

Volume - II

TRI-PARTITE PROJECT DEVELOPMENT AND IMPLEMENTATION-AGREEMENT

BETWEEN

AND

AND

FOR

DESIGN, FINANCE, MANUFACTURE, SUPPLY, INSTALL, TEST, COMMISSION,
OPERATE AND MAINTAIN ROOF TOP SOLAR PV SYSTEMS FOR 25 YEARS AND
EXECUTE PPA WITH MESCOM ON NET-METERING BASIS

Table of Contents

1.	ARTICLE 1: DEFINITION AND INTERPRETATION.....	4
1.1	Definitions	4
1.2	Interpretation	4
1.3	Measurements and arithmetic conventions	7
1.4	Priority of agreements, clauses and schedules	7
2.	ARTICLE 2: SCOPE OF THE PROJECT AND THE DESIGN & OPERATIONAL STANDARDS	9
2.1	Scope of the Project.....	9
2.2	Design & Operational Standards.....	9
3.	ARTICLE 3: TERM OF AGREEMENT	10
3.1	Effective Date.....	10
3.2	Agreement Period.....	10
3.3	Early Termination	10
3.4	Audit of the Developer's Accounts:.....	10
3.5	Survival	10
4.	ARTICLE 4: CONDITION PRECEDENT	12
4.1	Conditions Precedent.....	12
4.2	Conditions Precedent for the Developer	12
4.3	Conditions Precedent for the Authority	13
4.4	Delay by the Authority.....	14
4.5	Delay by the Developer	15
4.6	Performance Security	15
5.	ARTICLE 5: OBLIGATION OF THE DEVELOPER	17
5.1	Obligations of the Developer	17
5.2	Equity Lock-in Conditions.....	19
5.3	Information regarding Interconnection Facilities	20
5.4	Connectivity to the grid	20
5.5	Purchase and sale of Contracted Capacity	20
5.6	Extensions of Time.....	20
5.7	Liquidated Damages for delay in commencement of supply of power	21
5.8	Acceptance/Performance Test	22
5.9	Third Party Verification	22
5.10	Safety Measures.....	23
6.	ARTICLE 6: OBLIGATION OF THE AUTHORITY	25
6.1	Obligations of the Authority	25
7.	Article 7: REPRESENTATIONS AND WARRANTIES	26
7.1	Representations and warranties of the Developer	26
7.2	Representations and Warranties of the Facilitator	27
7.3	Representations and Warranties of the Authority.....	27
7.4	Obligation to Notify Change	28

8.	ARTICLE 8: Synchronisation, Commissioning and Commercial Operation	28
9.	ARTICLE 9: DISPATCH	29
9.1	Dispatch	29
10.	ARTICLE 10: METERING	30
10.1	Meters	30
10.2	Measurement of Energy	30
10.3	Reporting of Metered Data and Parameters	30
11.	ARTICLE 11: INSURANCES	31
11.1	Insurance	31
11.2	Application of Insurance Proceeds	32
11.3	Effect on liability of the Facilitator and the Authority	32
12.	ARTICLE 12 : APPLICABLE TARIFF RECEIVABLE AND SHARING OF CDM BENEFITS.....	33
12.1	Applicable Tariff Receivable	33
12.2	Sharing of Clean Development Mechanism (CDM) Benefits	33
13.	ARTICLE 13: BILLING AND PAYMENT	34
13.1	General	34
13.2	Delivery and Content of Monthly Bills/Supplementary Bills.....	34
13.3	Payment of Monthly Bills	35
13.4	Disputed Bill	36
13.5	Quarterly and Annual Reconciliation	37
13.6	Payment of Supplementary Bill	38
14.	ARTICLE 14: FORCE MAJEURE	39
14.1	Definitions	39
14.2	Affected Party.....	39
14.3	Force Majeure	39
14.4	Force Majeure Exclusions	40
14.5	Notification of Force Majeure Event.....	40
14.6	Duty to Perform and Duty to Mitigate	41
14.7	Available Relief for a Force Majeure Event	41
15.	ARTICLE 15: CHANGE IN LAW	43
15.1	Definitions	43
15.2	Relief for Change in Law	43
16.	ARTICLE 16: Termination	44
16.1	Termination for Developer Default	44
16.2	Procedure for cases of Developer Event of Default.....	45
16.3	Obligation of Parties.....	47
16.4	Termination Payment.....	47
16.5	Rights of Authority on Termination	47
16.6	Accrued Rights of Parties.....	48
16.7	Senior Lenders' Step-in Rights.....	48

16.8	Termination due to Force Majeure.....	49
17.	ARTICLE 17: Defects Liability after termination	50
17.1	Liability for defects after Termination.....	50
17.2	Retention in Escrow Account.....	50
18.	ARTICLE 18: Compensation for Breach of Agreement	52
18.1	Compensation for default by the Developer	52
18.2	Compensation for default by the Authority	52
18.3	Compensation to be in addition.....	52
18.4	Mitigation of costs and damage.....	52
19.	ARTICLE 19 :Divestment of rights and Interest.....	54
19.1	Divestment Requirements.....	54
19.2	Inspection and cure.....	55
19.3	Cooperation and assistance on transfer of Project	55
19.4	Vesting Certificate	55
19.5	Additional Facilities.....	57
19.6	Divestment costs etc.....	57
20.	ARTICLE 20: Liability and Indemnification	58
20.1	Indemnity	58
20.2	Procedure for claiming Indemnity.....	59
20.3	Indemnifiable Losses	59
20.4	Limitation on Liability.....	60
20.5	Duty to Mitigate.....	60
21.	ARTICLE 21: Governing Law and Dispute Resolution	62
21.1	Governing Law.....	62
21.2	Amicable Settlemet and Dispute Resolution	62
21.3	Dispute Resolution	62
21.4	Arbitration	63
21.5	Performance during Dispute	64
22.	ARTICLE 22: Assignment and Charges	65
22.1	Assignments.....	65
23.	ARTICLE 23: Miscellaneous.....	67
23.1	Interest and Right of Set Off	67
23.2	Confidentiality.....	67
23.3	Waiver of immunity.....	67
23.4	Waiver	68
23.5	Exclusion of implied warranties etc.....	68
23.6	Survival	69
23.7	Entire Agreement.....	69
23.8	Severability	69
23.9	No partnership	69
23.10	Third Parties	70
23.11	Successors and assigns.....	70
23.12	Notices	70
23.13	Language	71

23.14	Counterparts.....	72
24.	ARTICLE 24: Independent Consultant.....	73
24.1	Appointment of Independent Consultant.....	73
24.2	Duties and functions.....	73
24.3	Remuneration.....	73
24.4	Termination of appointment	73
24.5	Authorised signatories	73
24.6	Dispute resolution.....	74
25.	ACCOUNTS AND AUDIT	75
25.1	Audited accounts	75
25.2	Appointment of auditors.....	75
25.3	Certification of claims by Statutory Auditors.....	76
25.4	Set-Off.....	76
25.5	Dispute resolution.....	76
26.	ARTICLE 26: Definitions	77
26.1	Definitions	77

TRI-PARTITE PROJECT DEVELOPMENT AND IMPLEMENTATION AGREEMENT

This Tri-Partite Project Development and Implementation Agreement (Agreement) is entered into on this the ____ day of _____, 2018 at Shivamogga

AMONGST

1. Shivamogga Smart City Limited (SSCL), a Special Purpose Vehicle company incorporated under the Companies Act 2013 having its registered office at 1st Floor, SN Market, Nehru Road, Shivamogga 577201 (hereinafter referred to as **"Facilitator"**, which expression shall, unless it be repugnant to the context or meaning thereof, include it's administrators, successors, and assigns)

AND

2. _____ (hereinafter referred to as **"Authority"**, which expression shall, unless it be repugnant to the context or meaning thereof, include it's administrators, successors, and assigns);

AND

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

WHEREAS:

- A. Under smart city development, roof top solar PV installations are proposed for all new development structures and also for the existing government buildings. In its efforts to move towards self-sustenance, the Facilitator intends to set up Rooftop Solar PV Power Plant on the four government buildings owned by different entities in Shivamogga. One of such government building is owned by the Authority.
- B. Pursuant to this, _____ Building at _____ intends to undertake development of Rooftop Solar PV (**Rooftop Solar PV**) through private sector participation on PPP basis on rooftop of its office building owned by it (the **"Government Building"**) on Net-metering arrangement (the **"Project"**) and has agreed for the services of the Facilitator for assisting it in the identiification of Developer.
- C. The Authority would pay 85% of the prevailing MESCOM tariff (**per unit**) from time

to time for the units consumed by the building (**inclusive of GST and other applicable taxes**) to the Developer commencing from the Commercial Operation Date for the electricity consumed from the Rooftop Solar PV installed on the Government Building.

- D.** The Rooftop Solar PV Power Plant shall be installed as per the Net-metering arrangement. The Developer shall enter into a Power Purchase Agreement with MESCOM. Any excess energy at the end of the billing month which is deemed exported to the Grid shall be paid by MESCOM to the Developer at the rate of **PPA Tariff** quoted by them and in the manner provided in Article 12 of this Agreement.
- E.** Accordingly, the **Authority** through the Facilitator had invited proposals by its "**Request for Proposal**" or "**RFP**" for the selection of Developer on July 30, 2018, prescribing the technical and commercial terms and conditions for selection of Bidders for undertaking development of solar rooftop on the Government Building. In this regard, **Facilitator** had received proposals from certain bidders including, inter alia, the consortium comprising M/s _____ and _____ (collectively the "**Consortium**") with _____ as its lead member (the "**Lead Member**").
- F.** After evaluation of the Proposal received, Facilitator and the Authority had accepted the bid of the Consortium for development of 438 kW capacity of Solar Rooftop and issued its Letter of Award No. _____ dated _____ (herein after called the "**LOA**") to the Consortium [**"Selected Bidder"**] requiring, inter alia, the execution of this Agreement.
- G.** The Selected Bidder has since promoted and incorporated the Developer ("Special Purpose Vehicle" or "SPV"), subject to the terms as mentioned in the Clause 5.2(b) of this Agreement and has requested **Authority** through a letter bearing number _____ dated _____ and undertaking letter from _____ dated November 15, 2018 to accept _____ as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Project Development and Implementation Agreement pursuant to the LOA for executing the Project.
- H.** By its letter dated November 2, 2018 the Developer has also joined in the said request of the Consortium to Facilitator and the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium including the obligation to enter into this Tri-Partite Project Development and Implementation Agreement pursuant to the LOA. The Developer has further, subject to Clause 5.2(b) of this Agreement, agreed to represent to the

effect that it has been promoted by the Consortium for the purposes hereof.

- I. Facilitator and Authority has agreed to the said request of the Consortium and the Developer, and has accordingly agreed to enter into this Tri-Partite Project Development and Implementation Agreement with the Developer for execution of the Project, subject to and on the terms and conditions set forth hereinafter.
- J. Facilitator and Authority acknowledges that simultaneously with the execution of this Agreement, the Developer has submitted Performance Security for the amount and in the manner set out in Clause 4.5(a).

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

ARTICLE 1: DEFINITION AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 26) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to laws of Karnataka, laws of India or Indian law or regulation having the force of law shall include the laws, Acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c) references to a **"person"** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, Government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e) the words **"include"** and **"including"** are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- f) references to **"construction"** or **"building"** or **"installation"** include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and

"construct" or **"build"** or **"install"** shall be construed accordingly;

- g) references to **"development"** include, unless the context otherwise requires, construction, augmentation, upgradation and other activities incidental thereto, and "develop" shall be construed accordingly;
- h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i) any reference to day shall mean a reference to a calendar day;
- j) references to a **"business day"** shall be construed as a reference to a day (other than a Sunday) on which banks in Shivamogga generally open for business;
- k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- l) references to any date or period shall mean and include such date, period as may be extended pursuant to this Agreement;
- m) any reference to any period commencing **"from"** a specified day or date and **"till"** or **"until"** a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- n) the words importing singular shall include plural and vice versa;
- o) references to any gender shall include the other and the neutral gender;
- p) **"lakh"** means a hundred thousand (1,00,000) and **"crore"** means ten million (1,00,00,000);
- q) **"indebtedness"** shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- r) references to the **"winding-up"**, **"dissolution"**, **"insolvency"**, or **"reorganisation"** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including

- the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
 - u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
 - w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and
 - x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Developer to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

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

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

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

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

ARTICLE 2: SCOPE OF THE PROJECT AND THE DESIGN & OPERATIONAL STANDARDS

2.1 Scope of the Project

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

- a) designing, financing, manufacturing, supplying the materials, installation, testing, commissioning, grid synchronization and completing the Project for the Contracted Capacity and supply power to the Government Building and connect to the grid through a service connection and to feed the surplus energy into the grid under the Net Metering scheme at the respective Interconnection Points of MESCOM within Scheduled Commissioning Date;
- b) Strengthening and refurbishment of rooftops as may be required
- c) Operation and maintenance of the Project in accordance with Design and Operational Standards as mentioned in Clause 2.2 and other provisions of this Agreement; and
- d) Performance and fulfillment of all other obligations of the Developer in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Developer under this Agreement.

2.2 Design & Operational Standards

- a) The Design & Operational Standards (the "Design & Operational Standards") shall mean the minimum prescribed standards that the Developer has to adhere to during the design, construction and operation & maintenance of the Project as provided in Schedule 1 to this Agreement.

ARTICLE 3: TERM OF AGREEMENT

3.1 Effective Date

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

3.2 Agreement Period

This Agreement shall subject to Clauses 3.2, 3.3 and 3.5 be valid for a term of 25 (Twenty Five) years commencing from the Commercial Operation Date unless extended by the Authority on mutual basis ("**Agreement Period**") . At the end of the Agreement Period, the Solar Rooftop PV installed shall be handed over to the Authority or its associate entities on as-is-where-is-basis. The Authority will have the discretion to accept or reject any of these assets.

3.3 Early Termination

This Agreement shall terminate before the Expiry Date if either the Authority or Developer terminates the Agreement, pursuant to Article 16 of this Agreement. In the event of early Termination, the Rooftop Solar PV system installed shall be handed over to the Authority or its associate entities on as-is-where-is-basis. The Authority will have the discretion to accept or reject any of these assets.

3.4 Audit of the Developer's Accounts:

The Facilitator and the Authority reserves the right to conduct/ or cause to be conducted by a third agency an audit of the book of accounts of the Developer in respect of the Solar Rooftop PV system included under this Agreement. The Developer shall fully cooperate in the audit by making available all the concerned documents and information.

3.5 Survival

The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 14, 20, 21 and 22 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 4: CONDITION PRECEDENT

4.1 Conditions Precedent

Save and except as expressly provided in Articles 4, 14 ,21, 23 or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4 (the **"Conditions Precedent"**) by the Developer within 90 (Ninety days) days from the Effective Date, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by the Authority.

4.2 Conditions Precedent for the Developer

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

- a) Executed the Power Purchase Agreement (PPA) with MESCOM according to the Net-Metering arrangement for the development of Rooftop Solar PV Plant on the Government Building, which shall be facilitated by SSCL at the rates discovered by the competitive bidding process for selection of the Developer;
- b) obtained all Consents, Clearances and Permits¹ required for supply of power as per the terms of this Agreement;
- c) achieved Financial Closure and provided a the copies of Financing Agreement to the Facilitator and the Authority duly attested by director of the Developer;
- d) made adequate arrangements to connect the Solar Rooftop with the Interconnection Facilities as per the Net Metering scheme;
- e) fulfilled technical requirements for Solar Rooftop PV Project as per the format provided in Schedule 1 and also provided the documentary evidence for the same;
- f) delivered to the Facilitator and Authority from the Consortium Members, their respective confirmation, in original, of compliance with the equity lock-in condition set out in 5.2²;

¹ Environmental clearance, if applicable the approval for power evacuation and any other clearance that may be required as per applicable laws.

² Documentary evidence such as MOA, AOA of the SPV, share certificates of the shareholders and all other documents relating to the shareholding in the SPV shall be submitted to the SSCL and / or the Authority

- g) delivered to the Facilitator and the Authority a legal opinion from the legal counsel of the Developer with respect to the authority of the Developer to enter into this Agreement and the enforceability of the provisions thereof.
 - h) delivered to the Authority and its authorized representation/Third Party the following documents:
 - i. Project Organization structure detailing the escalation matrix and communication protocol.
 - ii. Execution methodology and conceptual design
 - iii. Level 2 schedule for the Solar Rooftop PV Project execution
 - iv. Document deliverable list with approval category and submission timelines
 - v. Procurement plan and activities
 - vi. Quality Assurance Plan (QAP)
 - vii. Dispatch plan
 - viii. Construction schedule and methodology
- 4.2.1 Opened an Escrow account for receiving the revenue from MESCOM and the Authority..
- 4.2.2 Developer shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and Facilitator & Authority shall provide to the Developer all the reasonable cooperation as may be required to the Developer for satisfying the Conditions Precedent.
- 4.2.3 The Developer shall notify the Facilitator & the Authority in writing at least once a month on the progress made in satisfying the Conditions Precedent. Developer shall promptly inform the Facilitator & the Authority when any Conditions Precedent is satisfied by it.

4.3 Conditions Precedent for the Authority

The Conditions Precedent is required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have

- a) Granted the permission to the Developer for access to the rooftop of the Government Building under its jurisdiction;
- b) Granted the permission to the Developer for access to all electrical metering and electrical interconnection points across the Government Building which is to be developed as per this Agreement;

4.4 Delay by the Authority

In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.3 within the period of 90 (Ninety) days from the Effective Date, a period of 30 (thirty) days shall be given to the Authority for fulfillment of its Conditions Precedent. If Authority fails to fulfill its Conditions Precedent within the said extended period of 30 (thirty) days, Developer at its discretion may terminate this Agreement, whereupon Authority shall return the Performance Security submitted by the Developer.

4.5 Delay by the Developer

In the event that the Developer does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.2 within the period of 90 days from the Effective Date and the delay has not occurred for any reasons attributable to the Authority or due to Force Majeure, the Developer shall pay to Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum period of 30 (thirty) days. On expiry of the said extended period of 30 (thirty) days, the Authority at its discretion may terminate this Agreement.

4.6 Performance Security

a) For due and punctual performance of its obligations under this Agreement, relating to the Project and for guaranteeing the commencement of the supply of power upto the Contracted Capacity within the time specified in this Agreement, the Developer has delivered to Authority, simultaneously with the execution of this Agreement, an irrevocable and revolving bank guarantees from a scheduled bank acceptable to the Authority for an amount of **Rs. _____** ("**Performance Security**"). The Performance Security is furnished to Authority in the form of three (3) bank guarantees in favor of _____, _____ Building, _____, Shivamogga as per the format provided in Schedule 3.

The details of the bank guarantees furnished towards the Performance Security are given below;

100% of the Performance Security amount in the form of Bank Guarantee No. _____ dated _____ for an amount of **Rs. 9.5 Lakhs**.

b) Appropriation of Performance Security

Upon occurrence of a Developer Default or failure to meet the Conditions Precedent by the Developer, Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Performance Security as Damages for such Developer Default or Conditions Precedent. Upon such appropriation from the Performance Security, the Developer shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Developer shall, within the time so granted, replenish or furnish fresh Performance

Security as aforesaid failing which Authority shall be entitled to terminate this Agreement in accordance with Article 16.

c) Release of Performance Security

Subject to other provisions of this Agreement, the Authority shall release the Performance Security, if any, after 15 (Fifteen) months from the Commercial Operation Date of the Solar PV Power Plant of the Government Building.

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

ARTICLE 5: OBLIGATION OF THE DEVELOPER

5.1 Obligations of the Developer

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

- a) Execute the Power Purchase Agreement (PPA) with MESCOM under the Net-metering arrangement which shall be facilitated by Facilitator at the rates discovered through reverse bidding by them.;
- b) The Developer shall be responsible to adhere to the terms of the Power Purchase Agreement in addition to the terms of this Tri-Partite PDIA;
- c) designing, financing, supply of materials, constructing, erecting, testing, commissioning, grid synchronization and completing the Project for the Contracted Capacity in accordance with the Applicable Law, Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices;
- d) observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder;
- e) comply with all Applicable Laws and obtain applicable consents, clearances and permits (including renewals as required) in performance of its obligations under this Agreement and maintaining all Applicable Permits in full force and effect during the Term of this Agreement;
- f) commence supply of power no later than the Scheduled Commissioning Date and continue the supply of power throughout the Agreement Period;
- g) connect the Solar Rooftop PV with the grid at the Interconnection Facilities as per the Net Metering scheme.
- h) The Developer shall submit progress reports in the format provided by the Independent Consultant, every fortnight from the Effective Date till the COD.
- i) The Developer shall handover all the as-built drawings and documents to Authority within 7 (seven) days from the commissioning of the Solar Rooftop PV system for the Government Building.
- j) own the Solar Rooftop PV throughout the Agreement Period and keep it free and clear of encumbrances, except those expressly permitted under Article 22;

- k) Comply with the equity lock-in conditions set out in Clause 5.2; and
- l) be responsible for all payments related to any taxes, cesses, duties or levies imposed by the Government Instrumentalities or competent statutory authority on land, equipment, material or works of the project to or on the electricity consumed by the Project or by itself or on the income or assets owned by it.
- m) Submit the following documents/drawings to the Facilitator /Authority/Independent Consultant:
 - (i) Inspection reports as per the approved QAP
 - (ii) Warranty certificates
 - (iii) Basic and Detailed Engineering drawings
 - (iv) Monthly progress reports in the format provided by the Authority/its authorized representative/Third Party Inspector
 - (v) O&M Plan within 30 (Thirty) days prior to Scheduled Commissioning Date
 - (vi) As-built drawings within 15 (fifteen) days from COD
- n) Incorporate comments of the authorized representative of the Facilitator /Authority/Third Party Inspectors on the documents/drawings etc. submitted and re-submit the same for approval/reference within 15 days of receipt of comments.
- o) Operation and Maintenance:
 - i. The Developer shall maintain the Solar Rooftop PV system for a period of 25 years from the COD.
 - ii. The Developer shall deploy necessary trained manpower for operating and maintaining the Project
 - iii. The Developer shall have at least 1 year O&M spares at a designated location
 - iv. The Developer shall submit monthly reports to the Facilitator and the Authority with the following details:
 - a. Generation data for the month for the Government Building;
 - b. Event failure and rectification report; and
 - c. Inventory details.
 - v. The Developer shall submit quarterly report on the periodic maintenance carried out as per the prescribed format approved by Independent Consultant.

In case of any default in the above obligations relating to O&M of the Project, the Developer will be charged a penalty at the rate of Rs. 10,000/- (Rupees ten thousand only) per day.

5.1.1 The Developer shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.

5.1.2 The Developer shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- a) make, or cause to be made, necessary applications to the relevant government agencies with such particulars and details, as may be required for obtaining Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
- b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- d) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Developer's obligations under this Agreement; and
- e) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement.

5.2 Equity Lock-in Conditions

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

Names of Shareholders	Description of Shareholding

b) The Developer vide its undertaking letter dated _____ has undertaken to allocate shares to _____ (Other Member of Bidding Consortium) and thereby agreed to restructure the shareholding structure on or before _____ in accordance with the terms of the tender. In the event of failure to abide by the terms of the said undertaking, same shall be considered as an Event of Default by the Developer and shall entitle the Authority to Terminate this Agreement without any Termination Payment with the notice of 21 (twenty one) days and to forfeit the Performance Security.

- c) The Developer having been set up for the sole purpose to exercise the rights and observing and performing its obligations and liabilities under this Agreement, the Developer hereby undertakes and agrees to comply with the following lock-in conditions:
 - (i) Members of the Consortium shall collectively hold at least 51% of subscribed and paid up equity share capital of the Developer at all times until third anniversary of the commercial operations date of the Project.
 - (ii) Lead Member shall have 26% shareholding of the SPV throughout the Agreement Period.
- d) In the event of non-compliance of the above, the same shall constitute an event of default by Developer and the Authority shall be entitled to terminate this Agreement in accordance with Article 16.

5.3 Information regarding Interconnection Facilities

The Developer shall be required to obtain all information with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install, operate and evacuate the power at the interconnection facility.

5.4 Connectivity to the grid

The Developer shall be responsible for power evacuation from the Rooftop Solar PV Power plant to the grid.

5.5 Purchase and sale of Contracted Capacity

Subject to the terms and conditions of this Agreement, the Developer undertakes to generate and supply power on Net-Metering basis adhering to the terms and condition of the Tri-partite PDIA and the PPA.

5.6 Extensions of Time

- 5.6.1 In the event that the Developer is prevented from performing its obligations under Clause 5.1 by the Scheduled Commissioning Date due to:
 - a) any Authority Event of Default; or
 - b) Force Majeure Events affecting the Authority; or
 - c) Force Majeure Events affecting the Developer,the Scheduled Commissioning Date shall be deferred, subject to the limit

prescribed in Clause 5.6.2 and Clause 5.6.3 for a reasonable period but not less than 'day to day' basis, to permit the Developer or the Authority through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Developer or the Authority, or till such time such Event of Default is rectified by the Authority.

- 5.6.2 In case of extension occurring due to reasons specified in clause 5.6.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than 15 (fifteen) months.
- 5.6.3 In case of extension due to reasons specified in Article 5.6.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of 3(three) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 16.

If the Parties have not agreed, within 30 (thirty) 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 should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 22.

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

5.7 Liquidated Damages for delay in commencement of supply of power

- 5.7.1 If the Developer is unable to commence supply of power by the Scheduled Commissioning Date, the Developer shall pay to the Authority, Liquidated Damages for the delay in such commencement of supply of power available for dispatch by the Scheduled Commissioning Date as per the following:

Liquidated Damage shall be imposed on the Developer for each day of delay of not achieving the Scheduled Commissioning Date. The liquidated damages shall be equivalent to the revenue loss to the Authority due to non-commissioning of the Project within six (6) months of the Effective Date;

- a. For the delay up to one month an amount equivalent to 20% of the Performance Security.
- b. For the delay of more than one (1) month and upto two months an amount equivalent to 40% of the total Performance Security.

- c. For the delay of more than two and upto three months an amount equivalent to 40% of the Performance Security.

The maximum time period allowed for achieving COD with payment of Liquidated Damages shall be limited to three month after the Scheduled Commissioning Date. In case of delay beyond this time period for the reasons attributable to the inefficiency of the Developer would amount to forfeiture of Performance Security and termination of Tri-Partite Project Development and Implementation Agreement.

For avoidance of doubt, in the event of failure to pay the above mentioned damages by the Developer entitles the Authority to forfeit and appropriate the Performance Security.

- 5.7.2 The maximum time period allowed for achieving COD with payment of Liquidated Damages shall be limited to three month after the Scheduled Commissioning Date. In case, the achievement of COD is delayed beyond 9 months, it shall be considered as an Developer's Event of Default and provisions of Article 16 shall apply in the event of termination of this Agreement and shall lead to forfeiture of the Performance Security.

5.8 Acceptance/Performance Test

- 5.8.1 Prior to synchronization of the Solar Rooftop PV, the Developer shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by MESCOM or Chief Electrical Inspectorate, Government of Karnataka to carry out testing and certification for the Solar Rooftop PV Project.

5.9 Third Party Verification

- 5.9.1 The Developer shall be further required to provide entry to the site of the Solar Rooftop facility free of all encumbrances at all times during the term of the Agreement with the Facilitator and the Authority, its authorized representatives including representatives from the Independent Consultant, MESCOM, Authority and a third Party nominated by any Governmental Instrumentality for inspection and verification of the works being carried out by the Developer at the site of the Project.
- 5.9.2 The Developer shall submit to Independent Consultant, with a copy to the Facilitator and Authority the following documents:
 - 1. Project Organization structure detailing the escalation matrix and communication protocol.
 - 2. Level 2 schedule for the Solar Rooftop PV Project execution
 - 3. Document deliverable list with approval category and submission timelines

4. Quality Assurance Plan (QAP)
5. Procurement and dispatch plan
6. Construction schedule and methodology
7. O&M Plan

On receipt of comments/suggestions from the Independent Consultant and /or Facilitator & Authority on any of the above documents, the Developer shall incorporate the same and re-submit the same for approval.

The Developer shall submit the basic, detailed and vendor engineering documents for review and approval as per the approved deliverable list. The basic engineering documents shall include the design capacity proposed by the Developer.

In case of any difference between the estimated potential capacity and the design capacity, the same shall be suitably justified by the Developer with adequate documentary proof. In such an event, the design capacity shall be approved by the Authority on the recommendation of the Independent Consultant.

The Independent Consultant may randomly inspect the major items at the manufacturing premises. For the balance items inspection and dispatch shall be carried out as per the approved QAP.

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

- 5.9.3 During the term of this Agreement, the Developer shall comply with any additional requirements as may be sought by the Independent Consultant in line with this Agreement.
- 5.9.4 The Independent Consultant may carry out checks for testing the CUF of the Project. During a Contract Year, if the CUF of the Project is found to be below 12% on account of reasons solely attributable to Developer, the Developer shall be liable for non fulfillment of its obligation. The liability, as prescribed by the Karnataka Electricity Regulatory Commission (KERF) from time to time, shall be levied by the the Authority on Developer for non supply of power.

5.10 Safety Measures

The Developer shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Solar Rooftop PV and Government Building. In particular, the Developer shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Solar Rooftop PV, and shall comply with the safety requirements.

All costs and expenses arising out of or relating to safety requirements shall be borne by the Developer to the extent such costs and expenses form part of the Project and services included in the Scope of the Project.

In addition, the Developer shall comply with any requirements recommended by Facilitator /Authority/Independent Consultant considering the safety of equipment/ Project/ Authority buildings/ personnel or for the ease of O&M or as per good engineering practices etc.

ARTICLE 6: OBLIGATION OF THE AUTHORITY

6.1 Obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority shall release payments to the Developer as per the procedure set out in Article 12.
- 6.1.3 The Authority agrees to provide support to the Developer and undertake to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
 - a) upon written request from the Developer, and subject to the Developer complying with Applicable Laws, provide reasonable support and assistance to the Developer in procuring Applicable Permits required from any government agencies for implementation and operation of the Project;
 - b) not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;
 - c) act reasonably, while exercising its discretionary power under this Agreement;
 - d) support, cooperate with and facilitate the Developer in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - e) provide permission to the Developer to enter the Government Building premises and give complete access to the rooftop of the building during the term of this Agreement;
 - f) provide free access to the electrical metering points and electrical interconnection points across the Government Building where rooftop solar PV power plant is to be developed as per this Agreement.
 - g) In case of any expansion works undertaken by the Authority during the term of this Agreement, resulting in the temporary shutdown, uninstallation and re-installation of the rooftop solar PV system, then, the Authority shall propose to the Developer to operate for an extended period beyond the term of this Agreement up to such time duration for which the system remained out of operation.

Article 7: REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Developer

- a) it is duly organized, validly existing and in good standing under the laws of India;
- b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- d) it has the financial standing and capacity to undertake the Project;
- e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Developer's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- g) there are no actions, suits, proceedings or investigations pending or to the Developer's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Developer Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- j) no representation or warranty by the Developer contained herein or in any other document furnished by it to the Authority to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of

material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

- k) Without prejudice to any express provision contained in this Agreement, the Developer acknowledges that prior to the execution of this Agreement, the Developer has after a complete and careful examination made an independent evaluation of the Project, and the information provided by the Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Developer in the course of performance of its obligations hereunder.
- l) The Developer warrants that the Government Building premises and the roof thereof shall be maintained properly without any damage to property and would be brought to the original status in case of any damage caused to the buildings due to the Project activities.
- m) The Developer also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Authority shall not be liable for the same in any manner whatsoever to the Developer.

7.2 Representations and Warranties of the Facilitator

Facilitator represents and warrants that:

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

7.3 Representations and Warranties of the Authority

Authority represents and warrants that:

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

7.4 Obligation to Notify Change

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

ARTICLE 8: Synchronisation, Commissioning and Commercial Operation

- a) The Developer shall provide at least 15 (fifteen) days advanced written notice to the Facilitator & the Authority of the date on which it intends to commission the solar rooftop project.
- b) The Developer shall synchronize its system with the Grid System only after the approval of synchronization is granted by the head of the concerned sub-division / MESCOM officer and checking/verification is made by the concerned authorities of the Grid System.
- c) The Developer shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Project is electrically connected in accordance with applicable Grid Code.
- d) The Developer shall commission the Project within 6 (six) months from the Effective Date unless extended as per the term of this Agreement.

ARTICLE 9: DISPATCH

9.1 Dispatch

The Project shall be required to maintain compliance to the applicable Grid Code requirements and directions, if any, as specified by MESCOM.

ARTICLE 10: METERING

10.1 Meters

- 10.1.1 For installation of meters, meter testing, meter calibration and meter reading and all matters incidental thereto, the Developer and the Authority shall follow and be bound by the Applicable Laws including Central Electricity Authority (Installation and Operation of Meters) Regulations 2006, the Grid Code, as amended and revised from time to time.
- 10.1.2 The Developer shall bear all costs including the taxes pertaining to installation, testing, calibration, maintenance, renewal and repair of meters for the operationalization of Solar Rooftop PV system.

10.2 Measurement of Energy

Measurement of electrical energy shall be done at the Interconnection point.

10.3 Reporting of Metered Data and Parameters

- 10.3.1 The Project will install necessary equipment for regular operations of the Solar Rooftop PV system and for monitoring the electric power generated from the plant.
- 10.3.2 Provision should be made for data acquisition through remote monitoring facilities. All data shall be recorded chronologically date wise. The data file should be MS Excel compatible. The data logger shall have internal reliable battery backup and data storage capacity to record all sorts of data simultaneously round the clock. All data shall be stored in a common work sheet chronologically and representation of monitored data shall be in graphics mode or in tabulation form.
- 10.3.3 The Developer shall enable generation data monitoring through web-portal access to the Authority/MESCOM/ Independent Consultant. The Developer shall also provide training to Authority/MESCOM/ Independent Consultant for using the web portal.
- 10.3.4 Online arrangement would have to be made by the Developer for submission of above data regularly for the entire period of this Project Development and Implementation Agreement to the Facilitator & Authority and any of its assignee /MESCOM.
- 10.3.5 Reports on above parameters on monthly basis shall be submitted by the Developer to the Facilitator /Authority/MESCOM for the term of this Agreement.

ARTICLE 11: INSURANCES

11.1 Insurance

11.1.1 ***During Construction*** - The Developer shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, during the construction for the Project Facilities, such insurance as are necessary including but not limited to the following:

- a) Developer's all risk insurance;
- b) comprehensive third party liability insurance including injury or death to personnel / representatives of Persons who may enter the Project Site;
- c) workmen's compensation insurance; `
- d) any other insurance that may be necessary to protect the Developer , its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

11.1.2 ***During O&M*** - The Developer shall at its cost and expense, purchase and maintain by re-instatement or otherwise, during the operation and maintenance, insurance against:

- a) loss, damage or destruction of the Additional Facilities at replacement value;
- b) the Developer's general liability arising out of the Project;
- c) liability to third parties;
- d) any other insurance that may be necessary to protect the Developer, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

11.1.3 The Developer shall insure against any damages that may be caused to the rooftop of the Government Building at the time of construction of Solar Rooftop or during the Agreement Period.

11.1.4 If the Developer shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof

from the Developer, or in the event of computation of a Termination Payment, treat an amount equal to the insurance cover as deemed to have been received by the Developer.

11.2 Application of Insurance Proceeds

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

11.3 Effect on liability of the Facilitator and the Authority

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 Developer can claim compensation, under any Insurance shall not be charged to or payable by the Facilitator and the Authority.

ARTICLE 12 : APPLICABLE TARIFF RECEIVABLE AND SHARING OF CDM BENEFITS

12.1 Applicable Tariff Receivable

- a) For the energy supplied and consumed by the Authority, the Developer shall be entitled to receive payment at the tariff of 85% of the prevailing MESCOM tariff **per unit (inclusive of GST and other applicable taxes)** of electricity supplied from the Rooftop Solar PV Power Plant and consumed by the Authority, provided the Developer meets the Operational Standards as specified in Clause 2.2 and in accordance with the terms of this Agreement during the period between COD and the Expiry Date;
- b) For the excess energy exported to the MESCOM at the end of the month, the Developer shall be entitled to receive payment as proposed by the Developer in their Financial Bid at the PPA Tariff rate of **Rs. _____per unit** of electricity exported to the MESCOM;
- c) Developer shall be required to open an Escrow account in which the above revenues received from Authority and MESCOM shall be deposited.

12.2 Sharing of Clean Development Mechanism (CDM) Benefits

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

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

ARTICLE 13: BILLING AND PAYMENT

13.1 General

- 13.1.1 On achievement of COD and thereon commencement of supply of power, the Authority shall pay to the Developer the monthly Tariff Payments based on the energy consumed from the rooftop solar PV system on or before the Due Date, in accordance with this PDIA.
- 13.1.2 Developer shall open an Escrow account in which the revenue receipts from the Authority and the MESCOM will be deposited.
- 13.1.3 All Tariff Payments by Authority to the Developer shall be in Indian Rupees.

13.2 Delivery and Content of Monthly Bills/Supplementary Bills

- 13.2.1 The Developer shall issue to the Authority a signed monthly bill/Supplementary Bill for the immediately preceding Month between the 5th day upto the 15th day of the next Month. In case the monthly bill/Supplementary Bill for the immediately preceding Month is issued after the 15th day of the next Month, the Due Date for payment of such monthly bill/ Supplementary Bill shall be as detailed out in Clause 13.3.2 below.
- 13.2.2 The revenue to the Developer shall be calculated as detailed out in Clause 13.2.3.
- 13.2.3 Each monthly bill shall be a lump-sum amount that will be calculated as follows –
 - I. When the Developer performs as per the Design and Operational Standards as mentioned in Schedule I**
 - a) **For the Energy Supplied from the Rooftop Solar PV Power Plant and Consumed by the Authority –** The amount receivable by the Developer shall be determined based on the energy consumed by the Authority at the discounted MESCOM prevailing rate.

$$\begin{aligned} &\text{Amount to Developer from Authority against energy consumed from Solar Plant} = \\ &\quad (\text{Energy Consumed from the Rooftop Solar PV Plant}) \times (\text{PREVAILING MESCOM RATE} * 15\% \text{ DISCOUNT FACTOR}) \end{aligned}$$
 - b) For the surplus energy exported to the Grid, the Developer shall receive money as per the PPA terms for net export at the bid derived PPA Tariff rate of Rs. _____ per unit

Amount to Developer from net export of energy =
(Net energy exported on net-metering basis) x (PPA Tariff payable by MESCOM)

- c) **Total Monthly Payment to the Developer** - Total monthly payment to the Developer shall be sum of (a) and (b) as mentioned above

Total Monthly Receivable to the Developer =
Amount to Developer from Authority against energy consumed from Solar Plant
+ (PLUS)
Amount to Developer from MESCOM for net export of energy

II. When the Developer performs below the Design and Operational Standards as mentioned in Schedule I

Subject to Clause 13.2.3 (I), the Developer shall be liable to compensate the Authority for the electrical units consumed by the Authority from the Grid which otherwise would have been supplied from the Rooftop Solar PV Power Plant had the Plant operated as per the Design and Operational Standards. The Developer shall compensate the Authority to the extent of difference between the applicable Retail Tariff for the year & Tariff and the units consumed from the Grid which otherwise should have been supplied by the Rooftop Solar PV Power Plant had the Plant operated as per Design and Operational Standards.

- 13.2.4 Taxes as applicable shall be deducted by the Authority at the time of payment done to the Developer against the invoices raised by the Developer.
- 13.2.5 There will be a Quarterly and Annual Reconciliation as per Clause 13.5 on the units generated (quarterly and annually) and the payments made to the Developer (quarterly and annually) and any deviation from the compliance or non-compliance to the Design and Operational Standards shall be adjusted after the annual reconciliation only.

13.3 Payment of Monthly Bills

- 13.3.1 Subject to Clause 13.1, the Authority shall make monthly payment for the bill raised by the Developer.
- 13.3.2 The Authority shall pay the amount payable under the Monthly bill/Supplementary Bill within 15 days of it receiving the Monthly bill/ Supplementary Bill from the Developer to the Authority.

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

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

The Developer shall open a Escrow account at Shivamogga (the "**Developer's Designated Account**") for all Payments (including Supplementary Bills) to be made by Authority to the Developer, and notify Facilitator /Authority/MESCOM of the details of such account at least 90 (ninety) days before the dispatch of the first Monthly bill.

13.4 Disputed Bill

13.4.1 If the Authority does not dispute a Monthly Bill or a Supplementary Bill raised by the Developer by the Due Date, such Bill shall be taken as conclusive subject to reconciliation as per Clause 13.5.

13.4.2 If the Authroity disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 95% of the disputed amount as per the payment clasue of this Agreement and it shall within 15 (fifteen) days of receiving such Bill, issue a notice (the "**Bill Dispute Notice**") to the invoicing Party setting out:

- a) the details of the disputed amount;
- b) its estimate of what the correct amount should be; and
- c) all written material in support of its claim.

13.4.3 If the Developer agrees to the claim raised in the Bill Dispute Notice issued pursuant to Clause 13.4.2, the Developer 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.

- 13.4.4 If the Developer does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Clause 13.4.2, it shall, within 15 (fifteen) days of receiving the Bill Dispute Notice, furnish a notice (the “**Bill Disagreement Notice**”) to the Authority providing:
- a) reasons for its disagreement;
 - b) its estimate of what the correct amount should be; and
 - c) all written material in support of its counter-claim.
- 13.4.5 Upon receipt of the Bill Disagreement Notice by the Authority under Clause 13.4.4, authorized representative(s) of the Authority and Developer shall meet and make best endeavours to amicably resolve such dispute within 15 (fifteen) days of receipt of the Bill Disagreement Notice.
- 13.4.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Clause 13.4.4, the matter shall be referred to Dispute resolution in accordance with Article 21.
- 13.4.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, Authority shall, without prejudice to its right to Dispute, be under an obligation to make payment of 95% of the Disputed Amount in the Monthly Bill.

13.5 Quarterly and Annual Reconciliation

- 13.5.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment payments, Tariff rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.
- 13.5.2 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 Developer, Facilitator and the Authority shall jointly sign such reconciliation statement. Within 15 (fifteen) days of signing of a reconciliation statement, the Developer shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 21.

13.6 Payment of Supplementary Bill

13.6.1 Developer may raise a ("**Supplementary Bill**") for payment on account of:

- a) Adjustments required by the Energy Accounts (if applicable); or
- b) Change in Law as provided in Article 15, or

13.6.2 The Authority shall remit all amounts due under a Supplementary Bill raised by the Developer to the Developer's Designated Account by the Due Date.

ARTICLE 14: FORCE MAJEURE

14.1 Definitions

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

14.2 Affected Party

14.2.1 An Affected Party means the Facilitator or the Authority or the Developer whose performance has been affected by an event of Force Majeure.

14.3 Force Majeure

- a) A 'Force Majeure' means any event or circumstance or combination of events stated below which wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:
- b) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- c) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- d) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Developer or of the Contractors;
- e) any judgment or order of any court of competent jurisdiction or statutory authority made against the Developer in any proceedings for reasons other than (i) failure of the Developer to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Government or
- f) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Developer or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that

such delay, modification, denial, refusal or revocation did not result from the Developer's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit.

14.4 Force Majeure Exclusions

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

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

14.5 Notification of Force Majeure Event

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

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

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

14.6 Duty to Perform and Duty to Mitigate

- 14.6.1 To the extent not prevented by a Force Majeure Event pursuant to Clause 14.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

14.7 Available Relief for a Force Majeure Event

Subject to this Article 14:

- a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations;
- 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.

ARTICLE 15: CHANGE IN LAW

15.1 Definitions

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

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

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

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Developer, or (ii) any change on account of regulatory measures by the KERC, or (iii) any change in the KERC approved Tariff as compared to the approved tariff exist as on the Bid Due Date.

15.2 Relief for Change in Law

15.2.1 The aggrieved Party shall be required to approach the MESCOM / KERC for seeking approval of Change in Law.

15.2.2 The decision of the KERC 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 all the Parties.

ARTICLE 16: Termination

16.1 Termination for Developer Default

16.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Developer fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Developer shall be deemed to be in default of this Agreement (the "**Developer Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- a) The Developer has failed to achieve the COD beyond three (3) months of Scheduled Commissioning Date, for any reason whatsoever;
- b) The condition relating to equity lock-in period specified in Clause 5.2 of this Agreement is not complied with;
- c) the Performance Security has been appropriated in accordance with Clause 4.5(b) and /the Developer fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- d) The Developer has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- e) The Developer is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by the Developer within 30 (thirty) days of receipt of first notice in this regard given by the Authority.
- f) The Developer is in material breach of any of its obligations under this Agreement and the same has not been remedied for more than 60 days;
- g) Any representation made or warranty given by the Developer under this Agreement is found to be false or misleading;
- h) A resolution has been passed by the shareholders of the Developer for voluntary winding up of the Developer;

- i) Any petition for winding up of the Developer has been admitted and liquidator or provisional liquidator has been appointed or the Developer has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of the Authority, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Developer under this Agreement;
- j) A default has occurred under any of the Financing Documents and any of the lenders to the Project has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- k) Developer assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project in contravention of the provisions of this Agreement;
- l) Developer 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 to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
- m) PPA executed between Developer and MESCOM is terminated as a result of the default attributable to the Developer; and
- n) The Developer has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 120 days.

16.2 Procedure for cases of Developer Event of Default

- 16.2.1 Upon the occurrence and continuation of any Developer Event of Default under Clause 16.1, the Authority shall be entitled to terminate this Agreement by issuing a notice stating its intention to terminate this Agreement (Authority's Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 16.2.2 Following the issue of the Authority Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

- 16.2.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 16.2.4 Within a period of 7 (seven) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Developer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Authority shall terminate this Agreement by giving a written Termination Notice of 30 (thirty) days to the Developer.

16.3 Obligation of Parties

- 16.3.1 Following issue of Termination Notice by the Authority, the Parties shall promptly take all such steps as may be necessary or required to ensure that;
- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities,
 - (ii) the termination payment, if any, payable by the Authority in accordance with the following Clause 16.4 is paid to the Developer on the Termination Date, and
 - (iii) the Project Facilities are handed over to the Authority by the Developer on the Termination Date free from any Encumbrance along with any payment that may be due by the Developer to the Authority.

16.4 Termination Payment

- 16.4.1 Upon Termination on account of a Developer Event of Default after COD, the Facilitator shall pay to the Developer, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. For the avoidance of doubt, the Developer hereby acknowledges that no Termination Payment shall be due or payable on account of a Developer Event of Default occurring prior to COD.
- 16.4.2 The Developer expressly agrees that Termination Payment under this Article 16 shall constitute a full and final settlement of all claims of the Developer on account of Termination of this Agreement for any reason whatsoever and that the Developer or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.
- 16.4.3 In the event of early Termination, the Solar Rooftop PV system installed shall be handed over to the Authority on as-is-where-is-basis. The Authority will have the discretion to accept or reject any of these assets.
- 16.4.4 In the event of Expiry of the Agreement, the Solar Rooftop PV system installed shall be handed over to the Authority on as-is-where-is-basis. The Authority will have the discretion to accept or reject any of these assets.

16.5 Rights of Authority on Termination

- 16.5.1 Upon Termination of this Agreement for any reason whatsoever, the Authority/ Facilitator shall upon making the Termination Payment, if any, to the Developer have the power and authority to:
- (i) enter upon and take possession and control of the Project Facilities forthwith;
 - (ii) prohibit the Developer and any person claiming through or under the Developer from entering upon/ dealing with the Project Facilities;
- 16.5.2 Notwithstanding anything contained in this Agreement, the Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Developer in connection with the Project, and the handback of the Project Facilities by the Developer to the Authority shall be free from any such obligation.

16.6 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the termination payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

16.7 Senior Lenders' Step-in Rights

- 16.7.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby agree that :
- (i) upon the Senior Lenders recalling and demanding the debt outstanding under the Financing Agreement (following an event of default under the Financing Agreement), or
 - (ii) upon a Termination Notice being issued by the Authority,
- the Senior Lenders shall, without prejudice to any other remedy available to them, have the option to propose to the Authority the substitution of the Developer by another suitable entity ("Proposed Developer"). Any such proposal shall contain in sufficient detail all the relevant information about the Proposed Developer and the terms and conditions of the substitution.
- 16.7.2 Upon receipt of the Senior Lenders' proposal pursuant to the preceding sub-article (a), the Authority shall, at its discretion, have the right to accept substitution of the Developer on such terms and conditions as it may deem fit.

Provided that any such substitution shall,

- (i) be on terms and conditions which are not less favourable to the Authority than those prevailing at the time of substitution, and
- (ii) be for the remaining Agreement Period only.

16.7.3 In the event of substitution as aforesaid, all the rights, privileges and the benefits of the Developer shall be deemed to have been transferred to and vested in the Proposed Developer and the Authority and the Proposed Developer shall take such steps and enter into such documents as may be necessary to give effect to the substitution.

16.7.4 Upon the substitution of the Developer becoming effective as aforesaid, the Developer shall hand back to the Authority or upon instruction of the Authority to the Proposed Developer and for the purpose of giving effect to this provision, the Authority shall have all such rights as are provided in Article 16.5.

16.8 Termination due to Force Majeure

If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 5.6.3, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

ARTICLE 17: Defects Liability after termination

17.1 Liability for defects after Termination

The Developer shall be responsible for all defects and deficiencies in the Project for a period of 120 (One hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. In the event that the Developer fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Developer's risk and cost so as to make the Project conform to the Technical Specifications as given in Schedule 1. All costs incurred by the Authority hereunder shall be reimbursed by the Developer to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account.

17.2 Retention in Escrow Account

- 17.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 17.2.3, a sum equal to 5% (five per cent) of the total Realisable Fee for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 17.1.
- 17.2.2 Without prejudice to the provisions of Clause 17.2.1, the Independent Consultant shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 17.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Consultant shall be retained in the Escrow Account for the period specified by it.
- 17.2.3 The Developer may, for the performance of its obligations under this Article 17, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 17.2.1 or 17.2.2, as the case may be, and for the period specified therein, substantially in the form set forth, to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Security for undertaking the repairs or rectification at the Developer's risk and cost in accordance with the

provisions of this Article 17. Upon furnishing of a Performance Security under this Clause 17.2.3, the retention of funds in the Escrow Account in terms of Clause 17.2.1 or 17.2.2, as the case may be, shall be dispensed with.

ARTICLE 18: Compensation for Breach of Agreement

18.1 Compensation for default by the Developer

Subject to the provisions of Clause 18.4, in the event of the Developer being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 18.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

18.2 Compensation for default by the Authority

Subject to the provisions of Clause 18.4, in the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Developer by way of compensation, all direct costs suffered or incurred by the Developer as a consequence of such material default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material default but shall not include loss of Fee revenues, debt repayment obligations, or other consequential losses and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

18.3 Compensation to be in addition

Compensation payable under this Article 18 shall be in addition to, and not in substitution for, or derogation of Termination Payment, if any.

18.4 Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

ARTICLE 19 :Divestment of rights and Interest

19.1 Divestment Requirements

19.1.1 Upon Termination, the Developer shall comply with and conform to the following Divestment Requirements:

- a) notify to the Authority forthwith the location and particulars of all Project Assets;
- b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- c) cure all Project Assets, including, structures and equipment, of all defects and deficiencies so that the Project is compliant with the Technical Specification provided in the Schedule 1 ; provided that in the event of Termination prior to COD, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- d) deliver and transfer relevant records reports, Intellectual Property and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Developer represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any encumbrance;
- e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Developer in the Project, including manufacturers' warranties in respect of any plants or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Developer in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

19.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Developer, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

19.2 Inspection and cure

- 19.2.1 Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Consultant shall verify, after giving due notice to the Developer specifying the time, date and venue of such verification and/or inspection, compliance by the Developer with the Technical Specification, and if required, cause appropriate tests to be carried out at the Developer's cost for this purpose. Defaults, if any, in the compliance to the Technical Specification as given in Schedule 1 shall be cured by the Developer at its cost and the provisions of Defects Liability shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 19.

19.3 Cooperation and assistance on transfer of Project

- 19.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.
- 19.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Developer shall further provide such reasonable advice and assistance as the Authority, its developer or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 19.3.3 The Government shall have the option to purchase or hire from the Developer at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 19.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

19.4 Vesting Certificate

- 19.4.1 The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a vesting

certificate which will have the effect of constituting evidence of divestment by the Developer of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Developer.

19.5 Additional Facilities

- 19.5.1 Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities shall continue to vest in the Developer upon and after Termination.

19.6 Divestment costs etc.

- 19.6.1 The Developer shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Developer in the Project in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Developer in connection with such divestment shall be borne by the Authority.
- 19.6.2 In the event of any dispute relating to matters covered by and under this Article 19, the Dispute Resolution Procedure shall apply.

ARTICLE 20: Liability and Indemnification

20.1 Indemnity

20.1.1 The Developer shall indemnify, defend and hold the Facilitator and the Authority harmless against:

- a) any and all third party claims against the Facilitator or Authority 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 Developer of any of its obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by the Facilitator and Authority from third party claims arising by reason of a breach by the Developer of any of its obligations under this Agreement, (provided that this Article 20 shall not apply to such breaches by the Developer, for which specific remedies have been provided for under this Agreement)

20.1.2 The Authority shall indemnify, defend and hold the Facilitator and the Developer harmless against:

- a) any and all third party claims against the Facilitator and the Developer, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Authority 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 Facilitator and the Developer from third party claims arising by reason of a breach by the Authority of any of its obligations.

20.1.3 The Facilitator shall indemnify, defend and hold the Authority and the Developer harmless against:

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

reason of a breach by the Facilitator of any of its obligations.

20.2 Procedure for claiming Indemnity

20.2.1 Third party claims

- a) Where the indemnified party is entitled to indemnification from the indemnified party pursuant to Clause 20.1.1(a) or 20.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Clause 20.1.1(a) or 20.1.2(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 indemnified party shall be liable to settle the indemnification claim within 30 (thirty) days of receipt of the above notice. Provided however that, if:
 - i. the Parties choose to refer the dispute before the Arbitrator in accordance with Clause 21.4; 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 Clause 20.1.1(a) or 20.1.2(a) and the indemnified party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the indemnified party, which consent shall not be unreasonably withheld or delayed.

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

20.3 Indemnifiable Losses

- 20.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the indemnified party pursuant to Clause 20.1.1(b) or 20.1.2(b), the Indemnified

Party shall promptly notify the indemnified party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within 30 (thirty) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 20, such event shall constitute a payment default under Article 16.

20.4 Limitation on Liability

- 20.4.1 Except as expressly provided in this Agreement, neither the Developer nor Facilitator or the Authority 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 Facilitator, the Authority, the Developer or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.
- 20.4.2 The Authority shall have no recourse against any officer, director or shareholder of the Facilitator or the Developer or any of their Affiliate or any of its officers, directors or shareholders for such claims excluded under this Article. The Developer shall have no recourse against any officer, director or shareholder of the Facilitator and the Authority, or any of their affiliates or any of its officers, directors or shareholders for such claims excluded under this Article. The Facilitator shall have no recourse against any officer, director or shareholder of the Authority or the Developer or any of their Affiliate or any of its officers, directors or shareholders for such claims excluded under this Article

20.5 Duty to Mitigate

- 20.5.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 20.

ARTICLE 21: Governing Law and Dispute Resolution

21.1 Governing Law

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

21.2 Amicable Settlement and Dispute Resolution

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("**Dispute**") by giving a written notice ("**Dispute Notice**") to the other Party, which shall contain:
 - a) a description of the Dispute;
 - b) the grounds for such Dispute; and
 - c) all written material in support of its claim.
- ii. The other Party/ies shall, within 30 (thirty) days of issue of Dispute Notice issued under Clause 21.2 (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 30 (thirty) days of issue of Dispute Notice by any Party pursuant to Clause 21.2(i) if the other Party/ies does not furnish any counter claim or defense under Clause 21.2 (ii) or 30 (thirty) days from the date of furnishing counter claims or defense by the other Party/ies, all the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within 30 (thirty) days from the later of the dates mentioned in this Clause 21.2 (iii), the Dispute shall be referred for dispute resolution in accordance with Article 21.3.

21.3 Dispute Resolution

21.3.1 Dispute Resolution by the MESCOM

- a) Where any Dispute (a) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (b) relates to any matter agreed to be referred to the MESCOM, such Dispute shall be submitted to adjudication by the MESCOM.

21.4 Arbitration

a. Procedure

It is agreed by the Parties that, any disputes or claims arising out of this Agreement shall be settled by the sole or several arbitrators appointed in accordance with The Arbitration Centre-Karnataka (Domestic and International), Rules 2012.

b. Place of Arbitration

The place of arbitration shall ordinarily be Shivamogga but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

c. English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

d. Survival of Termination

The provisions of this Article shall survive the termination of this Agreement for any reason whatsoever.

e. Cost of Arbitration

The cost of Arbitration procedure shall be borne equally by all the parties.

f. Majority Decision

The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.

g. Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Centre – Karnataka (Domestic and International), Rules 2012 subject to the rights of the aggrieved parties to secure relief from any higher forum.

21.5 Performance during Dispute

- 21.5.1 Pending the submission of and/or decision on a Dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

ARTICLE 22: Assignment and Charges

22.1 Assignments

- 22.1.1 This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing.
- 22.1.2 Provided that, such consent shall not be withheld if the Authority seeks to transfer to any transferee all of its rights and obligations under this Agreement.
- 22.1.3 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.

ARTICLE 23: Miscellaneous

23.1 Interest and Right of Set Off

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

Provided the stipulation regarding interest for delayed payments contained in this Clause 23.1 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

23.2 Confidentiality

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

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

23.3 Waiver of immunity

Each Party unconditionally and irrevocably:

- a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

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

23.4 Waiver

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

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

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

23.5 Exclusion of implied warranties etc.

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

23.6 Survival

23.6.1 Termination shall;

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

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

23.7 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Developer arising from the Request for Proposal shall be deemed to form part of this Agreement and treated as such.

23.8 Severability

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

23.9 No partnership

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

23.10 Third Parties

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

23.11 Successors and assigns

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

23.12 Notices

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

- a) in the case of the Developer, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Developer may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Shivamogga may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Developer may from time to time designate by notice to the Authority;
- b) in the case of Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to _____, _____ Building, _____, Shivamogga with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Developer; provided that if the Developer does not have an office in Shivamogga it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and

- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery, provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

23.13 Language

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

23.14 Counterparts

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

ARTICLE 24: Independent Consultant

24.1 Appointment of Independent Consultant

The Authority appoint a consulting firm substantially in accordance with the selection criteria set forth in Schedule - 4, to be the Independent Consultant under this Agreement (the "Independent Consultant"). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 10 (Ten) Years.

24.2 Duties and functions

24.2.1 The Independent Consultant shall be responsible for providing the Project Monitoring and Consulting services during its the term of its appointment.

24.2.2 The Independent Consultant shall submit regular periodic reports (at least once every quarter) to the Authority in respect of its duties and functions.

24.3 Remuneration

The remuneration, cost and expenses of the Independent Consultant shall be paid by the Developer and subject to the limits set forth in Schedule-4.

24.4 Termination of appointment

24.4.1 Authority may, in its discretion, terminate the appointment of the Independent Consultant at any time, but only after appointment of another Independent Consultant in accordance with Clause 24.1.

24.4.2 If the Developer has reason to believe that the Independent Consultant is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Consultant. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Developer and Independent Consultant for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Developer remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Consultant is terminated hereunder, the Authority shall appoint forthwith another Independent Consultant in accordance with Clause 24.1.

24.5 Authorised signatories

The Authority shall require the Independent Consultant to designate and notify to the Authority and the Developer up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Consultant, and any communication or document required to be signed by the Independent Consultant shall be valid and effective only if signed by any of the designated persons; provided that the Independent Consultant may, by notice in writing, substitute any of the designated persons by any of its employees.

24.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Consultant, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

ACCOUNTS AND AUDIT

25.1 Audited accounts

- 25.1.1 The Developer shall maintain books of accounts recording all its receipts (including all Realisable Fees and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Developer shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Developer during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Auditor for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 25.1.2 The Developer shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

25.2 Appointment of auditors

- 25.2.1 The Developer shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it as mutually agreed with the Authority. All fees and expenses of the Statutory Auditors shall be borne by the Developer.
- 25.2.2 The Developer may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 25.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the "**Additional Auditors**") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs,

realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

25.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Developer to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of Monthly Fee Statements.

25.4 Set-Off

- 25.4.1 In the event any amount is due and payable by the Authority to the Developer, it may set-off any sums payable to it by the Developer and pay the balance remaining. Any exercise by the Authority of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

25.5 Dispute resolution

- 25.5.1 In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

ARTICLE 26: Definitions

26.1 Definitions

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

"Accounting Year" means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year.

"Act" or "Electricity Act, 2003" shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time.

"Affected Party" shall have the meaning set forth in Clause 14.2.

"Agreement" or "Project Development and Implementation Agreement" shall mean this Project Development and Implementation Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof.

"Agreement Period" shall have the meaning ascribed thereto in Article 3 of this Agreement.

"Appropriate Commission" shall mean the Central Electricity Regulatory Commission referred to in sub- section (1) of section 76 or Karnataka Electricity Regulatory Commission.

"Applicable Laws" means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

"Applicable Permits" means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project Facilities during the subsistence of this Agreement;

"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 Developer and the Authority, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Karnataka;

"Capacity Utilization Factor" or "CUF" Shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time.

"Change in Law" shall have the meaning ascribed thereto in Article 15 of this Agreement.

"CERC" shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors.

"Central Empowered Committee" Shall mean the committee formed as per the provisions of the National Solar Mission for selection of solar power developers.

"COD" or "Commercial Operation Date" Shall mean the actual commissioning date of respective units of the Power Project where upon the Developer starts injecting power from the Power Project to the Delivery Point.

"Company" means the Company acting as the Developer under this Agreement;

"Competent Court of Law" shall mean any court or tribunal or any similar judicial or quasi- judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement

"Conditions Precedent" shall have the meaning set forth in Clause 4.2.

"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 60 (sixty) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Developer Preliminary Default Notice or Authority's Preliminary Default Notice as

provided in Article 16 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances.

"Consortium" shall have the meaning set forth in Recital (E)

"Consortium Member" means a company specified in Recital (E) as a member of the Consortium;

"Construction Works" means all works and things necessary to complete the Project Facilities in accordance with this Agreement;

"Contract Year" shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that:

- (i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of 12 (twelve) months commencing on April 1 and ending on March 31, and
- (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement.

"Contractor" means the person or persons excluding Other Developer, as the case may be, with whom the Developer has entered into any of the EPC Contract, the O&M Contract, or any other agreement or a material contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Developer.

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- a. commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- b. not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

- c. provided that if the cure of any breach by the Developer requires any reasonable action by the Developer that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval;

"Damages" shall have the meaning set forth in Sub-clause (w) of Clause 1.2.1;

"Debt Due" means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- a) 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 two years prior to the Transfer Date;
- b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) 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, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Government Default; and
- c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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 to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"Design and Operational Standards" shall have the meaning set forth in Clause 2.2;

"Developer" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

"Developer Default" shall have the meaning set forth in Clause 16.1.1;

"Dispute" shall have the meaning set forth in Clause 21.2;

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 21;

"Document" or "Documentation" means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

"Due Date" shall have the same meaning ascribed thereto in Article 13 of this Agreement.

"Effective Date" shall mean date of signing 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.

"Emergency" means a condition or situation that is likely to endanger the security of the individuals on or about the Project Facilities, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

"Encumbrances" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Site / Project Facilities.

"Energy Accounts" shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof.

"Events of Default" shall mean the events as defined in Article 16 of this Agreement.

"Expiry Date" shall mean the date occurring 25 (twenty five) years from the Commercial Operation Date

"Project Development Charges" is the share of Facilitator for facilitating this transaction process..

"Financial Closure" shall mean the execution of all the Financing Agreements required for the Power Project and fulfillment of conditions precedents and waiver, if any, of any of the conditions precedent for the initial draw down of funds there under.

"Financial Proposal" shall mean the financial bid as submitted by the selected bidder at the time of bid submission. The financial bid of the selected bidder is annexed at Schedule-4 of this Agreement.

"Financing Agreement" shall mean the agreements pursuant to which the Developer has sought financing for the 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 the Authority.

"Force Majeure" or "Force Majeure Event" shall have the meaning ascribed to it in Clause 14.3.1;

"Gol" means Government of India.

"Good Industry Practice" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Developer in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

"Government Instrumentality" means any department, division or sub-division of Government of India or the State Government and includes any commission board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Project Facilities or the performance of all or any of the services or obligations of the Developer under or pursuant to this Agreement;

"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.

"Grid System" means the Interconnection Facilities and any other transmission or distribution facilities through which the Authority supply electricity to MESCOM or MESCOM transmits electricity to their customer(s);

“Insurances” shall mean the insurance cover to be obtained and maintained by the Developer in accordance with Article 11 of this Agreement.

“Interconnection Facilities” shall mean the facilities on Authority’s side of the Net Metering Point for sending and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 10, the Metering System required for supply of power as per the terms of this Agreement.

“Invoice” or “Bill” shall mean a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties.

“KERC” shall mean the Karnataka Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 3 of the Karnataka Electricity Reforms Act, 1999 or its successors.

"Authority Event of Default" shall have the meaning set forth in Clause 16.2;

“LOA” shall mean the Letter of Award to be issued to the selected Bidder inviting the selected Bidder to deposit the Performance Security and sign the Project Development and Implementation 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 KERK;

“Lead Member” shall have the meaning set forth in Recital (E);

"Lenders' Representative" means the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

"LOA" or "Letter of Acceptance" means the letter of acceptance referred to in Recital (F);

"Month" shall mean a period of 30 (thirty) days from (and excluding) the date of the event, where applicable, else a calendar month.

"Material Adverse Effect" means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party.

"Net Minimum Energy" shall have the meaning as defined at Scheduled-1 of this Agreement.

"Net Metering Point" shall mean point or points at which power supplied into the Grid System.

"O&M" means the operation and maintenance of the Project Facilities and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities in accordance with the provisions of this Agreement;

"Other Developer" shall mean all the bidders other than the Consortium, declared as Selected Bidder under the RFP and the SPV with whom the Power Purchase Agreements are executed in accordance with the provisions of the RFP to undertake Project.

"Party" and "Parties" shall have the meaning ascribed thereto in the recital to this Agreement.

"Performance Security" shall have the meaning set forth in Clause 4.5;

"Power Purchase Agreement" shall mean the Agreement between _____ and _____ MESCOM allowing _____ to transfer the power generated from the Solar Rooftop PV to the grid on Net Metering basis.

"Preliminary Default Notice" shall have the meaning ascribed thereto in Article 16 of this Agreement.

"Project" shall mean the solar rooftop facility of Installed Capacity of 21kW located on the government buildings owned/occupied by the Authority

This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, and all the other assets, buildings/structures, equipments, plant and machinery, facilities and related assets

required for the efficient and economic operation of the power generation facility;

Whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement

"Project Agreements" means this Agreement, EPC Contract, O&M Contract and any other agreements or material contracts that may be entered into by the Developer with any person in connection with matters relating to, arising out of or incidental to the Project.

"Project Site" shall mean the Government Building that is to be developed as per this Agreement. The list is annexed in **Schedule 2** of this Agreement.

"Prudent Utility Practices" shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:

- a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Project;
- b) the requirements of Indian Law; and
- c) the physical conditions at the site of the Project

"Realisable Fee" means all the Fee due and realisable under this Agreement, but does not include fees that the Developer has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Fee shall be the amount so declared by the Developer on the basis of its provisional accounts or the audited accounts, as the case may be, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply;

"Request for Proposals" or "RFP" shall have the meaning set forth in Recital (B);

"RBI" shall mean the Reserve Bank of India.

"Rupees", "Rs." shall mean Indian rupees, the lawful currency of India.

"Scope of the Project" shall have the meaning set forth in Clause 2.1;

“Scheduled Commissioning Date” shall mean 6 (six) months from the Effective Date.

"Senior Lenders" means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Developer under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold parri passu charge on the assets, rights, title and interests of the Developer;

“Solar Rooftop Photovoltaic” or “Solar Rooftop PV” Shall mean the solar photovoltaic power project that uses sunlight for conversion into electricity and that is being set up by the Developer to provide Solar Power to the Authority as per the terms and conditions of this Agreement.

“Solar Power” Shall mean power generated from the Solar Photovoltaic Project.

"State" means the State of Karnataka and **"State Government"** means the government of that State;

“State Transmission Utility” or “STU” shall mean Karnataka Power Transmission Corporation Limited or KPTCL.

“Tax” means and includes all taxes, fees, cesses, duties (including stamp duties), levies that may be payable by the Developer for execution of the agreement and during the term of this Agreement under Applicable Law;

"Termination" means the expiry or termination of this Agreement and the Rights hereunder;

"Termination Notice" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"Tests" means the tests to be carried out in accordance with the Specifications and Standards and as finalised by the Developer in consultation with the Authority.

"Total Project Cost" means the means the cost incurred by the Developer for development and construction of the Project Facilities, as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties.

"Transfer Date" means the date on which this Agreement hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

"Week" shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of Authority by

(Signature)

(Name)

(Designation)

For and on behalf of SSCL by

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of Developer by

(Signature)

(Name)

(Designation)

In presence of:

- 1.
- 2.



SCHEDULE 1

Technical Specification

The proposed projects shall be commissioned as per the technical specifications given below. Any shortcomings will lead to cancellation of subsidy in full or part as decided by Facilitator /Authority & Competent Authority's decision will be final and binding on the bidder.

1. DEFINITION

A Grid Tied Solar Rooftop Photo Voltaic (SPV) power plant consists of SPV array, Module Mounting Structure, Power Conditioning Unit (PCU) consisting of Maximum Power Point Tracker (MPPT), Inverter, and Controls & Protections, interconnect cables and switches. PV Array is mounted on a suitable structure. Grid tied SPV system is without battery and should be designed with necessary features to supplement the grid power during day time. Components and parts used in the SPV power plants including the PV modules, metallic structures, cables, junction box, switches, PCUs etc., should conform to the BIS or IEC or international specifications, wherever such specifications are available and applicable.

Solar PV system shall consist of following equipments/components.

- Solar PV modules consisting of required number of Crystalline PV modules.
- Grid interactive Power Conditioning Unit with Remote Monitoring System
- Mounting structures
- Junction Boxes.
- Earthing and lightening protections.
- IR/UV protected PVC Cables, pipes and accessories

1.1. SOLAR PHOTOVOLTAIC MODULES:

1.1.1. The PV modules used should be made in India.

1.1.2. The PV modules used must qualify to the latest edition of IEC PV module qualification test or equivalent BIS standards Crystalline Silicon Solar Cell Modules IEC 61215/IS14286. In addition, the modules must conform to IEC 61730 Part-2- requirements for construction & Part 2 – requirements for testing, for safety qualification or equivalent IS.

- a) For the PV modules to be used in a highly corrosive atmosphere throughout their lifetime, they must qualify to IEC 61701/IS 61701
- b) The total solar PV array capacity should not be less than allocated capacity (kWp) and should comprise of solar crystalline modules of minimum 320 Wp and above wattage. Module capacity less than minimum 320 watts should not be accepted
- c) Protective devices against surges at the PV module shall be provided. Low

voltage drop bypass diodes shall be provided.

- d) PV modules must be tested and approved by one of the IEC authorized test centers.
- e) The module frame shall be made of corrosion resistant materials, preferably having anodized aluminum.
- f) The bidder shall carefully design & accommodate requisite numbers of the modules to achieve the rated power in his bid. Authority / Facilitator shall allow only minor changes at the time of execution.
- g) Other general requirement for the PV modules and subsystems shall be the Following:

- I. The rated output power of any supplied module shall have tolerance of $\pm 3\%$.
- II. The peak-power point voltage and the peak-power point current of any supplied module and/or any module string (series connected modules) shall not vary by more than 2 (two) per cent from the respective arithmetic means for all modules and/or for all module strings, as the case may be.
- III. The module shall be provided with a junction box with either provision of external screw terminal connection or sealed type and with arrangement for provision of by-pass diode. The box shall have hinged, weather proof lid with captive screws and cable gland entry points or may be of sealed type and IP-65 rated.
- IV. IV curves at STC should be provided by bidder.

1.1.3. Modules deployed must use a RF identification tag. The following information must be mentioned in the RFID used on each modules (This can be inside or outside the laminate, but must be able to withstand harsh environmental conditions).

- a) Name of the manufacturer of the PV module
- b) Name of the manufacturer of Solar Cells.
- c) Month & year of the manufacture (separate for solar cells and modules)
- d) Country of origin (separately for solar cells and module)
- e) I-V curve for the module Wattage, I_m , V_m and FF for the module
- f) Unique Serial No and Model No of the module
- g) Date and year of obtaining IEC PV module qualification certificate.
- h) Name of the test lab issuing IEC certificate.
- i) Other relevant information on traceability of solar cells and module as per ISO 9001 and ISO 14001

1.1.4. Warranties:

a) Material Warranty:

- I. Material Warranty is defined as: The manufacturer should warrant the Solar Module(s) to be free from the defects and/or failures specified below for a period not less than five (05) years from the date of sale to the original customer ("Customer")

- II. Defects and/or failures due to manufacturing
- III. Defects and/or failures due to quality of materials
- IV. Non conformity to specifications due to faulty manufacturing and/or inspection processes. If the solar Module(s) fails to conform to this warranty, the manufacturer will repair or replace the solar module(s), at the Owners sole option
- b) Performance Warranty:
 - I. The predicted electrical degradation of power generated not exceeding 20% of the minimum rated power over the 25 year period and not more than 10% after ten years period of the full rated original output.

2. Capacity of Plant

- a) The solar PV panels shall be installed for the Contracted Capacity of 438 kWp
- b) During the first 12 month period immediately after COD, the Plant shall generate minimum energy of 1,500 unit/kW. The units specified herein include the 3% degradation for the first year. After the first anniversary of the COD, an additional 0.7%/annum of degradation is permissible.

3. ARRAY STRUCTURE

- a) Hot dip galvanized MS mounting structures may be used for mounting the modules/ panels/arrays. Each structure should have angle of inclination as per the site conditions to take maximum insolation. However to accommodate more capacity the angle inclination may be reduced until the plant meets the specified performance ratio requirements.
- b) The Mounting structure shall be so designed to withstand the speed for the wind zone of the location where a PV system is proposed to be installed (like Delhi-wind speed of 150 km/ hour). It may be ensured that the design has been certified by a recognized Lab/ Institution in this regard and submit wind loading calculation sheet to Facilitator /Authority. Suitable fastening arrangement such as grouting and calming should be provided to secure the installation against the specific wind speed.
- c) The mounting structure steel shall be as per latest IS 2062: 1992 and galvanization of the mounting structure shall be in compliance of latest IS 4759.
- d) Structural material shall be corrosion resistant and electrolytically compatible with the materials used in the module frame, its fasteners, nuts and bolts. Aluminium structures also can be used which can withstand the wind speed of respective wind zone. Necessary protection towards rusting need to be provided either by coating or anodization.
- e) The fasteners used should be made up of stainless steel. The structures shall be designed to allow easy replacement of any module. The array structure shall be so designed that it will occupy minimum space without sacrificing the output from the SPV panels
- f) Regarding civil structures the bidder need to take care of the load bearing capacity of the roof and need arrange suitable structures based on the quality of roof.

- g) The total load of the structure (when installed with PV modules) on the terrace should be less than 60 kg/m².
- h) The minimum clearance of the structure from the roof level should be 300 mm.

4. JUNCTION BOXES (JBs)

- a) The junction boxes are to be provided in the PV array for termination of connecting cables. The J. Boxes (JBs) shall be made of GRP/FRP/Powder Coated Aluminium /cast aluminium alloy with full dust, water & vermin proof arrangement. All wires/cables must be terminated through cable lugs. The JB's shall be such that input & output termination can be made through suitable cable glands.
- b) Copper bus bars/terminal blocks housed in the junction box with suitable termination threads conforming to IP65 standard and IEC 62208 Hinged door with EPDM rubber gasket to prevent water entry. Single / double compression cable glands. Provision of earthings. It should be placed at 5 feet height or above for ease of accessibility.
- c) Each Junction Box shall have High quality Suitable capacity Metal Oxide Varistors (MOVs) / SPDs, suitable Reverse Blocking Diodes. The Junction Boxes shall have suitable arrangement monitoring and disconnection for each of the groups.
- d) Suitable markings shall be provided on the bus bar for easy identification and the cable ferrules must be fitted at the cable termination points for identification

5. DC DISTRIBUTION BOARD:

- a) DC Distribution panel to receive the DC output from the array field.
- b) DC DPBs shall have sheet from enclosure of dust & vermin proof conform to IP 65 protection. The bus bars are made of copper of desired size. Suitable capacity MCBs/MCCB shall be provided for controlling the DC power output to the PCU along with necessary surge arrestors.

6. AC DISTRIBUTION PANEL BOARD:

- a) AC Distribution Panel Board (DPB) shall control the AC power from PCU/ inverter, and should have necessary surge arrestors. Interconnection from ACDB to mains at LT Bus bar while in grid tied mode.
- b) All switches and the circuit breakers, connectors should conform to IEC 60947, part I, II and III/ IS60947 part I, II and III.
- c) The changeover switches, cabling work should be undertaken by the bidder as part of the project.
- d) All the Panel's shall be metal clad, totally enclosed, rigid, floor mounted, air - insulated, cubical type suitable for operation on three phase / single phase, 415 or 230 volts, 50 Hz
- e) The panels shall be designed for minimum expected ambient temperature of 45 degree Celsius, 80 percent humidity and dusty weather.

- f) All indoor panels will have protection of IP54 or better. All outdoor panels will have protection of IP65 or better.
- g) Should conform to Indian Electricity Act and rules (till last amendment).
- h) All the 415 AC or 230 volts devices / equipment like bus support insulators, circuit breakers, SPDs, VTs etc., mounted inside the switchgear shall be suitable for continuous operation and satisfactory performance under the following supply conditions

Variation in supply voltage	+/- 10 %
Variation in supply frequency	+/- 3 Hz

7. PCU/ARRAY SIZE RATIO:

- a) The combined wattage of all inverters should not be less than rated capacity of power plant under STC.
- b) Maximum power point tracker shall be integrated in the PCU/inverter to maximize energy drawn from the array.

8. PCU/ Inverter:

As SPV array produce direct current electricity, it is necessary to convert this direct current into alternating current and adjust the voltage levels to match the grid voltage. Conversion shall be achieved using an electronic Inverter and the associated control and protection devices. All these components of the system are termed the "Power Conditioning Unit (PCU)". In addition, the PCU shall also house MPPT (Maximum Power Point Tracker), an interface between Solar PV array & the Inverter, to the power conditioning unit/inverter should also be DG set interactive. If necessary. Inverter output should be compatible with the grid frequency. Typical technical features of the inverter shall be as follows:

- Switching devices : IGBT/MOSFET
- Control : Microprocessor /DSP
- Nominal AC output voltage and frequency: 415V, 3 Phase, 50 Hz (In case single phase inverters are offered, suitable arrangement for balancing the phases must be made.)
- Output frequency : 50 Hz
- Grid Frequency Synchronization range : + 3 Hz or more
- Ambient temperature considered : -20o C to 50o C
- Humidity : 95 % Non-condensing
- Protection of Enclosure : IP-20(Minimum) for indoor.
- : IP-65(Minimum) for outdoor.\
- Grid Frequency Tolerance range : + 3 or more
- Grid Voltage tolerance : - 20% & + 15 %
- No-load losses : Less than 1% of rated power
- Inverter efficiency(minimum) : >93% (In case of 10kW or above)
- Inverter efficiency (minimum) : > 90% (In case of less than 10 kW)

- THD : < 3%
- PF : > 0.9
 - a) Three phase PCU/ inverter shall be used with each power plant system (10kW and/or above) but In case of less than 10 kW single phase inverter can be used.
 - b) PCU/inverter shall be capable of complete automatic operation including wake-up, synchronization & shutdown.
 - c) The output of power factor of PCU inverter is suitable for all voltage ranges or sink of reactive power, inverter should have internal protection arrangement against any sustainable fault in feeder line and against the lightning on feeder.
 - d) Built-in meter and data logger to monitor plant performance through external computer shall be provided.
 - e) The power conditioning units / inverters should comply with applicable IEC/ equivalent BIS standard for efficiency measurements and environmental tests as per standard codes IEC 61683/IS 61683 and IEC 60068- 2(1,2,14,30) /Equivalent BIS Std.
 - f) The charge controller (if any) / MPPT units environmental testing should qualify IEC 60068-2(1, 2, 14, 30)/Equivalent BIS std. The junction boxes/ enclosures should be IP 65(for outdoor)/ IP 54 (indoor) and as per IEC 529 specifications.
 - g) The PCU/ inverters should be tested from the MNRE approved test centres / NABL /BIS /IEC accredited testing- calibration laboratories. In case of imported power conditioning units, these should be approved by international test houses.

9. INTEGRATION OF PV POWER WITH GRID:

The output power from SPV would be fed to the inverters which converts DC produced by SPV array to AC and feeds it into the main electricity grid after synchronization. In case of grid failure, or low or high voltage, solar PV system shall be out of synchronization and shall be disconnected from the grid. Once the DG set comes into service PV system shall again be synchronized with DG supply and load requirement would be met to the extent of availability of power. 4 pole isolation of inverter output with respect to the grid/ DG power connection need to be provided.

10. DATA ACQUISITION SYSTEM / PLANT MONITORING

- i. Data Acquisition System shall be provided for each of the solar PV plant.
- ii. Data Logging Provision for plant control and monitoring, time and date stamped system data logs for analysis with the high quality, suitable PC. Metering and Instrumentation for display of systems parameters and status indication to be provided.
- iii. Solar Irradiance: An integrating Pyranometer / Solar cell based irradiation sensor (along with calibration certificate) provided, with the sensor mounted in the plane of the array. Readout integrated with data logging system.
- iv. Temperature: Temperature probes for recording the Solar panel temperature

- and/or ambient temperature to be provided complete with readouts integrated with the data logging system
- v. The following parameters are accessible via the operating interface display in real time separately for solar power plant:
 - a. AC Voltage.
 - b. AC Output current.
 - c. Output Power
 - d. Power factor.
 - e. DC Input Voltage.
 - f. DC Input Current.
 - g. Time Active.
 - h. Time disabled.
 - i. Time Idle.
 - j. Power produced
 - k. Protective function limits (Viz-AC Over voltage, AC Under voltage, over frequency, under frequency ground fault, PV starting voltage, PV stopping voltage.
 - vi. All major parameters available on the digital bus and logging facility for energy auditing through the internal microprocessor and read on the digital front panel at any time) and logging facility (the current values, previous values for up to a month and the average values) should be made available for energy auditing through the internal microprocessor and should be read on the digital front panel.
 - vii. PV array energy production: Digital Energy Meters to log the actual value of AC/DC voltage, Current & Energy generated by the PV system provided. Energy meter along with CT/PT should be of 0.5 accuracy class.
 - viii. Computerized DC String/Array monitoring and AC output monitoring shall be provided as part of the inverter and/or string/array combiner box or separately.
 - ix. String and array DC Voltage, Current and Power, Inverter AC output voltage and current (All 3 phases and lines), AC power (Active, Reactive and Apparent), Power Factor and AC energy (All 3 phases and cumulative) and frequency shall be monitored.
 - x. Computerized AC energy monitoring shall be in addition to the digital AC energy meter.
 - xi. The data shall be recorded in a common work sheet chronologically date wise. The data file shall be MS Excel compatible. The data shall be represented in both tabular and graphical form.
 - xii. All instantaneous data shall be shown on the computer screen.
 - xiii. Software shall be provided for USB download and analysis of DC and AC parametric data for individual plant.
 - xiv. Provision for Internet monitoring and download of data shall be also incorporated.
 - xv. Remote Server and Software for centralized Internet monitoring system shall be also provided for download and analysis of cumulative data of all the plants and the data of the solar radiation and temperature monitoring system.

- xvi. Ambient / Solar PV module back surface temperature shall be also monitored on continuous basis.
- xvii. Simultaneous monitoring of DC and AC electrical voltage, current, power, energy and other data of the plant for correlation with solar and environment data shall be provided.
- xviii. Remote Monitoring and data acquisition through Remote Monitoring System software at the Authority / Facilitator location with latest software/hardware configuration and service connectivity for online / real time data monitoring/control complete to be supplied and operation and maintenance/control to be ensured by the supplier. Provision for interfacing these data on Authority / Facilitator server and portal in future shall be kept.

10. TRANSFORMER “IF REQUIRED” & METERING:

- a) Dry/oil type relevant kVA, 11kV/415V, 50 Hz Step up along with all protections, switchgears, Vacuum circuit breakers, cables etc. along with required civil work.
- b) The bidirectional electronic energy meter (0.5 S class) shall be installed for the measurement of import/Export of energy.
- c) The bidder must take approval/NOC from the Concerned DISCOM for the connectivity, technical feasibility, and synchronization of SPV plant with distribution network and submit the same to Authority / Facilitator before commissioning of SPV plant.
- d) Reverse power relay shall be provided by bidder (if necessary), as per the local DISCOM requirement.

11. POWER CONSUMPTION:

- a) Regarding the generated power consumption, priority need to give for internal consumption first and thereafter any excess power can be exported to grid. Finalization of tariff is not under the purview of Authority / Facilitator or MNRE. Decisions of appropriate authority like DISCOM, state regulator may be followed.

12. PROTECTIONS

The system should be provided with all necessary protections like earthing, Lightning, and grid islanding as follows:

12.1. LIGHTNING PROTECTION

The SPV power plants shall be provided with lightning & overvoltage protection. The main aim in this protection shall be to reduce the over voltage to a tolerable value before it reaches the PV or other sub system components. The source of over voltage can be lightning, atmosphere disturbances etc The entire space occupying the SPV array shall be suitably protected against Lightning by deploying required number of Lightning Arrestors. Lightning protection should be provided as per IEC 62305 standard. The

protection against induced high-voltages shall be provided by the use of metal oxide varistors (MOVs) and suitable earthing such that induced transients find an alternate route to earth.

12.2. SURGE PROTECTION

Internal surge protection shall consist of three MOV type surge-arrestors connected from +ve and –ve terminals to earth (via Y arrangement)

12.3. EARTHING PROTECTION

- i. Each array structure of the PV yard should be grounded/ earthed properly as per IS:3043-1987. In addition the lighting arrester/masts should also be earthed inside the array field. Earth Resistance shall be tested in presence of the representative of Department/ Authority / Facilitator as and when required after earthing by calibrated earth tester. PCU, ACDB and DCDB should also be earthed properly.
- ii. Earth resistance shall not be more than 5 ohms. It shall be ensured that all the earthing points are bonded together to make them at the same potential.

12.4. GRID ISLANDING:

- i. In the event of a power failure on the electric grid, it is required that any independent power-producing inverters attached to the grid turn off in a short period of time. This prevents the DC-to-AC inverters from continuing to feed power into small sections of the grid, known as “islands.” Powered islands present a risk to workers who may expect the area to be unpowered, and they may also damage grid-tied equipment. The Rooftop PV system shall be equipped with islanding protection. In addition to disconnection from the grid (due to islanding protection) disconnection due to under and over voltage conditions shall also be provided.
- ii. A manual disconnect 4pole isolation switch beside automatic disconnection to grid would have to be provided at utility end to isolate the grid connection by the utility personnel to carry out any maintenance. This switch shall be locked by the utility personnel

13. CABLES

Cables of appropriate size to be used in the system shall have the following characteristics:

- i. Shall meet IEC 60227/IS 694, IEC 60502/IS1554 standards
- ii. Temp. Range: –10oC to +80oC.
- iii. Voltage rating 660/1000V
- iv. Excellent resistance to heat, cold, water, oil, abrasion, UV radiation
- v. Flexible
- vi. Sizes of cables between array interconnections, array to junction boxes, junction boxes to Inverter etc. shall be so selected to keep the voltage drop (power loss) of the entire solar system to the minimum. The cables (as per IS) should be insulated with a special grade PVC compound formulated for outdoor use.

- vii. Cable Routing/ Marking: All cable/wires are to be routed in a GI cable tray and suitably tagged and marked with proper manner by good quality ferule or by other means so that the cable easily identified.
- viii. The Cable should be so selected that it should be compatible up to the life of the solar PV panels i.e. 25years.
- ix. The ratings given are approximate. Bidder to indicate size and length as per system design requirement. All the cables required for the plant provided by the bidder. Any change in cabling sizes if desired by the bidder/approved after citing appropriate reasons. All cable schedules/layout drawings approved prior to installation.
- x. Multi Strand, Annealed high conductivity copper conductor PVC type 'A' pressure extruded insulation or XLPE insulation. Overall PVC/XLPE insulation for UV protection Armoured cable for underground laying. All cable trays including covers to be provided. All cables conform to latest edition of IEC/ equivalent BIS Standards as specified below: BoS item / component Standard Description Standard Number
Cables General Test and Measuring Methods, PVC/XLPE insulated cables for working Voltage up to and including 1100 V ,UV resistant for outdoor installation IS /IEC 69947.
- xi. The size of each type of DC cable selected shall be based on minimum voltage drop however; the maximum drop shall be limited to 1%.
- xii. The size of each type of AC cable selected shall be based on minimum voltage drop however; the maximum drop shall be limited to 2 %.

14. CONNECTIVITY

The maximum capacity for interconnection with the grid at a specific voltage level shall be as specified in the Distribution Code/Supply Code of the State and amended from time to time. Following criteria have been suggested for selection of voltage level in the distribution system for ready reference of the solar suppliers.

Plant Capacity	Connecting Voltage
Up to 5 kW	230V-single phase
Above 5kW and up to 50 Kw	415V – three phase
Above 50kW and up to 100kW	11kV HT

- i. The maximum permissible capacity for rooftop shall be 1 MW for a single net metering point.
- ii. Utilities may have voltage levels other than above, DISCOMS may be consulted before finalization of the voltage level and specification be made accordingly.
- iii. For large PV system (Above 50 kW) for commercial installation having large load, the solar power can be generated at low voltage levels and stepped up to 11 kV level through the step up transformer. The transformers and associated switchgear would require to be provided by the SPV bidders.

15. TOOLS & TACKLES AND SPARES:

- i. After completion of installation & commissioning of the power plant, necessary tools & tackles are to be provided free of cost by the bidder for maintenance purpose. List of tools and tackles to be supplied by the bidder for approval of specifications and make from Authority / Facilitator.
- ii. A list of requisite spares in case of PCU/inverter comprising of a set of control logic cards, IGBT driver cards etc. Junction Boxes. Fuses, MOVs / arrestors, MCCBs etc along with spare set of PV modules be indicated, which shall be supplied along with the equipment. A minimum set of spares shall be maintained in the plant itself for the entire period of warranty and Operation & Maintenance which upon its use shall be replenished

16. DANGER BOARDS AND SIGNAGES:

Danger boards should be provided as and where necessary as per IE Act. /IE rules as amended up to date. Three signage shall be provided one each at battery –cum- control room, solar array area and main entry from administrative block. Text of the signage may be finalized in consultation with Authority / Facilitator.

17. FIRE EXTINGUISHERS:

The firefighting system for the proposed power plant for fire protection shall be consisting of:

- a) Portable fire extinguishers in the control room for fire caused by electrical short circuits
- b) Sand buckets in the control room
- c) The installation of Fire Extinguishers should confirm to TAC regulations and BIS standards. The fire extinguishers shall be provided in the control room housing PCUs as well as on the Roof or site where the PV arrays have been installed.

18. DRAWINGS & MANUALS:

- i. Two sets of Engineering, electrical drawings and Installation and O&M manuals are to be supplied. Bidders shall provide complete technical data sheets for each equipment giving details of the specifications along with make/makes in their bid along with basic design of the power plant and power evacuation, synchronization along with protection equipment.
- ii. Approved ISI and reputed makes for equipment be used.
- iii. For complete electro-mechanical works, bidders shall supply complete design, details and drawings for approval to Authority / Facilitator before progressing with the installation work

19. PLANNING AND DESIGNING:

- i. The bidder should carry out Shadow Analysis at the site and accordingly design strings & arrays layout considering optimal usage of space, material and labor. The

bidder should submit the array layout drawings along with Shadow Analysis Report to Authority / Facilitator for approval.

- ii. Authority /SSCL reserves the right to modify the landscaping design, Layout and specification of sub-systems and components at any stage as per local site conditions/requirements.
- iii. The bidder shall submit preliminary drawing for approval & based on any modification or recommendation, if any. The bidder submits three sets and soft copy in CD of final drawing for formal approval to proceed with construction work.

20. DRAWINGS TO BE FURNISHED BY BIDDER AFTER AWARD OF CONTRACT

- i. The Contractor shall furnish the following drawings Award/Intent and obtain approval
- ii. General arrangement and dimensioned layout
- iii. Schematic drawing showing the requirement of SV panel, Power conditioning Unit(s)/ inverter, Junction Boxes, AC and DC Distribution Boards, meters etc.
- iv. Structural drawing along with foundation details for the structure.
- v. Itemized bill of material for complete SV plant covering all the components and associated accessories.
- vi. Layout of solar Power Array
- vii. Shadow analysis of the roof

21. SOLAR PV SYSTEM ON THE ROOFTOP FOR MEETING THE ANNUAL ENERGY REQUIREMENT

The Solar PV system on the rooftop of the selected buildings will be installed for meeting upto 90% of the annual energy requirements depending upon the area of rooftop available and the remaining energy requirement of the office buildings will be met by drawing power from grid at commercial tariff of MESCOM.

22. SAFETY MEASURES:

The bidder shall take entire responsibility for electrical safety of the installation(s) including connectivity with the grid and follow all the safety rules & regulations applicable as per Electricity Act, 2003 and CEA guidelines etc.

SCHEDULE 2

Details of sites

No.	Name of building	Metering	Recommended kWp	Area in sq. meters
1	PWD Building Balraj Urs Road	Net	7	224
2	Veterinary College	Net	50	5000
3	District Central co-operative bank	Net	58	679
4	Shivamogga Smart City Office	Net	69	706
5	Pump house – Krishnarajendra Pump house	Net	254	3300
Total			438	

SCHEDULE -3

PERFORMANCE SECURITY (PROFORMA OF BANK GUARANTEE)³

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

In favour of

_____ having its registered address at _____, (hereinafter referred to as "**Authority**", which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors, and assigns);

WHEREAS

- A. By the Tri-Partite Project Development and Implementation Agreement (the "Agreement") being entered into between **Facilitator**, Authority and _____⁴, a company incorporated under the provisions of the Companies Act, 1956/2013 having its registered office/ permanent address at _____ (hereinafter referred as "Developer"), has been granted the right to development of Solar PV Power Plant, hereinafter referred to as the Project.
- B. In terms of Article 4.5 of the Agreement, the Developer is required to furnish to Authority, an unconditional and irrevocable Bank Guarantee for an amount of Rs. _____/- (Rupees _____ Only) as security for due and punctual performance/discharge of its obligations under the Agreement.

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

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

³ To be issued by a Scheduled Bank in India

⁴ Name of SPV

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

1. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ of all its obligations relating to the Project during the term of the Agreement.
2. The Guarantor as primary obligator shall, without demur, pay to the Authority sums not exceeding in aggregate Rs. _____/- (Rupees _____ Only), within one working day of receipt of a written demand thereof from the Authority stating that the Developer has failed to meet its performance obligations under the Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Developer or validity of demand so made by the Authority and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Developer or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.

In order to give effect to this Guarantee, the Authority shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/ delayed exercise of any of its rights by the Authority or any indulgence shown by the Authority to the Developer and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise, delayed exercise of any of its rights by the Authority or any indulgence shown by the Authority provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

3. This Guarantee shall be irrevocable and shall remain in full force and effect for a period of 15 months from the Commercial Operation Date unless discharged /released earlier by the Authority in accordance with the provisions of the Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____/- (Rupees _____ Only).
4. This Guarantee shall not be affected by any change in the constitution or winding up of the Developer/the Guarantor or any absorption, merger or amalgamation of the Developer/the Guarantor with any other Person.

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

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

SIGNED AND DELIVERED

by _____ Bank
by the hand of Shri _____ its
_____ and authorised official.

SCHEDULE -4

SELECTION OF INDEPENDENT CONSULTANT

Selection of Independent Consultant

- 1.1. The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 shall apply, *mutatis mutandis*, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 1.2. The Authority shall select the Independent Consultant to undertake and perform the duties and functions of monitoring the Project.

Fee and expenses

- 2.1. In determining the nature and quantum of duties and services to be performed by the Independent Consultant during the term of its appointment, payments to the Independent Consultant shall be borne by the Developer in accordance with PDIA.
- 2.2. The nature and quantum of duties and services to be performed by the Independent Consultant during the term of its appointment shall be determined by the Authority in conformity with the provisions of PDIA and with due regard for economy in expenditure. All payments made to the Independent Consultant on account of fee and expenses during the term of its appointment shall be borne by the Developer.

Appointment of government entity as Independent Consultant

Notwithstanding anything to the contrary contained in this Schedule, Authority may in its discretion appoint a government-owned entity as the Independent Consultant; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided that a government-owned entity which is owned or controlled by Authority shall not be eligible for appointment as Independent Consultant.

SCHEDULE -5
TECHNICAL AND FINANCIAL PROPOSAL OF THE DEVELOPER

SCHEDULE -6
Escrow Arrangement Agreement