

**STANDARD**  
**POWER PURCHASE AGREEMENT FOR**  
**PROCUREMENT OF ..... MW SOLAR POWER**  
**ON LONG TERM BASIS**  
**Between**

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

**And**

**MANIPUR STATE POWERDISTRIBUTION**  
**COMPANYLIMITED(MSPDCL)**

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

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

Between

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

And

The **Manipur State Power Distribution Company Limited (MSPDCL)**, which is a 100% subsidiary of MSPCL and undertakes power distribution activity within the state of Manipur, having its Head office at 3rd Floor, New Directorate Building, Near 2nd MR Gate, Imphal-Dimapur Road, Imphal: 795001. CIN:U40101MN2013SGC008343 represented for and on its behalf by ..... (Hereinafter referred to as “**MSPDCL**” or “**Procurer**” or “**Buyer**” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the **Second Part**;

The SPD and MSPDCL are individually referred to as ‘Party’ and collectively referred to as

‘Parties’.

WHEREAS:

- A. The Government of India has announced the Policy for promotion of the Solar Power in the country and has provided a target to achieve an aggregate installed capacity of 100 GW by the year 2022.
- B. The Ministry of Power, Government of India has issued the Guidelines for the Tariff Based Competitive Bidding Process for procurement of power generated from the Grid connected Solar Power Project vide Resolution dated 3<sup>rd</sup> August 2017, including subsequent amendments and clarifications issued thereof. This PPA has been prepared in general based on these Guidelines.

- C. Manipur State Power Distribution Company Limited (MSPDCL), in pursuance to the Electricity Act 2003, herein after referred to as the Act, the erstwhile, State Electricity Department was unbundled into 2 (two) state owned functionally independent successor entities i.e. (i) Manipur State Power Company Ltd (herein after referred has MSPCL) a deemed transmission licensee and (ii) Manipur State Power Distribution Company Ltd (herein after referred has MSPDCL) a deemed distribution Licensee w.e.f 1st of Feb 2014, by a Gazette notification of the Government of Manipur vide Manipur State Electricity Reforms Transfer Scheme 2013 (or Transfer scheme 2013) dated 31st December 2013. MSPDCL is a 100% subsidiary of MSPCL and undertakes power distribution within the state of Manipur. MSPDCL holds the entire network in the state at a voltage level of 11KV and below.
- D. **MANIREDA** shall mean “Manipur Renewable Energy Development Agency” an autonomous Govt. agency under the Power Department, Government of Manipur having its Office at 2nd Floor, South Block, Secured Office Complex, Near 2nd M.R. Gate, Imphal-Dimapur Road, Imphal -795001, Manipur. MANIREDA looks after the Renewable Energy Production activities of the Manipur State.
- E. MANIREDA had initiated a Tariff Based Competitive Bid Process for procurement of 50 MW of the power generated from the Grid connected Ground Mounted Solar Power Project on the terms and conditions contained in the Request for Selection (herein after referred to as ‘RFS’) issued by MANIREDA on behalf of the Purchaser (MSPDCL) vide RFS No..... Dated.....
- F. **M/s.....[Insert name of the Successful bidder]**, has been declared as a successful bidder against Request for Selection (RfS) issued by MANIREDA on behalf of MSPDCL for selection of SPD for development of 50 MW Solar PV Power Project. SPD has been issued Letter of Award (LOA) (LOA No. .... dated ....) for development of 50 MW Solar PV Power Project, generation and sale of Solar power under the above RfS.

AND

**M/s.....[Insert name of the Successful bidder]** has formed a project company, **M/s ..... [Insert name of the SPV]** (hereinafter referred to as ‘SPD’), within the provisions of RfS for development of Solar PV Power Project, generation and sale of Solar PV power under the above RfS.

- G. The Solar Power Developer (hereinafter referred to as ‘SPD’) is engaged in the business of generation and sale of power and is desirous of setting up a **50 MW** Ground Mounted Solar PV Power Project at estate land as identified by the Government of Manipur, in Jiribam district, in the state of Manipur and for supply of such electricity to MSPDCL under a Power Purchase Agreement to be entered into between SPD and MSPDCL;
- H. MSPDCL has agreed to purchase such Solar Power from the SPD as the Purchaser as per the provisions of the RfS. Accordingly, MSPDCL has agreed to sign this Power Purchase Agreement with the SPD to purchase such power as per the provisions of the RFS;
- I. In terms of the RfS and the Bidding Documents, the SPD has furnished the Performance Bank Guarantee for the sum of Rs.....in favour of MSPDCL as per the format provided as a part of the Bidding Documents and a copy of the Bank Guarantee provided is in Schedule – 1 to this agreement;
- J. The SPD has fulfilled the terms of the bidding and the terms of the Letter of Award for signing this Power Purchase Agreement as a definitive agreement for establishing the Ground Mounted Solar Power Project of **50 MWSPV Power Plant at estate land as identified by the Government of Manipur, in Jiribam district, in the state of Manipur** for generation and sale of electricity by the SPD to MSPDCL.
- K. The parties acknowledges and accepts that MANIREDA is an autonomous Govt. agency under the Power Department, Government of Manipur and is only facilitating the selection of SPD for generation of electricity from the Solar PV Power Projects and therefore, cannot assume independently, any obligation, financial or otherwise, either to the SPD or to MSPDCL, Whatever obligation is enforced by the MSPDCL under the PPA against SPD, SPD shall be bound to fulfil the obligation towards MSPDCL and similarly, whatever rights that SPD may claim under this Agreement against MSPDCL, shall be subject to due enforcement of the corresponding rights by SPD against MSPDCL, without an independent obligation on the part of MANIREDA;
- L. The parties have agreed to execute this Power Purchase Agreement in terms of the provisions of the RfS, the bidding documents and the Letter of Award in regard to the terms and conditions for establishment of the Ground Mounted Solar Power Project of

**50 MW SPV Power Plant** at the estate land as identified by the Government of Manipur, in Jiribam district, in the state of Manipur for generation and supply of electricity by the SPD to MSPDCL.

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

## ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 *Definitions*

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

“Act” or “Electricity Act, 2003”	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
“Adjusted Equity”	<p>shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “Reference Date”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date;</p> <p>i. On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date;</p> <p>ii. An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”);</p> <p>iii. After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three three three percent) thereof at the commencement of each month following the COD [reduction of 1% (one percent) per quarter of an year] and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date;</p> <p>For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the PPA period is extended, but the revision on account of WPI shall continue to be made.</p>
“Agreement” or “Power Purchase Agreement” or “PPA”	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
“Appropriate Commission”	Unless otherwise stated, Appropriate Commission shall mean SERC;

"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to SPD and MSPDCL, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Manipur;
"Buying Entity" or "Buying Utility" or "Discom"	Shall mean MSPDCL which has agreed to purchase the solar power from SPD.
"Capacity Utilization Factor" or "CUF"	<p>shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time; However, for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity;</p> <p>In any Contract Year, if 'X' MWh of energy has been metered out at the Delivery Point for 'Y' MW Project capacity, <math>CUF = (X \text{ MWh} / (Y \text{ MW} * \text{total hours available in an year})) \times 100\%</math>;</p>
"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;
"Change in Law"	shall have the meaning ascribed thereto in Article 12 of this Agreement;
"Commissioning"	The Project will be considered as commissioned if all equipment as per rated Project Capacity has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the PPA.
"Commercial Operation Date (COD)"	shall mean the date on which the commissioning certificate is issued upon successful commissioning (as per provisions of this Agreement) of the project or the last part capacity of the Project as the case may be;
"Competent Court of Law"	shall mean any court or tribunal or any similar judicial or quasi- judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
"Consents, Clearances and Permits"	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
"Consultation Period"	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a SPD Preliminary Default Notice or MSPDCL Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

“Contract Year”	<p>shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that:</p> <p>(i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and</p> <p>(ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement</p>
"Contracted Capacity"	<p>shall mean <b>50 MWSPV Power</b> contracted with MSPDCL for supply by the SPD to MSPDCL at the Delivery Point from the Solar Power Project. It shall be equal to the Project Capacity as defined;</p>
“Day”	<p>shall mean a day, if not a Business Day, the immediately succeeding Business Day.</p>
“Debt Due”	<p>shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:</p> <p>i. The principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the ‘Principal’) but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;</p> <p>ii. All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (i) above until the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Utility Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost.</p> <p>Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken.</p>



	Provided further that the Debt Due, on or after COD, shall in no case exceed 80% (eighty percent) of the Total Project Cost.
“Delivery Point” / “Interconnection point”	<p>Shall mean the single point at the voltage level of <b>132/33 kV</b> substation of the STU in <b>Jiribam District</b> at the voltage level of 132 kV.</p> <p>For interconnection with STU network and metering, the SPD shall abide by the relevant CERC Regulations, Grid Code and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time or orders passed there under by the appropriate commission or CEA. Pursuant to Article 4.2.6, all charges and losses related to Transmission of power from project up to Delivery Point (including but not limited to open access, transmission, wheeling, DSM, Scheduling, Reactive power charges (if applicable) etc.) as notified by the competent authority / regulator shall be borne by the SPD and beyond the Delivery Point all charges and losses as notified by the competent authority / regulator from time to time shall be borne by the MSPDCL. In case it is paid by MSPDCL, the same shall be recovered from the SPD (as applicable);</p>
“Dispute”	shall mean any dispute or difference of any kind between MSPDCL and the SPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
"Due Date"	Due Date shall mean the forty-fifth (45th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hard copy and duly acknowledged by the MSPDCL or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the MSPDCL.
“Effective Date”	shall have the meaning ascribed thereto in Article 2.1.1 of this Agreement;
“Electricity Laws”	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Accounts / State Energy Accounts "	shall mean the state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof or where such state energy accounts are not issued, Joint Meter Reading (JMR) will be considered;

“Event of Default”	shall mean the events as defined in Article 13 of this Agreement;
“Expiry Date”	Shall mean the date occurring twenty five (25) years from the Scheduled Commissioning Date subject to that the supply of power shall be limited for a period of 25 years from the Scheduled Commissioning Date unless extended by the Parties as per this Agreement;
“Financial Closure”	shall mean compliance with the requirements under Article 3.1 of this Agreement;
“Financing Agreements”	shall mean the agreements pursuant to which the SPD has sought financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of MSPDCL;
"Force Majeure" or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 11 of this Agreement;
“Guidelines	shall mean the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects issued by the Ministry of Power on 3 <sup>rd</sup> August 2017, including subsequent amendments and clarifications;
"Grid Code" / “IEGC” or “State Grid Code”	shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub- section (1) of Section 86 of the Electricity Act 2003, as applicable;
“Indian Governmental Instrumentality”	shall mean the Government of India, State Government of Manipur, any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the above state Government(s) or both, any political sub-division of any of them; including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
“Insurances”	shall mean the insurance cover to be obtained and maintained by the SPD in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on SPD’s side of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;

“Invoice” or “Bill”	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
“Joint Control”	shall mean a situation where none of the promoter shareholders has at least 51 % shareholding in the paid up share capital and voting rights in the SPD, and the control is exercised jointly;
“Late Payment Surcharge”	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
“Letter of Credit” or “L/C”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“MNRE”	shall mean the Ministry of New and Renewable Energy, Government of India;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
“Must Run”	means this power plant which is not subjected to Merit Order dispatch principles; MSPDCL shall also ensure deployment of efficient energy management system so as to ensure entire energy generation capability of the Project;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
“Payment Security Mechanism”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“Performance Bank Guarantee”	shall mean the irrevocable unconditional bank guarantee, submitted by the SPD to MSPDCL in the form attached hereto as Schedule 1;
“Power Project” or “Project”	shall mean the Ground Mounted solar power generation facility comprising single unit at single location, having single point of injection into the STU grid at Interconnection/ Delivery/ Metering Point. The Project shall include all units and auxiliaries such as water supply, treatment or storage facilities, bay(s) for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility, whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power to MSPDCL;

“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 13 of this Agreement;
“Project Capacity”	shall mean the maximum AC capacity of the Project at the point of injection on which the Power Purchase Agreement has been signed. Minimum size of the project is 5MW AC.
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project; b) the requirements of Indian Law; and the physical conditions at the site of the Power Project;
“RBI”	shall mean the Reserve Bank of India;
“Rebate”	shall have the same meaning as ascribed thereto in Article 10.3.4 of this Agreement;
"Rupees", "Rs.", “₹”	shall mean Indian rupees, the lawful currency of India;
“Scheduled Commissioning Date” or “SCD” of the Project	shall mean ..... [Insert Date that is eighteen(18) months from the Effective Date of this Agreement as applicable];
“SERC”	Shall mean State Electricity Regulatory Commission
“SLDC”	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
“SLDC Charges”	shall mean the charges levied by the SLDC of the state wherein the Solar Power Project is located;
“Standby Meter”	A meter connected to CT and PT, other than those used for main meter and check meter and shall be used for accounting and billing of electricity in case of both Main meter and Check meter are not working and the same has been recommended by competent authority of State to refer for Energy Accounts; This may be located at the plant side or substation side as per applicable regulation;
“Solar Photovoltaic Project” or “Ground Mounted Solar PV Project” or “SPV”	shall mean the solar photovoltaic power project that uses sunlight for conversion into electricity and that is being set up by the SPD to provide Solar Power to MSPDCL as per the terms and conditions of this Agreement;
“MSPDCL”	shall mean Manipur State Power Distribution Company Limited

"Tariff"	Shall have the same meaning as provided for in Article 9 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
"Unit/ Part Commissioning"	Subject to the compliance of conditions / procedure as detailed under Schedule-2 of this Agreement, Unit / Part Commissioning shall mean the Ground Mounted Solar PV Capacity (AC MW) to be commissioned as per provisions of this Agreement and RfS document. Part Commissioning shall be applicable for Projects having capacity not less than 05 MW;
"Unit Commercial Operation Date (UCOD)"	shall mean the date of issuance of commissioning certificate for the respective part(s) of the Power Project subsequent to the demonstration of the compliance of commissioning as per this Agreement and witnessed by the Committee duly constituted and also start of injection and scheduling power from the Power Project to the Delivery Point and availability / installation of all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

## **1.2 Interpretation**

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

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

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

## ARTICLE 2: TERM OF AGREEMENT

### 2.1 *Effective Date*

2.1.1 This Agreement shall come into effect from (Enter the date as on 30<sup>th</sup> day of the issuance of Letter of Award to the SPD) and such date shall be referred to as the Effective Date.”

### 2.2 *Term of Agreement*

2.2.1 Subject to Article 2.3 and 2.4 of this Agreement, this Agreement shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period at least one hundred eighty (180) days prior to the Expiry Date, on mutually agreed terms and conditions except under Force Majeure conditions in which extension can be as per the conditions stipulated in Article 11.

2.2.2 The SPD is free to operate their plants beyond the Expiry Date subject to the prior consent of MSPDCL and if other conditions like Land lease (as applicable), permits, approvals and clearances etc. allow. In such case unless otherwise agreed by the MSPDCL, MSPDCL shall not be obligated to procure power beyond the Expiry Date.

### 2.3 *Early Termination*

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

### 2.4 *Survival*

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



ARTICLE 3: CONDITIONS SUBSEQUENT

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

The SPD agrees and undertakes to duly perform and complete all of the following activities including Financial Closure at the SPD's own cost and risk within 12 Months from the Effective Date of this Agreement, unless such completion is affected by any Force Majeure event, or for the activities specifically waived in writing by MANIREDA/MSPDCL:

- a) The SPDs shall report tie-up of Financing Arrangements for the Projects. In this regard, the SPD shall submit a certificate/ necessary documents from all financing agencies regarding the tie-up of 100% of the funds indicated for the Project, including arrangements of funds in the form of Equity.

The SPD will have to submit the required documents to MANIREDA/MSPDCL at least 15 (Fifteen) days prior to the scheduled Financial Closure date. In case of delay in submission of documents mentioned above, MANIREDA/MSPDCL shall not be liable for delay in verification of documents and subsequent delay in Financial Closure.

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

- 3.2.1 In case of a failure to submit the documents as above, MSPDCL, shall be entitled to encash the Performance Bank Guarantee submitted by the SPD, terminate this Agreement by giving a notice to the SPD in writing of at least seven (7) days, unless the delay (subject to the conditions that SPD has made / is making all possible efforts) is on account of factors not owing to any action or inaction on the part of the SPD, or caused due to a Force Majeure as per PPA. Unless extended as per provisions of Article 3.2.2 of this Agreement in writing, the termination of the Agreement shall take effect upon the expiry of the 7th day of the above notice.
- 3.2.2 An extension can however be considered, on the sole request of SPD, on advance payment of extension charges of INR 1,000/- per day per MW + 18% GST to MSPDCL with an intimation to MANIREDA. This extension will not have an impact on the obligation of SPD to achieve commissioning by the Scheduled Commissioning Date of the Project. Subsequent to the completion of deadline for achieving financial closure, MSPDCL shall issue notices to the SPD for not meeting the requirements of Financial Closure as per the RfS deadlines. The notice shall

provide a period of 7 business days to the SPD to either furnish the necessary documents or make the above mentioned payment of Rs. 1,000/MW/day. In case of non-submission of either-the requisite documents or the necessary amount upon expiry of the above mentioned notice period of 7 days, MSPDCL, shall encash the PBG of the SPD and terminate the PPA for the Project. The amount of Rs. 1,000/MW/day shall be paid in favour of MSPDCL by the SPD in advance prior to the commencement of the said delay period and shall be calculated based on the period of delay as estimated by the SPD. In case of the SPD meeting the requirements of Financial Closure before the last date of such proposed delay period, the remaining amount deposited by the SPD shall be returned by MSPDCL without interest. Interest on account of delay in deposition of the above mentioned charges or on any subsequent extension sought, shall be levied @ one year SBI MCLR rate /annum on pro-rata basis. Any extension charges paid so, shall be returned to the SPD without any interest on achievement of successful commissioning within the Scheduled Commissioning Date, on pro-rata basis, based on the project capacity commissioned as on Scheduled Commissioned Date. However, in case the SPD fails to commission the Contracted Capacity by Scheduled Commissioning Date, the extension charges deposited by the SPD shall not be refunded by MSPDCL.

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

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

- 3.3.1 The Performance Bank Guarantee (PBG)/Payment on Order Instrument (POI) having validity from the date of submission of PBG/POI until 27 months from the Effective Date of this Agreement, for a value of **INR .....**to be furnished under this

Agreement shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement as per format provided in Schedule 1 and 2.

- 3.3.2 The failure on the part of the SPD to furnish and maintain the Performance Bank Guarantee/POI shall be a material breach of the term of this Agreement on the part of the SPD.
- 3.3.3 If the SPD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement or any further extension thereof granted by MSPDCL, subject to conditions mentioned in Article 4.5, MSPDCL shall encash the Performance Bank Guarantee/POI equivalent to the penalty leviable as on the date of encashment without prejudice to the other rights of MSPDCL under this Agreement.

#### **3.4 Return of Performance Bank Guarantee/POI**

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

**ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT**

**4.1 *SPD's Obligations***

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

- a) The SPD shall be solely responsible and make arrangements for development of the Project and for Connectivity up to the delivery point at the Sub Station of SPV Power Plant for confirming the evacuation of power by the Scheduled Commissioning date and all clearances related thereto;
- b) Obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. The Solar Power Developer shall, on his own, obtain permissions/ sanctions from Government authorities, if any required for establishing the project.
- c) Designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.
- d) the commencement of supply of power up to the Contracted Capacity to MSPDCL no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement;
- e) Connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point; The SPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point.
- f) owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;
- g) maintaining its controlling shareholding (controlling shareholding shall mean more than 50% of the voting rights and paid-up share capital) prevalent at the time of signing of PPA up to a period of one (1) year after Commercial Operation Date of the Project in line with the provisions of the RfS; However transfer of controlling shareholding within the same Group Companies will be allowed with the permission of MSPDCL after COD subject to the condition that the management control remains within the same Group Companies; and
- f) Fulfilling all obligations undertaken by the SPD under this Agreement.
- g) Obtaining Open Access upto the delivery point, for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement.

Beyond delivery point, it shall be the responsibility of MSPCL to avail necessary clearances from concerned authorities such as obtaining LTA, MTOA etc., for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement.

- h) The SPD shall be responsible for directly coordinating and dealing with MSPDCL and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Solar Power and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the SPD and MSPDCL are Grid connected entities.
- i) The SPD shall fulfill the technical requirements according to criteria mentioned in RFS .
- j) Further, the Project being implemented under this Agreement shall fulfil the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof,
- k) As part of scheduling of power from the Project, the SPD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces, including MSPDCL, as per the Regulations in force. The SPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.
- l) SPD shall also submit an undertaking that no grant / subsidy shall be availed from the Government against this project.

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

- 4.2.1 The SPD shall be required to obtain all information from the STU/MSPDCL/concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the SPD's side of the Delivery Point to enable delivery of electricity at the Delivery Point. The transmission of power up to the point of interconnection / delivery point where the metering is done for energy accounting shall be the responsibility of the SPD at his own cost.
- 4.2.2 Penalties, fines and charges imposed by the STU/MSPDCL under any statute or regulation in relation to delay in commissioning of Project shall be payable by the SPD to the extent the delay is attributable to the SPD.

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

4.2.4 Void.

4.2.5. The arrangement of connectivity upto 132/33 KV STU Substation / delivery point Substation in Jiribam District shall be made by the SPD. The entire cost of transmission including cost of construction of line, any other charges, losses etc. from the Project up to the Interconnection Point will be borne by the SPD. In case of non-availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the SPD, provisions of Article 4.10 shall be applicable.

4.2.6 Beyond the delivery point, the generated solar power will be wheeled to the MSPDCL load points/ (signaling transfer points) STPs using STU and DISCOM network during day time and the surplus power after meeting the day load requirement of these STPs will be banked and shall be utilized by MSPDCL as per the prevailing solar Policy and regulations of Manipur. The various charges such as STU charges/SLDC charges/Transmission Losses, Wheeling and Banking charges and other losses/ taxes/duties/cess etc., beyond the delivery point/interconnection point shall be borne by MSPDCL as per Transmission / Wheeling Banking Agreement to be signed between MSPDCL and STU and DISCOM respectively for the entire term of this agreement.

**4.2.7 Land arrangements:**

This Agreement has come into effect subsequent to grant of possession rights to the SPD for 100% area of the land identified for the Project, as provided through lease/rental basis. The lease/rental amount for the land usage is fixed at Rs. \_\_\_\_\_ for each year for the Term of the PPA. MANIREDA confirms that the land as handed over to the SPD is free from all encumbrances and encroachments. Further, subsequent to signing of this Agreement, in case of any legal issues arising out of such handing over of the land resulting in delay in

achieving Condition Subsequent and/or commissioning of the Project, the respective deadline for fulfilment of Condition Subsequent and/or the Scheduled Commissioning Date, as applicable, will be suitably extended by MSPDCL.

*(Refer Annexure I of this Agreement)*

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

4.3.1 Subject to the terms and conditions of this Agreement, the SPD undertakes to sell to MSPDCL and MSPDCL undertakes to pay Tariff for all the energy scheduled at the Delivery Point corresponding to the Contracted Capacity as per prevailing SERC regulations.

4.3.2 Void.

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

4.4.1 The SPD will declare the CUF of the project and will be allowed to revise the same once within first year after COD of the project. Thereafter, the CUF for the Project shall remain unchanged for the entire term of the PPA. The declared annual CUF shall in no case be less than **17%**. It shall be the responsibility of the SPD, entirely at its cost and expense to install such number of Solar panels and associated infrastructure (like project equipment) as may be necessary to achieve the required CUF, and for this purpose SPD shall make its own study and investigation of the GHI and other factors prevalent in the area which have implication on the quantum of generation. Further, arrangement of extra land for such installation shall be intimated to MSPDCL in advance and MSPDCL shall have to reply for the same in 7 days in the best interest of the project generation. However, non-availability of land shall not absolve SPD from his obligations under the PPA. SPD shall maintain generation so as to achieve annual CUF within + 10% and -15% of the declared value till the end of 10 years from COD, subject to the annual CUF remaining minimum of **15%**, and within +10% and -20% of the declared value of the annual CUF thereafter till the end of the PPA duration of 25 years. The lower limit will, however, be relaxable by MSPDCL to the extent of non-availability of grid for evacuation which is beyond the control of the SPD. The annual CUF will be calculated every Contract Year.

The compensation due to shortfall in generation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of compensation shall be equal to the compensation payable (including equivalent amount of Electricity purchased from the grid for meeting load demand due to short fall in

solar power) by the buying Entity, which shall ensure that the buying Entity is offset for all potential costs associated with low generation and supply of power under the PPA, subject to a minimum of 50% (fifty per cent) of the cost of this shortfall in energy terms, calculated at PPA tariff. The amount, being equal to the compensation payable, by the buying Entity for not meeting load requirements is only a measure of damage. It shall not be construed that the compensation is payable by SPD only if the buying Entity are required to pay compensation for such not meeting of load requirements or that the buying Entity or the SPD shall be required to prove or establish such payment of compensation for not meeting the load. SPD shall agree that the methodology specified herein above for calculation of liquidated damages payable by the SPD for shortfall in generation is a genuine and accurate pre-estimation of the actual loss that will be suffered by buying Entity. SPD shall further acknowledge that a breach of any of the obligations contained herein result in injuries and that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this document is a genuine and reasonable pre-estimate of the damages that may be suffered by buying Entity in each case specified under this Agreement. However, this compensation shall not be applicable in events of Force Majeure identified under the PPA with MSPDCL, affecting supply of power by the SPD to the Buying Entity.

- 4.4.2 Any excess generation over and above 10% of declared annual CUF may be purchased by MSPDCL at a fixed tariff of 75% (seventy-five percent) of the PPA tariff. However, the SPD shall inform at least 30 days in advance of such excess generation to buying Entity, to enable buying Entity to take necessary actions for the acceptance of this excess generated energy. Buying Entity shall be required to intimate its approval/refusal to the SPD, for buying such excess generation not later than 15days (No response beyond 15days shall be construed as refusal by Buying Entity) of receiving the above offer from the SPD. While the SPD would be free to install DC solar field as per his design of required output, including his requirement of auxiliary consumption. In case at any point of time, the peak of capacity reached is higher than the rated capacity and causes disturbance in the system at the point where power is injected, the SPD will have to forego the excess generation and reduce the output to the rated capacity to ensure compliance with grid requirement.



Any energy produced and flowing into the grid before Scheduled Commissioning Date shall not be at the cost of MSPDCL. MSPDCL may agree to buy such power at a tariff as agreed to between MSPDCL and SPD, provided the MSPDCL consents for purchase of such power.

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

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

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

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to Article 4.5.6, for a reasonable period but not less than 'day for day' basis, to permit the SPD or MSPDCL through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or MSPDCL, or till such time such Event of Default is rectified by MSPDCL.

**4.5.2** Subsequent to grant of connectivity, in case there is a delay in grant/ operationalization of LTA and/or there is a delay in readiness of the evacuation infrastructure at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the transmission network until SCD of the Project, and it is established that:

- (i) The SPD has complied with the complete application formalities as per RfS,
- (ii) The SPD has adhered to the applicable procedure in this regard as notified by the SERC/DISCOM, and
- (iii) The delay in grant of connectivity/LTA and/or delay in evacuation infrastructure at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the transmission network, is a factor attributable to the MSPDCL and/or transmission licensee and is beyond the control of the SPD;

The above shall be treated as delays beyond the control of the SPD and SCD for such Projects shall be revised subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or operationalization of LTA. Decision on requisite extension on account of the above factor shall be taken by MSPDCL and shall be binding on SPD.

- 4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of 365 days from the date of the Force Majeure Notice, any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.10. In case neither party terminates the Agreement under this clause, the Agreement shall stand terminated on the expiry of Fifteen (15) months of the continuation of the Force Majeure event unless the parties mutually agree to extend the Agreement for the further period.
- 4.5.4 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Article 16.
- 4.5.5 As a result of such extension on account of Article 4.5.1 or Article 4.5.2, the newly determined Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.
- 4.5.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond the date pursuant to Article 4.6.2.
- 4.5.7 Delay in commissioning of the project beyond the scheduled commissioning date for reasons other than those specified in Article 4.5.1 & Article 4.5.2 shall be an event of default on part of the SPD and shall be subject to the consequences specified in the Article 4.6.

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

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

Delay beyond the Scheduled Commissioning Date upto (& including) the date as on 6 months after the Scheduled Commissioning Date: The total PBG amount shall be encharged on per day basis and proportionate to the balance capacity not

commissioned. In case of calculation of liquidated damages, a 'month' shall comprise 30 days.

- 4.6.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee shall be limited to 6 months after the SCD of the Project. In case, the Commissioning of the Project is delayed beyond 6 months after the SCD, the Contracted Capacity shall stand reduced / amended to the Project Capacity Commissioned within 6 months after the SCD and the PPA for the balance Capacity will stand terminated and shall be reduced from the project capacity.
- 4.6.3 The SPD further acknowledges that the amount of the liquidated damages fixed is genuine and reasonable pre-estimate of the damages that may be suffered by MSPDCL as specified under this Agreement.
- 4.6.4 Any delay in handing over land to the SPD in accordance with the given timelines, or delay on account of legal issues arising out of handing over of the land to the SPD, shall entail a corresponding extension in financial closure deadline and scheduled commissioning date..

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

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

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

- 4.8.1 The SPD shall be further required to provide entry to the site of the Power Project free of all encumbrances at all times during the Term of the Agreement to MSPDCL and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the SPD at the site of the Power Project.
- 4.8.2 The third party may verify the construction works/operation of the Power Project being carried out by the SPD and if it is found that the construction works/operation of the Power Project is not as per the Prudent Utility Practices, it may seek clarifications from SPD or require the works to be stopped or to comply with the instructions of such third party.

#### **4.9 *Breach of Obligations***

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

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

##### **4.10.1 Generation Compensation in offtake constraint due to Transmission**

**Infrastructure not complete/ ready (Transmission constraint):** After the Scheduled Commissioning Date, subject to the submission of documentary evidences from the Competent Authority, if the plant is ready in all respects upto the delivery point but the necessary power evacuation/ transmission infrastructure is not ready, for reasons not attributable to the SPD, leading to offtake constraint, the generation compensation shall be restricted to the following and there shall be no other claim, directly or indirectly against MSPDCL:

<b>Transmission Constraint</b>	<b>Provision for Generation Compensation</b>
If the Project is ready but the necessary power evacuation/transmission infrastructure is not ready, leading to offtake constraint	a. The normative CUF of 19% (Nineteen per cent) or committed CUF, whichever is lower, for the 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 Years, shall be procured by MSPDCL at the PPA tariff so as to offset this loss.

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

However, it is also clarified that if the plant is ready in all respects upto the delivery point to connect to the delivery point and it is also ready to evacuate the power, but the necessary power evacuation/ transmission infrastructure is not ready/available at the end of STU/DISCOM network leading to offtake constraint (full or part), then MSPDCL shall compensate SPD as per this clause assuming the off take constraint is due to MSPDCL only.

**4.10.2 Generation Compensation in offtake constraint due to Grid Unavailability:** Since the unavailability of the Grid is uncontrollable from MSPDCL side, the situation may be taken as a ‘Force Majeure’ condition and MSPDCL shall not be liable for any compensation towards the SPD.

**4.10.3 Offtake constraints due to Backdown:** The payment to be made to generators by MSPDCL due to offtake constraint will be reimbursable from the agency responsible for evacuation infrastructure (MSPCL or STU, as the case may be). DISCOM periphery in Manipur starts from 11 KV System onwards, any fault above 11 KV system shall not be the responsibility of MSPDCL.

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

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

- 5.1.1 The SPD shall give MSPDCL/ Concerned Authority (SLDC as applicable) at least sixty (60) days’ advanced preliminary written notice and at least thirty (30) days’ advanced final written notice, of the date on which it intends to synchronize the Power Project to the Grid System.
- 5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the SPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.1.3 The synchronization equipment and all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the SPD at its generation facility of the Power Project at its own cost. The SPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/Grid System and checking/verification is made by the concerned authorities of the Grid System.
- 5.1.4 The SPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code under intimation to MSPDCL. In addition, the SPD will inject in-firm power to grid time to time to carry out operational/ functional test prior to commercial operation. For avoidance

of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.

- 5.1.5 The SPD shall commission the Project as detailed in “Schedule 3: Commissioning Procedure” within eighteen (08) Months of the Effective Date of PPA. Declaration of COD shall only be done subject to the demonstration of the compliances as per Schedule-2 and subsequent upon the successful visit by the Commissioning Committee.
- 5.1.6 Part commissioning of the Project shall be accepted by MANIREDA&MSPDCL in accordance with “Schedule 2: Commissioning Procedure” of this PPA.
- 5.1.7 The Parties agree that for the purpose of commencement of the supply of electricity by SPD to MSPDCL, liquidated damages for delay etc., the Scheduled Commissioning Date as defined in this Agreement shall be the relevant date.

## **ARTICLE 6: DISPATCH AND SCHEDULING**

### **6.1 Dispatch and Scheduling**

- 6.1.1 The SPD shall be required to schedule its power as per the applicable regulations / requirements / guidelines of SERC or any other competent agency (SLDC) and same being recognized by the MSPDCL or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by MSPDCL from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the SPD.
- 6.1.2 The SPD shall be responsible for directly coordinating and dealing with the MSPDCL and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Solar Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the SPD and MSPDCL are the Grid connected entities in respect of the Solar Power contracted under this Agreement.
- 6.1.3 The SPD shall be responsible for any deviation from scheduling and for any resultant liabilities on account of charges for deviation as per applicable regulations and its amendments/ clarifications issued by CERC/SERC. DSM charges on this account shall be directly paid by the SPD.
- 6.1.4 Auxiliary power consumption will be treated as per the clause 9.3 of this PPA.

## **ARTICLE 7: METERING**

### **7.1 Meters**

7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the SPD and MSPDCL shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.

7.1.2 The SPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at SPD's side of Delivery Point.

7.1.3 In addition to ensuring compliance of the applicable codes, the SPD shall install Main & Check meters at the Delivery Point, along with Stand-by meter(s) as per the applicable Central/State regulations.

7.1.4 Void.

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

7.2.1 The grid connected Solar PV power plants will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the Project.

7.2.2 Online arrangement would have to be made by the SPD for submission of above data regularly for the entire period of this Power Purchase Agreement to the SLDC (as applicable), MSPDCL and the concerned Ministry or concerned agency as per applicable regulation / directions.

7.2.3 Reports on above parameters on monthly basis (or as required by Govt regulation / Govt guidelines) shall be submitted by the SPD to MSPDCL for entire period of PPA.



## **ARTICLE 8: INSURANCES**

### **8.1      *Insurance***

8.1.1 The SPD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, Insurances against such risks to keep the Project in good condition and shall take Industrial All Risk insurance policy covering risks against any loss or damage, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements, Implementation and Support Agreement and under the applicable laws.

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

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

In case of the Project being financed through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be applied as per such Financing Agreements.

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

### **8.3      *Effect on liability of MSPDCL***

8.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the SPD can claim compensation, under any Insurance shall not be charged to or payable either by Buyer or its Partner/Beneficiary States. It is for the SPD to ensure that appropriate insurance coverage is taken for payment by the insurer for the entire loss and there is no under insurance or short adjustment etc.

## **ARTICLE 9: APPLICABLE TARIFF**

9.1 The SPD shall be entitled to receive the Tariff of Rs. .... / kWh [Insert the Tariff discovered through the bidding process conducted by MANIREDA on behalf of MSPDCL, fixed for the entire term of this Agreement, with effect from the SCD, for the power sold by the SPD to the Buying Entity for the energy as reflected in the Energy Accounts. In case of early part-commissioning, till SCD, subject to the consent for such purchase by the Buying Utility, MSPDCL may purchase the generation @ 75% (seventy-five per cent) of the PPA tariff. However, in case the entire Project capacity is commissioned prior to SCD, MSPDCL may purchase energy supplied till SCD at **[Insert PPA Tariff]/kWh**. In both the cases of early part or full commissioning of the Project, the Applicable Tariff for the commissioned Project shall be Rs. \_\_\_\_\_/kWh **[Insert PPA Tariff]** from and including the SCD.

9.2 Any excess generation over and above energy specified in Article 4.4.1, will be purchased by MSPDCL at a tariff of 75% of the tariff as per Article 9.1, provided the Buying Entity consents for purchase of such excess generation. However, the SPD will not be allowed to sell energy generated prior to SCD or excess energy during any Contract Year to any other entity other than MSPDCL (unless refused by MSPDCL). However, the SPD shall inform at least 30 days in advance of such excess generation to buying Entity, to enable buying Entity to take necessary actions for sale of this excess generated energy.

Buying Entity shall be required to intimate its approval/refusal to the SPD, for buying such excess generation not later than 15 days of receiving the above offer from the SPD. In case at any point of time, the peak of capacity reached is higher than the rated capacity and causes disturbance in the system at the point where power is injected, the SPD will have to forego the excess generation and reduce the output to the rated capacity to ensure compliance with grid requirement.

### **9.3 Auxiliary Power Consumption by the SPD**

SPD shall be entitled to draw the power for its auxiliary consumption from the grid. Auxiliary power shall be adjusted by the Buying Entity from energy billing through net off scheme from the delivered energy, as indicated below:

Net Energy = Delivered Energy by the SPD at Delivery Point - Energy draws from Buying Entity Grid for auxiliaries as recorded at the Delivery Point. The import energy may be billed at PPA tariff in this case.

## **ARTICLE 10: BILLING AND PAYMENT**

### **10.1     *General***

10.1.1 Void.

10.1.2 From the commencement of supply of power, MSPDCL shall unconditionally pay to the SPD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with Article 9. All Tariff Payments by MSPDCL shall be in Indian Rupees.

10.1.3 For the purpose of payment of the bills raised by the SPD(s), in case Energy Account is published on cumulative basis, payment to the SPD(s) for the energy delivered shall be apportioned based on JMR taken for the SPD's Project at the STU substation/delivery point / metering point.

10.1.4 The SPD shall be required to make arrangements and payments for import of energy (if any) at PPA tariff.

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

10.2.1 The SPD shall issue to MSPDCL hard copy of a signed Monthly Bill/Supplementary Bill for the immediately preceding Month/relevant period based on the issuance of Energy Accounts along with all relevant documents (payments made by SPD for drawal of power, payment of reactive energy charges, Metering charges or any other charges as per guidelines of SERC, if applicable.

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 MSPDCL or any other competent authority which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy as per Energy Accounts and the Applicable Tariff. Energy drawn from the grid will be regulated as per the regulations of respective State the Project is located in.

10.2.2 As per applicable regulation(s) of the Appropriate Commission, all charges pertaining to obtaining open access and scheduling of power upto the SPD's obligations as defined in the PPA, if any, shall be borne by the SPD. All similar charges, if any, beyond delivery point, shall be borne by MSPDCL.

### 10.3 *Payment of Monthly Bills*

10.3.1 MSPDCL shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the SPD, as shall have been previously notified by the SPD as below.

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

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

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

#### 10.3.3 Late Payment Surcharge

In the event of delay in payment of a Monthly Bill by MSPDCL beyond Due date, Late Payment Surcharge shall be payable to the SPD at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by the SPD through the Supplementary Bill.

10.3.4 Subject to the Article 9 of this Agreement, in the event of early Commissioning of the Project and subject to acceptance by MSPDCL, the payment for the power fed to the grid may be accounted from the date of Commissioning of any part or full (whichever is earlier and SPD would be allowed to raise Bills accordingly).

### 10.3.5 Rebate

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

- a) A Rebate of 2% shall be payable to the MSPDCL for the payments made within a period of 10 (ten) days of the presentation of hard copy of Bill.
- b) Any payments made after ten (10) days of the date of presentation of Bill through hard copy up to the Due Date shall be allowed a rebate of 1%.
- c) For the above purpose, the date of presentation of Bill shall be the next Business Day of delivery of the physical copy of the Bill at MSPDCL.
- d) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc. and on Supplementary Bill.

For the above purpose date of presentation of bill shall be the same day of delivery in hard copy. However, for consideration of rebate, next business day shall be considered.

## 10.4 Payment Security Mechanism

### Letter of Credit (LC):

10.4.1 MSPDCL shall provide to the SPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the SPD in accordance with this Article.

10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, MSPDCL through a scheduled bank open a Letter of Credit in favour of the SPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

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

- 10.4.3 Provided that the SPD shall not draw upon such Letter of Credit prior to 30 days beyond the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.
- 10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, MSPDCL shall restore such shortfall within fifteen (15) days.
- 10.4.5 MSPDCL shall cause the scheduled bank issuing the Letter of Credit to intimate the SPD, in writing regarding establishing of such irrevocable Letter of Credit.
- 10.4.6 MSPDCL shall ensure that the Letter of Credit shall be renewed not later than its expiry.
- 10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by MSPDCL.
- 10.4.8 If MSPDCL fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including date as on 30 days beyond the Due Date, then, subject to Article 10.4.6 & 10.5.2, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from MSPDCL, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to SPD and;
- ii) a certificate from the SPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

## **10.5 Disputed Bill**

- 10.5.1 If the MSPDCL does not dispute a Monthly Bill or a Supplementary Bill raised by the SPD within thirty(30) days of receiving such Bill shall be taken as conclusive.

10.5.2 If the MSPDCL disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 50% of the invoice amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- i) the details of the disputed amount;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its claim.

10.5.3 If the SPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the SPD shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

10.5.4 If the SPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the MSPDCL providing:

- i) reasons for its disagreement;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its counter-claim.

10.5.5 Upon receipt of the Bill Disagreement Notice by the MSPDCL under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the MSPDCL and SPD shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.



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

10.5.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an invoice, MSPDCL shall, without prejudice to its right to Dispute, be under an obligation to make payment of 50% of the invoice amount in the Monthly Bill.

## **10.6 Quarterly and Annual Reconciliation**

10.6.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

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

## **10.7 Payment of Supplementary Bill**

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

- i) Adjustments required by the Energy Accounts (if applicable); or
- ii) Change in Law as provided in Article 12, or
- iii) Payment under Article 4.10,

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

10.7.2 MSPDCL shall remit all amounts due under a Supplementary Bill raised by the SPD to the SPD's Designated Account by the Due Date, except open access charges, LDC or scheduling charges and transmission charges (if applicable). For Supplementary Bill on account of adjustment required by energy account and payments under Article 4.10, Rebate as applicable to Monthly Bills pursuant to Article 10.3.5 shall equally apply. Payment will be made after realization of the same from the Buying Entity. No surcharge will be applicable other than that on the monthly energy payment and associated debit and credit note.

10.7.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 10.3.3.

## **ARTICLE 11: FORCE MAJEURE**

### **11.1 *Definition of Force Majeure***

A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly or partly prevents or unavoidably delays the performance by the Party (the Affected Party) of its obligations under the relevant Power Purchase Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices.

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

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

#### **11.2.1 Natural Force Majeure Event**

- a) Act of God, including, but not limited to lightning, fire, epidemic/pandemic and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of Procurer;
- b) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party;
- c) the discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land; or
- d) any event or circumstances of a nature analogous to any of the events as specified under Article 11.2.1 (a), 11.2.1 (b) and 11.2.1 (c).

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

- a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;
- b) nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its contractors;
- c) nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the SPD, as a result of which the SPD or its shareholders are deprived (wholly or partly) of their rights or entitlements under the Power Purchase Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the SPD or the SPD related parties;
- d) action of a Government Authority having Material Adverse Effect including but not limited to Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 12 of this Agreement; any unlawful or unauthorised or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the SPD or any of the clearance, licence, authorization to be obtained by the contractors to perform their respective obligations under the relevant PPA and/or the Project Documents; provided that such delay, modification, denial, refusal or revocation did not result from the SPD's or any contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, licence, authorization, as the case may be.

### **11.3 Force Majeure Exclusions**

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

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

#### **11.4 *Notification of Force Majeure Event***

11.4.1 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.

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

11.4.3 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event

of Force Majeure on the performance of its rights or obligations under the PPA, as soon as practicable after becoming aware of each of these cessations.

#### **11.5 Performance Excused**

11.5.1 The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the PPA as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 365 (Three Hundred Sixty Five) Days from the date of issuance of the FM Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.

11.5.2 For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the generator shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the PPA period, as the case may be.

11.5.3 Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.

11.5.4 Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

#### **11.6 No Liability for Other Losses**

Save as otherwise provided in this Agreement, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event.

#### **11.7 Resumption of Performance**

During the period that a Force Majeure Event is subsisting, the Affected Party shall, in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under the PPA. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon

resumption, shall notify other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

#### **11.8 Duty to Perform and Duty to Mitigate**

To the extent not prevented by a Force Majeure Event pursuant to Article 11.2, the Affected Party shall continue to perform its obligations pursuant to this Agreement, in line with provisions of Article 11.5. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

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

Subject to this Article 11:

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

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

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

- a) If, prior to the completion of the 365 (Three Hundred Sixty Five) Day period (or any extended period) for a Natural Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the

Parties are of the reasonable view that a Natural Force Majeure Event is likely to continue beyond such 365 (Three Hundred Sixty Five) Day period or any extended period agreed in pursuance of Article 11.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the PPA, and the termination shall take effect from the date on which such decision is taken.

- b) Without prejudice to the provisions of Article 11.10.1.(a) above, the Affected Party shall, after the expiry of the period of 365 (Three Hundred Sixty Five) Days or any other mutually extended period, be entitled to forthwith terminate the PPA in its sole discretion by issuing a notice to that effect.
- c) On termination of the PPA pursuant to Article 11.10.1(b):
  - i. no Termination Compensation shall be payable to the SPD.
  - ii. the SPD shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

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

- a) If, prior to the completion of the 365 (Three Hundred Sixty Five) Day period (or any extended period) for a Non Natural Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Non Natural Force Majeure Event is likely to continue beyond such 365 (Three Hundred Sixty Five) Day period or any extended period agreed in pursuance of Article 11.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the PPA, and the termination shall take effect from the date on which such decision is taken.
- b) Without prejudice to the provisions of Article 11.10.2.(a) above, the Affected Party shall, after the expiry of the period of 365 (Three Hundred Sixty Five) Days or any other mutually extended period, be entitled to forthwith terminate the PPA in its sole discretion by issuing a notice to that effect.
- c) On termination of the PPA pursuant to Article 11.10.2 (b):
  - i. no Termination Compensation shall be payable to the SPD.



- ii. the SPD shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

## ARTICLE 12: CHANGE IN LAW

### 12.1 *Definitions*

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

12.1.1 In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after **[Insert last date of bid submission]** including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining a consent, permit or license, not owing to any default of the Solar Power Developer; or (v) any change in the rates of any Taxes including any duties and cess or introduction of any new tax/cess/duty made applicable for setting up the solar power project and supply of power from the Solar Power project by the SPD which have a direct effect on the Project. It is further clarified that, applicability of Safeguard Duty on “Solar Cells whether or not assembled in modules or panels” which is till 29.07.2021, if gets extended and has a direct effect on the Project, resulting in change in Project Cost, such extension will also qualify under “Change in Law” as per timeline and procedure indicated under this Article. However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD.

12.1.2 In the event of occurrence of any of events as provided under Article 12.1.1 which results in any increase/ decrease in the Project Cost (i.e. cost incurred by the SPD towards supply and services only for the Project concerned, upto the Actual Commissioning Date of the last part capacity or Scheduled Commissioning Date/revised Scheduled Commissioning Date (as applicable), whichever is earlier), the SPD/ Buying Utility shall be entitled for compensation by the other party, as the case may be, subject to the condition that the such ‘Change in Law’ is recognized by the Appropriate Commission. Compensation payment on account of

such 'Change in Law' shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

12.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after [Insert last date of bid submission] and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 12.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on SPD and Buying Entity.

## **12.2 *Relief for Change in Law***

12.2.1 Save and except as provided under Article 12.1.3, the aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.

12.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on SPD and Buying Entity.

12.2.3 In case of Change in Law as approved by the Appropriate Commission pursuant to Article 12.2.1 or as provided under Article 12.1.3, the SPD/ Buying Entity (as the case may be) shall be entitled for relief as follows:

**Every net increase/decrease of Rs.1 lakh per MW in the Project Cost, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges, as the case may be, shall be liable for corresponding increase/decrease of an amount equal to Rs 0.005 /kWh.**

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

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

12.2.4 In case Change in Law results in delay in commissioning or supply of power, where cause and effect between these two can be clearly established, the Buying Entity may provide suitable time-extension in Scheduled Commissioning Date .

- 12.2.5 In the event of any decrease in the project cost by the SPD or any income to the SPD on account of any of the events as indicated above, SPD shall pass on the benefit of such reduction at a rate as provided in Article 12.2.3 to the Buying Entity which shall be further passed on to the Buying Entity. In the event of the SPD failing to comply with the above requirement, the Buying Entity shall make such deductions in the monthly tariff payments on immediate basis. Further, at the time of raising of 1st Monthly Tariff Payment Bill, SPD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 12.

### ***12.3 Notification of Change in Law***

- 12.3.1 If the SPD is affected by Change in Law in accordance with Article 12 and wishes to claim a Change in Law under this Article, it shall give notice to the Buying Utility of such Change in Law as soon as reasonably practicable (but no later than 60 days from the date of occurrence of such Change in Law).
- 12.3.2 Any notice service pursuant to this Article 12.3.1 and 12.1.3, shall provide, amongst other things, precise details of the Change in Law and its effect on the Project Cost, supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.

## ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

### 13.1 *SPD Event of Default*

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

- (i) the failure to commence supply of power to MSPDCL up to the Contracted Capacity, by the end of the period specified in Article 4, or failure to continue supply of Contracted Capacity to MSPDCL after Commercial Operation Date throughout the term of this Agreement, or

if

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

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

- is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
- is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;

- (ii) if

- (a) the SPD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or

- (b) any winding up or bankruptcy or insolvency order is passed against the SPD, or

- (c) the SPD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is

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

- (iii) the SPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from MSPDCL in this regard; or
- (iv) except where due to any MSPDCL's failure to comply with its material obligations, the SPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPD within thirty (30) days of receipt of first notice in this regard given by MSPDCL.
- (v) change in controlling shareholding before the specified time frame as mentioned in Article 4.1.1 of this Agreement; or
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SPD.
- (vii) except where due to any MSPDCL's failure to comply with its material obligations, the SPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPD within thirty (30) days of receipt of first notice in this regard given by MSPDCL.

### **13.2 MSPDCL Event of Default**

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

- (i) MSPDCL fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the SPD is unable to recover the amount outstanding to the SPD through the Letter of Credit,
- (ii) MSPDCL repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the SPD in this regard; or

- (iii) except where due to any SPD's failure to comply with its obligations, MSPDCL is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by MSPDCL within sixty (60) days of receipt of notice in this regard from the SPD to MSPDCL; or if
- MSPDCL becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of sixty (60) days, or
  - any winding up or bankruptcy or insolvency order is passed against MSPDCL, or
  - MSPDCL goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that it shall not constitute a MSPDCL Event of Default, where such dissolution or liquidation of Buyer or MSPDCL is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to MSPDCL and expressly assumes all obligations of MSPDCL and is in a position to perform them; or;
- (iv) Occurrence of any other event which is specified in this Agreement to be a material breach or default of MSPDCL.

### **13.3    *Procedure for cases of SPD Event of Default***

- 13.3.1 Upon the occurrence and continuation of any SPD Event of Default under Article 13.1, MSPDCL shall have the right to deliver to the SPD, with a copy to the representative of the lenders to the SPD with whom the SPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (MSPDCL Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

- 13.3.2 Following the issue of a MSPDCL Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 13.3.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the SPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, MSPDCL may terminate this Agreement by giving a written Termination Notice of sixty (60) days to the SPD.
- 13.3.5 Subject to the terms of this Agreement, upon occurrence of a SPD Event of Default under this Agreement, the SPD shall be liable pay to MSPDCL, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity. MSPDCL shall have the right to recover the said damages by way of forfeiture of bank guarantee, if any, without prejudice to resorting to any other legal course or remedy. In addition to the levy of damages as aforesaid, the lenders in concurrence with the MSPDCL, may exercise their rights, if any, under Financing Agreements, to seek substitution of the SPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the SPD and performing the obligations of the SPD. However, in the event the lenders are unable to substitute the defaulting SPD within the stipulated period, MSPDCL may terminate the PPA and may acquire the Project assets for an amount equivalent to 90% of the Debt Due or less as mutually agreed, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets. Provided that any substitution under this Agreement can only be made with the prior consent of MSPDCL including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by MANIREDA and accepts the terms and conditions of this Agreement.

13.3.6 The lenders in concurrence with the MSPDCL, may seek to exercise right of substitution under Article 13.3.5 by an amendment or notation of the PPA in favour of the selectee. The SPD shall cooperate with MSPDCL to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized. In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a new entity, an amount of Rs. 10 Lakh per Project+ 18% GST per transaction as facilitation fee (non-refundable) shall be deposited by the SPD to MSPDCL.

13.3.7 In the event the lenders are unable to substitute the defaulting SPD within the stipulated period, MSPDCL may terminate the PPA and may acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.

#### **13.4 Procedure for cases of MSPDCL Event of Default**

13.4.1 Upon the occurrence and continuation of any MSPDCL Event of Default specified in Article 13.2, the SPD shall have the right to deliver to MSPDCL, a SPD Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

13.4.2 Following the issue of a SPD Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

13.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

13.4.4 After a period of two hundred ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary, MSPDCL under intimation to the SPD shall novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the SPD, or if no offer of novation is



## MSPDCL-SPD PPA

made by MSPDCL within the stipulated period, then the SPD may terminate the PPA and at its discretion require MSPDCL to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the Debt Due and 110% (one hundred and ten per cent) of the Adjusted Equity less Insurance Cover, if any, or, (ii) pay to the SPD, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the SPD.

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

In the event of termination of PPA which is attributable to SPD, any damages or charges payable to the MSPDCL, for the connectivity of the plant, shall be borne by the SPD.

### **13.5** Not Used.

## **ARTICLE 14: LIABILITY AND INDEMNIFICATION**

### **14.1     *Indemnity***

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

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

14.1.2 MSPDCL shall defend and hold the SPD harmless against:

- a) any and all third party claims against the SPD, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by MSPDCL of any of their obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the SPD from third party claims arising by reason of a breach by MSPDCL of any of its obligations.

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

#### **14.2.1 *Third party claims***

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or 14.1.2(a) in respect of which it is entitled to be indemnified.

Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

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

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

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

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

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

- 14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of nonpayment of such losses after a valid notice under this Article 14.3, such event shall constitute a payment default under Article 13.

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

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

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

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

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

## **ARTICLE 15: ASSIGNMENTS AND CHARGES**

### **15.1     *Assignments***

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

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

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

The enforcement of the rights and obligation between the SPD and the Buying Entity provided in this Agreement shall not be treated as an assignment but an enforcement of the terms agreed under this Agreement.

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

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

### **15.2     *Permitted Charges***

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

## **ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION**

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

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

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

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

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (“Dispute”) by giving a written notice (Dispute Notice) to the other Party, which shall contain:
  - (a) a description of the Dispute;
  - (b) the grounds for such Dispute; and
  - (c) all written material in support of its claim.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 16.2.1(i), furnish:
  - (a) counter-claim and 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 16
  - (i) if the other Party does not furnish any counter claim or defence under Article 16
  - (ii) or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably.
  - (iii) If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 16.2.1, the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

16.3 ***Dispute Resolution***

16.3.1 **Settlement of Dispute**

- i) Where any Dispute or differences arises in relation to this agreement of any nature whatsoever including the construction, interpretation or implementation of the provisions of this agreement as well as claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, and relates to any matter, the parties shall seek to resolve any such dispute or difference by mutual consent as per the provisions of the Electricity Act, 2003, as amended from time to time.
- ii) If the parties fail to resolve, such a dispute or difference by mutual consent, within 45 days of its arising, then the dispute shall be referred by either party by giving notice to the other party in writing of its intention to refer to arbitration as hereafter provided regarding matter under dispute. No arbitration proceedings will commence unless such notice is given. Any dispute, in respect of which a notice of intention to commence arbitration has been given in accordance with sub-clause 16.3.1 (I), shall be finally settled by arbitration.

16.3.2 **IN CASE THE CONTRACTOR IS A PUBLIC-SECTOR ENTERPRISE OR A GOVERNMENT DEPARTMENT.**

- i) In case the Contractor is a Public-Sector Enterprise or a Government Department, the dispute shall be referred for resolution in Permanent Machinery for Arbitration (PMA) of the Department of Public Enterprise, Government of India. Such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary / Additional Secretary, when

so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusive. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

### **16.3.3 IN ALL OTHER CASES**

In all other cases, any dispute submitted by a party to arbitration shall be heard by an arbitration panel composed of three arbitrators, in accordance with the provisions set forth below.

- i) MSPDCL and the SPD shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the two arbitrators do not succeed in appointing a third arbitrator within Thirty (30) days after the later of the two arbitrators has been appointed, the third arbitrator shall, at the request of either party, be appointed by the Appointing Authority for third arbitrator which shall be the President, Institution of Engineers.
- ii) If one party fails to appoint its arbitrator within thirty (30) days after the other party has named its arbitrator, the party which has named an arbitrator may request the Appointing Authority to appoint the second arbitrator.
- iii) If for any reason an arbitrator is unable to perform its function, the mandate of the Arbitrator shall terminate in accordance with the provisions of applicable laws as mentioned in Clause 16.3.3.(i) and a substitute shall be appointed in the same manner as the original arbitrator.
- iv) Arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. The venue of arbitration shall be at Imphal.
- v) The decision of a majority of the arbitrators (or of the third arbitrator chairing the arbitration panel, if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction as decree of the court. The parties thereby waive any objections to or claims of immunity from such enforcement.
- vi) The arbitrator(s) shall give reasoned award.
- vii) Notwithstanding any reference to the arbitration herein, the parties shall continue to perform their respective obligations under the agreement unless they otherwise agree.



- viii) Cost of arbitration shall be equally shared between the SPD and MSPDCL

#### **16.4     *Parties to Perform Obligations***

- 16.4.1 Notwithstanding the existence of any Dispute and difference referred as per clause 16.3 above, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

## **ARTICLE 17: MISCELLANEOUS PROVISIONS**

### **17.1     *Amendment***

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

### **17.2     *Third Party Beneficiaries***

17.2.1 Subject to provisions contained in this agreement relating to implications of the PPA, this Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

### **17.3     *Waiver***

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

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

### **17.4     *Confidentiality***

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

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

## **17.5 Severability**

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

## **17.6 Notices**

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

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

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

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

(i) Address :  
Attention :  
Email :  
Fax. No. :  
Telephone No. :

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

registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

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

## **17.7     *Language***

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

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

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

17.8.1 Parties expressly agree and acknowledge that none of the shareholders of the SPD hereto shall be liable to MSPDCL or its Partner/Beneficiary States for any of the contractual obligations of the SPD under this Agreement. Further, the financial liabilities of the shareholder/s of SPD to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 2013.

## **17.9     *Taxes and Duties***

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

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

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

**17.10 *Independent Entity***

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

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

**17.11 *Compliance with Law***

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

**17.12.Void.**

**17.13*Breach of Obligations***

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

**17.14***Order of priority in application*

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

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

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

For and on behalf of  
[MSPDCL]

For and on behalf of  
[SPD]

Name, Designation and Address  
Signature with seal

Name, Designation and Address  
Signature with seal

Witness:

1.

2.

Witness:

1.

2.

**SCHEDULE 1: FORMAT OF THE PERFORMANCE BANK GUARANTEE**

(to be submitted separately for each Project)

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

In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected Solar Power Developer') submitting the response to RfS inter alia for selection of the Project of the capacity of **100 MW at estate land as identified by the Government of Manipur, in Jiri bam district, in the state of Manipur** under ..... [Insert name of the RfS], for supply of power there from on long term basis, in response to the RfS dated ..... issued by Manipur Renewable Energy Development Agency (hereinafter referred to as MANIREDA) and MANIREDA considering such response to the RfS of ..... [insert the name of the selected Solar Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Solar Power Project of the Solar Power Developer and issuing Letter of Intent No ----- to (Insert Name of selected Solar Power Developer) as per terms of RfS and the same having been accepted by the selected SPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Solar Power Developer or a Project Company, M/s ----- {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable ]. As per the terms of the RfS, the \_\_\_\_\_ [insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to MSPDCL at [Insert Name of the Place from the address of the MSPDCL] without demure forthwith on demand in writing from MSPDCL or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees----- [Total Value] only, on behalf of M/s \_\_\_\_\_ [Insert name of the selected Solar Power Developer / Project Company]

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

Our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ only.

Our Guarantee shall remain in force until..... MSPDCL shall be entitled to invoke this Guarantee till .....

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



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

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

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

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

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

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

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

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ (Rs. \_\_\_\_\_ only) and it shall remain in force until ..... (Provide for two additional months after the period of guarantee for invoking the process of encashment) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if MSPDCL serves upon us a written claim or demand.

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Power of Attorney No. \_\_\_\_\_

MSPDCL-SPD PPA

For

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

E-mail ID of the bank:

Banker's Stamp and Full Address.

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

Witness:

1. ....

Signature

Name and Address

2. ....

Signature

Name and Address

Notes:

1. The Stamp Paper should be in the name of the Executing Bank and of appropriate value.
2. The Performance Bank Guarantee shall be executed by Nationalized Bank from the List of Banks enclosed.

**SCHEDULE 2: FORMAT OF PAYMENT ON ORDER INSTRUMENT TO BE ISSUED BY IREDA/REC/PFC**

No.

Date

*Registered*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Reg: M/s \_\_\_\_\_(insert name of the PPA signing entity) (Project No. \_\_\_\_\_(insert project ID issued by MANIREDA) – Issuance of Payment on Order Instrument for an amount of Rs. \_\_\_\_\_**

Dear Sir,

1. It is to be noted that M/s. \_\_\_\_\_(insert name of the POI issuing Agency) ('IREDA/REC/PFC') has sanctioned a non-fund based limit loan of Rs. \_\_\_\_\_ (Rupees\_\_\_\_\_only) to M/s \_\_\_\_\_ under the Loan Agreement executed on \_\_\_\_\_ to execute Renewable Energy Project.
2. At the request of M/s \_\_\_\_\_, on behalf of \_\_\_\_\_(insert name of the SPV), this Payment on Order Instrument (POI) for an amount of Rs. \_\_\_\_\_(Rupees\_\_\_\_\_(in words)). This Payment on Order Instrument comes into force immediately.
3. In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected Solar Power Developer') submitting the response to RfS inter alia for selection of the Project of the capacity of ..... MW, at .....[Insert name of the place] under RfS for \_\_\_\_\_(insert name of the RfS), for supply of power there from on long term basis, in response to the RfS dated..... issued by Manipur Renewable Energy Development Agency/ Manipur State Power Distribution Company Limited (hereinafter referred to as MANIREDA/MSPDCL) and MANIREDA/MSPDCL considering such response to the RfS of .....[insert the

name of the selected Solar Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Solar Power Project of the Solar Power Developer and issuing Letter of Award No ----- to (Insert Name of selected Solar Power Developer) as per terms of RfS and the same having been accepted by the selected SPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Solar Power Developer or a Project Company, M/s ----- {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable ]. As per the terms of the RfS, the \_\_\_\_\_ [insert name & address of IREDA/PFC/REC] hereby agrees unequivocally, irrevocably and unconditionally to pay to MANIREDA/MSPDCL at [Insert Name of the Place from the address of the MANIREDA/MSPDCL] forthwith on demand in writing from MANIREDA/MSPDCL or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees----- [Total Value] only, on behalf of M/s \_\_\_\_\_ [Insert name of the selected Solar Power Developer / Project Company].

4. In consideration of the above facts, IREDA/REC/PFC, having its registered office at \_\_\_\_\_, agrees to make payment for the sum of Rs. \_\_\_\_\_ lakhs (in words.....) to MANIREDA/MSPDCL on the following conditions:-

- (a) IREDA/REC/PFC agrees to make payment of the above said amount unconditionally, without demur and without protest within a period of \_\_\_\_\_ days of receipt of request from MANIREDA/MSPDCL within the validity period of this letter as specified herein;
- (b) The commitment of IREDA/REC/PFC, under this Payment of Order Instrument will have the same effect as that of the commitment under the Bank Guarantee issued by any Public Sector Bank and shall be enforceable in the same manner as in the case of a Bank Guarantee issued by a Bank and the same shall be irrevocable and shall be honored irrespective of any agreement or its breach between IREDA/REC/PFC or its constituents notwithstanding any dispute that may be raised by the against MANIREDA/MSPDCL;

- (c) The liability of IREDA/REC/PFC continues to be valid and binding on IREDA/REC/PFC and shall not be terminated, impaired and discharged, by virtue of change in its constitution and specific liability under letter of undertaking shall be binding on its successors or assignors;
  - (d) The liability of IREDA/REC/PFC shall continue to be valid and binding on IREDA/REC/PFC and shall not be terminated/ impaired/ discharged by any extension of time or variation and alternation made given or agreed with or without knowledge or consent of the parties (MANIREDA/MSPDCL and Bidding Party), subject to the however to the maximum extent of amount stated herein and IREDA/REC/PFC is not liable to any interest or costs etc;
  - (e) This Payment of Order Instrument can be invoked either partially or fully, till the date of validity;
  - (f) IREDA/REC/PFC agrees that it shall not require any proof in addition to the written demand by MANIREDA/MSPDCL made in any format within the validity period. IREDA/REC/PFC shall not require MANIREDA/MSPDCL to justify the invocation of the POI against the SPV/SPD, to make any claim against or any demand against the SPV/SPD or to give any notice to the SPV/SPD;
  - (g) The POI shall be the primary obligation of IREDA/REC/PFC and MANIREDA/MSPDCL shall not be obliged before enforcing the POI to take any action in any court or arbitral proceedings against the SPV/SPD;
  - (h) Neither MANIREDA/MSPDCL is required to justify the invocation of this POI nor shall IREDA/REC/PFC have any recourse against MANIREDA/MSPDCL in respect of the payment made under letter of undertaking;
5. Notwithstanding anything contrary contained anywhere in this POI or in any other documents, this POI is and shall remain valid upto\_\_\_\_\_ and IREDA/REC/PFC shall make payment there under only if a written demand or request is raised within the said date and to the maximum extent of Rs.....and IREDA/REC/PFC shall in no case, be liable for any  
(Insert Project ID)

interest, costs, charges and expenses and IREDA's/REC's/PFC's liability in no case will exceed more than the above amount stipulated.

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

Thanking you,

Yours faithfully

For and on behalf of

**M/s. \_\_\_\_\_**

**(name of the POI issuing agency).**

( )

General Manager (TS)

Copy to:-

M/s. \_\_PP\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ As per their request

( )

General Manager (TS)

**SCHEDULE 3: COMMISSIONING PROCEDURE:****❖Capacity of Solar PV Projects:**

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

Sr. No.	Solar PV Project Capacity Bid	Minimum DC Arrays Capacity to be installed	Minimum Rated Inverter Capacity*	Maximum AC Capacity Limit at Delivery point
1	100 MW	100 MW	100 MW	100 MW

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

ii) The SPD shall be required to demonstrate compliances with the “*Technical Requirements for Grid Connected Solar PV Power Plants*” as mentioned in the RfS.

iii) Higher DC capacity arrays can also be allowed, subject to the condition that the AC capacity limit as mentioned in (i) above for scheduling at the Delivery Point as per

Article 4.4 “Right to Contracted Capacity & Energy” of the PPA is complied with.

iv) For commissioning of the Project, cumulative capacity of DC arrays and cumulative capacity of the inverters installed shall be considered. In case of part commissioning of the Project, it shall be required to have the DC Arrays Capacity and inverters capacity be installed not less than the proposed part commissioning capacity.

v) If generation at any time exceeds the maximum permissible AC capacity at delivery point, the excess generation during that period may not be considered under PPA.

**Appendix-1**

**Commissioning Procedure**

- i) At the time of commissioning, the Commissioning Committee shall verify compliance of technical parameter of the Project as per Annexure A of the RfS document.
- ii) SPD shall give to the MSPDCL & concerned LDC, and MANIREDA 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 Ground Mounted 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 Committee during their visit to the Project and documented as per prescribed format.

**Documents to be submitted to MSPDCL/MANIREDA:**

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. The SPD shall also have to submit the hardcopies to MANIREDA if asked by MANIREDA for verification/ cross check.

- 1. Covering Letter
- 2. Board Resolution for Authorized Signatory.
- 3. Invoice(s) of the Major Equipment(s) (including but not limited to modules, mounting structure, Inverters/ PCUs/, Weather Monitoring Stations/ DC Cables and for all major electrical equipment).
- 4. All supporting documents towards meeting the technical compliance along with datasheet/ warranty certificates/ contract agreement etc. as mentioned in Annexure-A
- 5. Installation report duly signed by the authorized signatory as per Appendix - A2.
- 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. SPD shall ensure Connectivity to the grid from concerned Transmission Utility/ DISCOM. Connectivity report as per the Appendix - A3.
9. Synchronization Certificate as per prescribed format issued by respective Transmission Utility/ DISCOM for ascertaining injection of power into grid as per Appendix - A4.
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 MSPDCL&LDC acknowledging successful data communication between plant end and MSPDCL&LDC.
14. After the submission of the documents by SPD, MANIREDA shall verify the documents and intimate/ reply with remarks. In case any additional supporting/ revised documents are asked by MANIREDA, the same have to be submitted by the SPD.
15. Only after all the required documents are verified by MANIREDA, the SPD shall have to submit/ update on the portal the proposed commissioning date along with commissioning order issued by State Nodal Agency i.e. MANIREDA.
16. After the proposed commissioning date along with commissioning order is submitted, the commissioning committee 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.
17. SPD shall have to submit the as-built drawing after the commissioning prior to the UCOD/COD.
18. SPD shall have to push the required plant related data to MANIREDA designated server in xml/json formats. Additionally, SPD shall also provide the login details/ SCADA login to MANIREDA/MSPDCL for online real time data monitoring prior to UCOD/COD.
19. Early Commissioning of a Solar Project prior to the scheduled commissioning date is permitted on acceptance of power by MSPDCL. In order to facilitate this, SPD shall inform the MSPDCL&concerned LDC and MANIREDA well in advance the date on which it intends to synchronize the Power Project to the Grid System. The SPD shall be required to give an advance notice of at least 90 days prior to the proposed commissioning date.
20. Joint Meter Reading (JMR) shall be taken at Delivery Point and Pooling Substation (if applicable)/ plant premise at the time of connectivity of the Project with Grid. This shall include information of respective meters installed at delivery/ interconnection point and pooling substation/plant premises.

21. SPD is permitted to schedule the Commissioning of the Project in full or part as per the commissioning procedure elaborated in **Clause No. 16, Section-II, ITB of RfS** Documents.

Solar Power Developer would be required to plan commissioning/ synchronization with grid at least 10 (Ten) Days ahead of the last permissible date for commissioning. If not done so, whole responsibility for not meeting the deadline for commissioning on account of inability of the Committee to visit the project site for commissioning rests solely on the developer.

**Note:** The commissioning procedure may change subject to any guidelines from MSPDCL.

**Appendix - 2****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)

Sr. No.	Capacity of the Package (MW)	
	Capacity already commissioned (MW)	
	Capacity proposed to be commissioned (MW)	
I.	Technology used (Mono/ Multi Crystalline/ Thin Film/ Others; please specify along with capacity of each type)	
II.	Rating of each module (Wp)	
III.	Mounting structure details	
IV.	Angle from horizontal at which array is installed	
V.	Number of modules installed of each type	
VI.	Source(s) of the cells installed of each type	
VII.	Source(s) of the Modules installed of each type	
VIII.	Number of PCUs/ Inverters installed	
IX.	Source of the PCUs/ Inverters (Name of supplier with address)	
X.	Rating of PCUs/ Inverters	
XI.	Date of Installation of Part / Full Capacity (as per Capacity proposed to be Commissioned)	
	PV Arrays	
	PCUs/ Inverters	
	Transformers	

**Full Commissioning Certificate**  
**of Ground Mounted Solar PV Power Project**

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

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

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

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

**ANNEXURE –I**

(Land Use Agreement/Lease/Rental Agreement to be enclosed here)