from the Solar Power Project
25. **"Contract Year"** shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that:
- (i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and
- (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement.
26. **"Contractor"** means the person or persons excluding Other solar power developer, as the case may be, with whom the Solar Power Developer has entered into any of the EPC Contract, the O&M Contract, or any other agreement or a material contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Solar Power Developer.
27. **"Cure Period"** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:
- a. commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- b. not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and provided that if the cure of any breach by the Solar Power Developer requires any reasonable action by the Solar Power Developer that must be approved by APDCL or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by APDCL or the Independent Engineer to accord their approval;
28. **"Delivery Point"** shall mean the point at receiving end of STU/DISCOM Sub-Station.. All costs and losses up to that point will be to the account of the Solar Power Developers;



29. **"Damages"** shall have the meaning set forth in Sub-clause (w) of Clause 1.2.1;
30. **"Dispute"** shall have the meaning set forth in Clause 18.2;
31. **"Dispute Resolution Procedure"** means the procedure for resolution of Disputes set forth in Article 18;
32. **"Document" or "Documentation"** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;
33. **"Due Date"** shall have the same meaning ascribed thereto in Article 13 of this Agreement.
34. **"DISCOM"** means Assam Power Distribution Company Limited
35. **"Effective Date"** shall mean date of [execution of PPA with APDCL](#);
36. **"Electricity Laws"** shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission.
37. **"Emergency"** means a condition or situation that is likely to endanger the security of the individuals on or about the Project Facilities, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;
38. **"Encumbrances"** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Site / Project Facilities
39. **"Energy Accounts"** shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof.
40. **"Events of Default"** shall mean the events as defined in Article 16 of this Agreement.
41. **"APDCL's Event of Default"** shall have the meaning set forth in Clause 16.2;
42. **"Expiry Date"** shall mean the date occurring twenty five (25) years from Effective Date.
43. **"Financial Closure"** shall mean the execution of all the Financing Agreements required for the Power Project and fulfillment of conditions precedents and waiver, if any, of any of the conditions precedent for the initial draw down of funds there under.
44. **"Financing Agreement"** shall mean the agreements pursuant to which the Solar Power Developer has sought financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of APDCL.
45. **"Force Majeure" or "Force Majeure Event"** shall have the meaning ascribed to it in Clause 14.3.1;
46. **"GoI"** means Government of India.
47. **"Good Industry Practice"** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance

of its obligations by the Solar Power Developer in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

48. **"Government Instrumentality"** means any department, division or sub-division of Government of India or the State Government and includes any commission board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Project Facilities or the performance of all or any of the services or obligations of the Solar Power Developer under or pursuant to this Agreement;
49. **"Grid Code"** shall mean the Grid Code specified by the CERC under Clause (h) of Subsection (1) of Section 79 of the Electricity Act, as amended from time to time.
50. **"Grid System"** means the Interconnection Facilities and any other transmission or distribution facilities through which the Solar Power Developer supply electricity to APDCL or APDCL transmits electricity to their customer(s);
51. **"Installed Capacity"** shall mean {the name plate capacity of all the units of the Solar PV Project reckoned at Generator Terminals or the AC Rating of the Solar PV Project at Delivery Point}.
52. **"Insurances"** shall mean the insurance cover to be obtained and maintained by the Solar Power Developer in accordance with Article 11 of this Agreement.
53. **"Interconnection Facilities"** shall mean the facilities on Solar Power Developer's side of the Delivery Point for sending and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 10, the Metering System required for supply of power as per the terms of this Agreement.
54. **"Invoice" or "Bill"** shall mean a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties.
55. **"Late Payment Surcharge"** shall have the meaning ascribed thereto in Article 13.4 of this Agreement.
56. **"Law"** shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the AERC;
57. **"Letter of Credit" or "LOC"** shall have the meaning ascribed thereto in Clause 13.6.1 of this Agreement.
58. **"Lead Member"** shall have the meaning set forth in Recital (B);
59. **"Lenders' Representative"** means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;
60. **"LOA" or "Letter of Acceptance"** means the letter of acceptance referred to in Recital (C);
61. **"Month"** shall mean a calendar year as per Gregorian calendar;
62. **"Material Adverse Effect"** means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party.

63. **"O&M"** means the operation and maintenance of the Project Facilities and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities in accordance with the provisions of this Agreement;
64. **"Party" and "Parties"** shall have the meaning ascribed thereto in the recital to this Agreement.
65. **"Payment Security Mechanism"** shall have the meaning ascribed thereto in Article 13.6 of this Agreement.
66. **"Performance Security"** shall have the meaning set forth in Clause 4.4;
67. **"Power Project"** shall mean the solar power generation facility of Installed Capacity of \_\_\_\_\_ MW, as per the published RFP; This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement.
68. **"Preliminary Default Notice"** shall have the meaning ascribed thereto in Article 16 of this Agreement.
69. **"Project Agreements"** means this Agreement, EPC Contract, O&M Contract and any other agreements or material contracts that may be entered into by the Solar Power Developer with any person in connection with matters relating to, arising out of or incidental to the Project.
70. **"Prudent Utility Practices"** shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:
- a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project;
  - b) the requirements of Indian Law; and the physical conditions at the site of the Power Project
71. **"Request for Proposals" or "RFP"** shall have the meaning set forth in Recital (B);
72. **"RBI"** shall mean the Reserve Bank of India.
73. **"Rebate"** shall have the same meaning as ascribed thereto in Article 13.5 of this Agreement.
74. **"RLDC"** shall mean the relevant Regional Load Dispatch Centre established under Subsection (1) of Section 27 of the Electricity Act, 2003.
75. **"Rupees", "INR"** shall mean Indian rupees, the lawful currency of India.
76. **"Scope of the Project"** shall have the meaning set forth in Clause 2.1;
77. **"Scheduled Commissioning Date"** shall mean **18 (Eighteen)** months from the Effective Date.
78. **"Senior Lenders"** means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Solar Power Developer under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold parri passu charge on the assets, rights, title and interests of the Solar Power Developer;
79. **"SLDC"** shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State where the Delivery Point is located.

80. "SLDC Charges" shall mean the charges levied by the SLDC of the state wherein the Solar Power Project is located.
81. "Solar Photovoltaic" or "Solar PV" Shall mean the solar photovoltaic power project that uses sunlight for conversion into electricity and that is being set up by the Solar Power Developer to provide Solar Power to APDCL as per the terms and conditions of this Agreement.
82. "Solar Power" Shall mean power generated from the Solar PV **ground mount** Project.
83. "Solar Power Developer" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;
84. "Solar Power Developer's Default" shall have the meaning set forth in Clause 16.1.1;
85. "State" means the State of Assam and "State Government" means the government of that State;
86. "State Transmission Utility" or "STU" shall mean Assam Electricity Grid Corporation Limited or AEGCL.
87. "Tariff" Shall have the same meaning as provided for in Article 12 of this Agreement.
88. "Tariff Payment" shall mean the payments to be made under Monthly Bills as referred to in Article 13 and the relevant Supplementary Bills.
89. "Tax" means and includes all taxes, fees, cesses, duties (including stamp duties), levies that may be payable by the Solar Power Developer for execution of the agreement and during the term of this Agreement under Applicable Law;
90. "Termination" means the expiry or termination of this Agreement and the Rights hereunder;
91. "Termination Notice" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;
92. "Term of Agreement" shall have the meaning ascribed thereto in Article 3 of this Agreement.
93. "Tests" means the tests to be carried out in accordance with the Specifications and Standards or the Maintenance Requirements and as finalised by the Solar Power Developer in consultation with APDCL/Independent Engineer.
94. "Week" shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

**SIGNED, SEALED AND DELIVERED**

**For and on behalf of APDCL by**

(Signature)  
(Name)  
(Designation)

**SIGNED, SEALED AND DELIVERED**

**For and on behalf of Solar Power Developer by**

(Signature)  
(Name)  
(Designation)  
In presence of:

- 1.
- 2.

**SCHEDULE 1**

**DETAILS ON INTEREST/TITLE OF SOLAR POWER DEVELOPER OVER THE LAND REQUIRED FOR PROJECT**

Evidence of clear possession of the required land for the Project

**SCHEDULE 2**

[Technical Qualification requirement in case of Solar PV Project]

**TECHNICAL REQUIREMENTS FOR GRID CONNECTED SOLAR PV POWER PLANTS**

The following are some of the technical measures required to ensure quality of equipment used in grid connected solar photovoltaic power projects:

**1. SPV Modules**

1.1. The SPV modules used in the grid solar power projects must qualify to the latest edition of any of the following IEC PV module qualification test or equivalent BIS standards.

Crystalline Silicon Solar Cell Modules:	IEC 61215
Thin Film Modules:	IEC 61646
Concentrator PV modules:	IEC 62108

1.2. In addition, SPV modules must qualify to IEC 61730 for safety qualification testing at 1000V DC or higher. The modules to be used in a highly corrosive atmosphere throughout their lifetime must qualify to IEC 61701

**2. Power Conditioner / Inverter**

The Power Conditioners/ Inverters of the SPV power plants must conform to the latest edition of IEC/equivalent Standards as specified below:

Efficiency Measurements:	IEC 61683
Environmental Testing:	IEC 60068 -2/IEC 62093
EM Compatibility (EMC):	IEC 61000-6-2, IEC 61000-6-4 & other relevant parts of IEC 61000
Electrical safety:	IEC 62103/ IEC 62109-1&2
Anti-Islanding Protection:	IEEE 1547/IEC 62116/UL 1741 or equivalent BIS Standards

**3. Other Sub – systems / Components:**

Other subsystems/components used in the SPV power plants (Cables, Connectors, Junction Boxes, Surge Protection Devices, etc.) must also conform to the relevant international/national Standards for Electrical Safety besides that for Quality required for ensuring Expected Service Life and Weather Resistance. It is recommended that the Cables of 600-1800 Volts DC for outdoor installations should comply with the BS EN50618:2014/2pfg 1169/08.2007 for service life expectancy of 25 years

**4. Authorized Test Centers:**

The PV modules/Power Conditioners deployed in the power plants must have valid test certificates for their qualification as per above specified IEC/ BIS Standards by one of the NABL Accredited Test Centers in India. In case of module types like Thin Film and CPV / equipment for which such Test facilities may not exist in India at present, test certificates from reputed ILAC Member Labs abroad will be acceptable

**5. Warranty:**

PV modules used in grid solar power plants must be warranted for output wattage, which should not be less than 90% (ninety per cent) at the end of 10 (ten) years and 80% (eighty per cent) at the end of 25 (twenty-five) years.

**6. Identification and Traceability:**

Each PV module used in any solar power project must use a RF identification tag. The following Information must be mentioned in the RFID used on each module (This can be inside or outside the laminate, but must be able to withstand harsh environmental conditions.)

- i. Name of the manufacturer of PV Module
- ii. Name of the Manufacturer of Solar cells
- iii. Month and year of the manufacture (separately for solar cells and module)
- iv. Country of origin (separately for solar cells and module)
- v. I-V curve for the module at Standard Test Condition (1000 W/m<sup>2</sup>, AM 1.5, 250C)
- vi. Wattage, I<sub>m</sub>, V<sub>m</sub> and FF for the module
- vii. Unique Serial No and Model No of the module
- viii. Date and year of obtaining IEC PV module qualification certificate
- ix. Name of the test lab issuing IEC certificate
- x. Other relevant information on traceability of solar cells and module as per ISO 9000

Site owners would be required to maintain accessibility to the list of Module IDs along with the above parametric data for each module.

**7. Performance Monitoring**

All grid solar PV power projects must install necessary equipment to continuously measure solar radiation, ambient temperature, wind speed and other weather parameters and simultaneously measure the generation of DC power as well as AC power generated from the plant. They will be required to submit this data to Procurer and MNRE or any other designated agency on line and/or through a report on regular basis every month for the entire duration of PPA. In this regard they shall mandatorily also grant access to Procurer and MNRE or any other designated agency to the remote monitoring portal of the power plants on a 24X7 basis

**8. Safe Disposal of Solar PV Modules**

The developers will ensure that all Solar PV modules from their plant after their 'end of life' (when they become defective/ non-operational/ non-repairable) are disposed of in accordance with relevant rule /regulation / acts as notified by the Government and as revised and amended from time to time.

**SCHEDULE 3**

**PERFORMANCE SECURITY**  
(PROFORMA OF BANK GUARANTEE)

THIS DEED OF GUARANTEE executed on this the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ by \_\_\_\_\_ (Name of the Bank) having its Head / Registered office at \_\_\_\_\_ hereinafter referred to as "the Guarantor" which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of \_\_\_\_\_, a Company incorporated under the Indian Companies Act, 1956 having its registered office at \_\_\_\_\_ (hereinafter referred to as "APDCL", which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors, and assigns);

WHEREAS

- A. By the Power Purchase Agreement (the "Agreement") being entered into between APDCL and \_\_\_\_\_, a company incorporated under the provisions of the Companies Act, 1956/, having its registered office/ permanent address at \_\_\_\_\_ (hereinafter referred as "Solar Power Developer"), has been granted the right to development of \_\_\_\_\_ MW Solar PV Power Plant an hereinafter referred to as the Project.
- B. In terms of Article 4.4 of the Agreement, the Solar Power Developer is required to furnish to APDCL, an unconditional and irrevocable bank guarantee for an amount of INR \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only) as security for due and punctual performance/dischage of its obligations under the Agreement.

At the request of the Solar Power Developer, the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/dischage by the Company of its obligations under the Agreement relating to the Project.

**NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:**

Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Agreement.

1. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. \_\_\_\_\_ of all its obligations relating to the Project under the Agreement.
2. The Guarantor as primary obligator shall, without demur, pay to APDCL sums not exceeding in aggregate INR \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only), within one working day of receipt of a written demand thereof from APDCL stating that the Solar Power Developer has failed to meet its performance obligations under the Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Solar Power Developer or validity of demand so made by APDCL and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Solar Power Developer or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof. In order to give effect to this Guarantee, APDCL shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/ delayed exercise of any of its rights by APDCL or any indulgence shown by APDCL to the Solar Power Developer and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise, delayed exercise of any of its rights by APDCL or any indulgence shown by APDCL provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
3. This Guarantee shall be irrevocable and shall remain in full force and effect for a period of **twenty two (22) months** from the date of signing of PPA unless discharged /released earlier by APDCL in accordance with the provisions of the Agreement. The Guarantor's liability in aggregate is limited to a sum of INR \_\_\_\_\_/- (Rupees \_\_\_\_\_ Only).
4. This Guarantee shall not be affected by any change in the constitution or winding up of the Solar Power Developer/the Guarantor or any absorption, merger or amalgamation of the Solar Power Developer/the Guarantor with any other Person.



The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under \_\_\_\_\_.

**IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN**

**SIGNED AND DELIVERED**

by \_\_\_\_\_ **Bank**

by the hand of Shri \_\_\_\_\_ **its** \_\_\_\_\_ **and**

**authorised official.**

**ATTACHMENT – 1**

**COMMISSIONING PROCEDURE**

*(This is for Reference Only; the Commissioning Procedure will be guided by as per PPA)*

- i) At the time of commissioning, the Commissioning Committee shall verify compliance of technical parameter of the Project as per Attachment -1 of the RFS document.
- ii) SPDs shall give to the concerned RLDC/ SLDC, APDCL at least 60 (Sixty) Days advance preliminary written notice and at least 30 (Thirty) Days advance final written notice, of the date on which it intends to synchronize the Power Project to the Grid 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.
- iii) A Solar PV Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into the grid.
- iv) SPD shall ensure that the equipment up to the rated Capacity has been installed and completed in all respects before the Schedule Commissioning Date. The same shall be verified by the concerned authority during their visit to the Project and documented as per prescribed format.

**Documents to be submitted to APDCL:**

The SPD will have to submit the following documents (duly signed and stamped by authorized signatory) well in advance prior to the scheduled commissioning date.

1. Covering Letter
2. Board Resolution for Authorized Signatory
3. Invoice (s) of the Major Equipment (s) (including but not limited to module, Inverters/PCUs, Weather Monitoring Stations/DC Cables and transformer etc.)
4. All supporting documents towards meeting the technical compliance along with datasheet/ warranty certificates/ contract agreement etc. as mentioned in Attachment -1.
5. Installation report duly signed by the authorized signatory as per **Attachment -2**.
6. Plant Layout clearly mentioning the details of rows and number of modules in each row.
7. Electrical Inspector report along with all annexures/ attachments. It would be the responsibility of the SPD to collect the certificate.
8. Connectivity report as per the **Attachment-3**.
9. Synchronization Certificate as per prescribed format issued by AEGCL/APDCL for ascertaining injection of power into grid as per **Attachment -4**.
10. Supporting document for "Consent to Operate".
11. Snap Shots of the Plant from various angles shall be taken for covering installation of important components of the solar power plant and made part of Installation Report.
12. Reading of all the inverters (instantaneous and total generation) along with its serial number of a particular date.
13. Relevant document from SLDC/ RLDC acknowledging successful data communication between plant end and SLDC/ RLDC.
14. After the submission of the documents by SPD, APDCL shall verify the documents and intimate/ reply with remarks. In case any additional supporting/ revised documents are asked by APDCL, the same have to be submitted by the SPD.
15. After the proposed commissioning date along with commissioning order is submitted, the commissioning committee formed (APDCL & AEGCL) shall visit the site within 07 working days to verify the technical compliance on site as per the information submitted by the SPD. In case the committee finds discrepancy/ deviation from the information submitted by the SPD during on site verification, the committee shall schedule its next visit only on the next available date as per the availability of all the committee members.

**ATTACHMENT – 3****INSTALLATION REPORT**

*(To be provided by SPD and to be submitted at least 10 days prior to Commissioning Date which shall be verified by Commissioning Committee)*

<b>Sl. No</b>	<b>Particulars</b>	<b>Details</b>
1	Capacity of the Project (MW <sub>p</sub> & MW <sub>AC</sub> )	
2	Capacity already commissioned (MW <sub>p</sub> & MW <sub>AC</sub> )	
3	Capacity proposed to be commissioned (MW <sub>p</sub> & MW <sub>AC</sub> )	
4	Technology used (Mono/ Multi Crystalline/ Thin Film/ Others; please specify along with capacity of each type)	
5	Rating of each module (Wp)	
6	Angle from horizontal at which array is installed	
7	Number of modules installed of each type	
8	Source(s) of the cells installed of each type	
9	Source(s) of the Modules installed of each type	
10	Number of PCUs/ Inverters installed	
11	Source of the PCUs/ Inverters (Name of supplier with address)	
12	Rating of PCUs/ Inverters	
13	Date of Installation of Full Capacity (as per Capacity proposed to be Commissioned)	
	PV Arrays	
	PCUs/ Inverters	
	Transformers	

**SAMPLE CONNECTIVITY REPORT**

(To be provided by AEGCL/APDCL)

This is in compliance to the office order of the -----, -----, <Place> issued vide office order <No.><dated>, the committee constituted vide said order has completed the work for commissioning of <kV> Bay & Metering Equipment to interconnect the <MW> Solar Power Generation Plant (having <technology>) with Grid installed at <Village>, <Tehsil>, <District> in the <State> on <date>, under RfS No.....dated.....

The details of Solar Power Plant are as under

Name of Solar Power Developer & Location	Capacity Mentioned In PPA	Connectivity	Details of Solar Power Plant (Transformer, Inverter, Modules, Switchgear)
<M/s> <Village> <Tehsil> <District.	<> MW	Metering Detail at Delivery Point (<Village>)  S. No. of <kV> CT i) <R-Phase> ii) <Y-Phase> iii) <B-Phase>  S. No. of <kV> CT i) <R-Phase> ii) <Y-Phase> iii) <B-Phase>  S.No. of Main<ABT> Meter> S.No. of Check <ABT Meter> S.No. of Standby <ABT Meter> Metering Equipment installed at Receiving end on dated: <> 220 kV SS, <>, <>, (<Distt.>)	A) Transformer <Make/Type:> <Sr. No.>  B) Inverters <Make/Type:> <Sr. No.>  C) Modules <Make: > <W>, < W > <Total: Nos.>  D) Switchgear  Panels <Make/Type:> <Sr. No.> Protection Provided: Under/Over voltage, Over current & Earth fault.

The Commissioning date of various equipment is as under:

<kV> line from --- to -----, completed on date -----.

Line Bay at < kV > GSS, ----- charged for ---- on -----.

<kV> line charged from -----to----- on date-----.

Main & check metering commissioned on ..... (initial record of Main/Check meters at the time of Commissioning is to be taken and enclosed)

Complete system commissioned on date-----

The Joint Inspection Report of metering arrangement & copy of permission of Electrical Inspector is enclosed herewith.

**ATTACHMENT – 5**

**SAMPLE SYNCHRONIZATION CERTIFICATE**

It is certified that ----- MW (Capacity) Solar Photovoltaic Power Project of M/s. -----, Village ----- Tehsil/  
Taluka -----, District ----- was Grid connected on ..... (Date) at----- Hrs.

It is further certified that the Project was synchronized and supply of power into the grid from the Project  
connected on ..... (Date) at ----- Hrs.

The above certificate is issued on the basis of MRI record.

NB:

- (i) The above certificate shall be issued by concerned CTU/ STU/ Transmission Utility/ DISCOMs
- (ii) Copy of duly signed MRI is to be enclosed.

**ATTACHMENT – 6**

**SAMPLE PART COMMISSIONING/ FULL COMMISSIONING CERTIFICATE OF SOLAR PV POWER PROJECT**

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

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

- (i) Installation Report including Snap shots of the Project from various angles
- (ii) Electrical Inspector Report
- (iii) Connectivity Report
- (iv) Synchronization Certificate including MRI record