

**SELECTION OF DEVELOPER
FOR
GRID CONNECTED ROOFTOP SOLAR PV SYSTEMS ON ROOFTOP OF
SELECTED HDMC OWNED BUILDINGS**

VOLUME II

**DRAFT PROJECT DEVELOPMENT AND
IMPLEMENTATION AGREEMENT**

**SOLAR ROOF TOP: DESIGN, FINANCE, SUPPLY, INSTALLATION, TEST AND
COMMISSIONING, OPERATE AND MAINTAIN ROOFTOP SOLAR
PHOTOVOLTAIC SYSTEMS FOR 25 YEARS ON DISCOUNT OVER RETAIL
TARIFF BASIS ON NET METERING OR GROSS METERING (AS PER KERC
REGULATIONS) AT MULTIPLE LOCATIONS OWNED BY HDMC
(APPROXIMATELY 340 KWP)**

May 2020

HUBBALLI DHARWAD SMART CITY LIMITED

Contents

1. ARTICLE 1: PROJECT DEVELOPMENT AND IMPLEMENTATION AGREEMENT	2
2. ARTICLE 2: DEFINITION AND INTERPRETATION	5
3. ARTICLE 3: SCOPE OF THE PROJECT AND DESIGN AND OPERATIONAL STANDARDS	9
4. ARTICLE 4: TERMS OF AGREEMENT	10
5. ARTICLE 5: CONDITIONS PRECEDENT	11
6. ARTICLE 6: OBLIGATIONS OF THE DEVELOPER	14
7. ARTICLE 7: OBLIGATIONS OF THE AUTHORITY	20
8. ARTICLE 8: REPRESENTATIONS AND WARRANTIES	21
9. ARTICLE 9: SYNCHRONIZATION, COMMISSIONING AND COMMERCIAL OPERATION	23
10. ARTICLE 10: POWER DISPATCH	24
11. ARTICLE 11: METERING	25
12. ARTICLE 12: INSURANCES	26
13. ARTICLE 13: APPLICABLE TARIFF RECEIVABLE BY DEVELOPER AND SHARING OF CLEAN DEVELOPMENT MECHANISM BENEFITS	28
14. ARTICLE 14: BILLING AND PAYMENT	29
15. ARTICLE 15: FORCE MAJEURE	33
16. ARTICLE 16: CHANGE IN LAW	36
17. ARTICLE 17: TERMINATION	37
18. ARTICLE 18: DEFECTS LIABILITY AFTER TERMINATION	41
19. ARTICLE 19: COMPENSATION FOR BREACH OF AGREEMENT	42
20. ARTICLE 20: DIVESTMENT OF RIGHTS AND INTEREST	43
21. ARTICLE 21: LIABILITY AND INEMNIFICATION	46
22. ARTICLE 22: GOVERNING LAW AND DISPUTE RESOLUTION	49
23. ARTICLE 23: ASSIGNMENT AND CHARGES	51
24. ARTICLE 24: MISCELLANEOUS	52
25. ARTICLE 25: INDEPENDENT CONSULTANT	56
26. ARTICLE 26: ACCOUNTS AND AUDIT	57
27. ARTICLE 27: DEFINITIONS	59
SCHEDULE 1: SCOPE OF WORK	66
SCHEDULE 2: TECHNICAL SPECIFICATIONS	71
SCHEDULE 3: SITE DETAILS	84
SCHEDULE 4: PERFORMANCE SECURITY	86
SCHEDULE 5: SELECTION OF INDEPENDENT CONSULTANT	88
SCHEDULE 6: ESCROW AGREEMENT	89
SCHEDULE 7: PPA BETWEEN DEVELOPER AND HESCOM	100
SCHEDULE 8: RIGHT OF WAY, SITE RULES AND FACILITIES AT SITE	101
SCHEDULE 9: CLEARANCES TO BE OBTAINED BY THE DEVELOPER WITH ASSISTANCE FROM THE PMC AND FACILITATOR	103
SCHEDULE 10: CLEARANCES TO BE OBTAINED BY THE BIDDER INDEPENDENTLY	104
SCHEDULE 11: MANDATORY PROJECT MILESTONES	105
SCHEDULE 12: GOVERNMENT POLICIES, GUIDELINES AND BEST PRACTICES	106
SCHEDULE 13: MEMORANDUM OF UNDESTANDING BETWEEN FACILITATOR (HDSCL) AND ROOFTOP OWNERS	107
SCHEDULE 14: TRIPARTITE AGREEMENT	108

1. ARTICLE 1: PROJECT DEVELOPMENT AND IMPLEMENTATION AGREEMENT

This Project Development and Implementation Agreement (“**PDIA**”) is entered into on this the *** day of ***, 20____ at _____.

1.1. AMONGST

(hereinafter referred to as “**Authority**”, which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors, and assignees);

AND

a company incorporated under the provisions of the Companies Act, [1956/2013], [***In case of consortium to be inserted, “the Lead Member of the Consortium”***] 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.

AND

Hubballi Dharwad Smart City Limited (the “**Facilitator**”) , the Special Purpose Vehicle company incorporated under the provisions of the Companies Act, [1956/2013], for the development of Hubballi Dharwad Smart City as per the Smart City Proposal (SCP) approved by the Ministry of Urban Development (MoUD) of the Government of India (GOI) and having its registered office at *****, (hereinafter referred to as the “**facilitator**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

1.2. WHEREAS

- A. Eleven numbers of HDMC owned buildings premises (the “**HDMC Buildings**”) have agreed to install rooftop solar PV power plant of which the entity named in Recital (1) above owns the _____ building and has concurred for installation of the rooftop solar PV power plant on its building rooftop (see **SCHEDULE 3** for Site Details);
- B. Hubballi Dharwad Smart City Limited (the “Facilitator”) is the Special Purpose Vehicle (SPV) company formed as per Company act, 2013 for the development of Hubballi Dharwad Smart City as per the Smart City Proposal. HDSCL has appointed project management consultant (PMC). The latter shall continue to act, advise and represent for the HDSCL / Facilitator and it includes its administrators, successors and assignees.
- C. Under smart city development, roof top solar PV installations are proposed for HDMC owned buildings under Phase I.

- D. In its efforts to move towards self-sustenance and given the rooftop space available with it, the Facilitator intends to set up Rooftop Solar PV Power Plant on the HDMC owned Buildings. The indicative potential of the rooftop area across 11 (eleven) HDMC owned Buildings premises is ~ 340 kWp (“the **Project**”).
- E. **Authority** intends to undertake development of Solar Rooftop PV (**Solar Rooftop PV**) through private sector participation on PPP basis and has agreed for the services of the **Facilitator by the HDSCL**, for assisting it in the identification of developer and implementation of the work, in consideration of 5% of the revenues to HDSCL, payable monthly by the authorities/HESCOM, through the escrow account during Agreement Period.
- F. Pursuant thereto, the **Authority**, through its Facilitator, had accordingly invited proposals by its “**Request for Proposal**” or “**RFP**” for the selection of Bidders for undertaking development of solar rooftops across eleven HDMC owned buildings. In this regard, the **Facilitator** had received proposals from certain bidders including, inter alia, the _____ entity/consortium comprising of _____ and _____ with _____ as its lead member.
- G. After evaluation of the Proposals received, **Facilitator and the Authority** had accepted the bid of the {single business entity/ Consortium} for development of [_____]kW capacity Of [Solar Rooftop] and issued its Letter of Award No.....dated..... (Herein after called the “**LOA**”) to the {single business entity/ Consortium} [“**Selected Bidder**”] requiring, inter alia, the execution of this Agreement.
- H. The single business entity/ Consortium has since promoted and incorporated the Developer Special Purpose Vehicle” or” SPV”, in accordance with the terms of RFP and has requested **Authority** through a letter bearing number ____ dated ____ to accept _____ (name of single business entity) [*In case of consortium, “the Consortium of _____ and _____ with _____ as the **Lead Member**”*] 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.
- I. By its letter datedthe Developer has also joined in the said request of the single business entity/ Consortium to **the Authority** to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the single business entity/ Consortium including the obligation to enter into this Project Development and Implementation Agreement pursuant to the LOA. The Developer has further represented to the effect that it has been promoted by the single business entity/ Consortium for the purposes hereof}.
- J. **Authority** has agreed to the said request of the {single business entity/ Consortium and the} Developer and has accordingly agreed to enter into this Project Development and Implementation Agreement with the Developer for execution of the Project, subject to and on the terms and conditions set forth hereinafter.

- K. **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 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:

2. ARTICLE 2: DEFINITION AND INTERPRETATION

2.1. 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.

2.2. Interpretations

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 Hubballi are 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 **"reorganization"** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- S. Unless 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.
- 2.3. 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.
- 2.4. 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.
- 2.5. 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.
- 2.6. 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.
- 2.7. Priority of Agreements, Clauses and Schedules
- 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.
- 2.8. Subject to Clause 2.7, 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.

3. ARTICLE 3: SCOPE OF THE PROJECT AND DESIGN AND OPERATIONAL STANDARDS

3.1. Scope of the Project

The Scope of the Project shall mean and include, during the term of this Agreement:

- A. Designing, financing, procuring/manufacturing, installing, testing, commissioning, grid synchronization, completing the Project for the Contracted Capacity and supply of power to the building owned by the Authority and connected to the grid through a service connection and the surplus energy will be fed into the grid under the Net Metering / grid metering scheme at the respective Interconnection Points of HESCOM 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 **SCHEDULE 1** and other provisions of this Agreement; and
- D. Performance and fulfilment 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.

3.2. Design and Operational Standards

The Design and Operational Standards shall mean the minimum prescribed standards that the Developer has to adhere to during the design, construction, and operation and maintenance of the Project as provided in **SCHEDULE 2** to this Agreement.

4. ARTICLE 4. TERMS OF AGREEMENT

4.1. Effective Date

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

4.2. Term of Agreement

This Agreement shall be subject to Clauses 4.2, 4.3 and 4.4 be valid for a term of 25 (Twenty-Five) years commencing from the Effective Date and ending on the Expiry Date. At the end of the Agreement period of 25 (Twenty-Five) years, the Solar Rooftop 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.

4.3. 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 Solar Rooftop 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.

4.4. Audit of the Developer's Accounts

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.

4.5. 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 15, 21, 22 and 23 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.

5. ARTICLE 5. CONDITIONS PRECEDENT

5.1. Conditions Precedent

Save and except as expressly provided in Articles 5, 15, 22, 2 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 5 (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.

5.2. 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. obtained all Consents, Clearances and Permits¹¹ required for supply of power as per the terms of this Agreement; (see **SCHEDULE 9** and **SCHEDULE 10**)
- B. achieved Financial Closure and provided a certificate to the Authority;
- C. made adequate arrangements to connect the Solar Rooftop with the Interconnection Facilities as per the Net Metering scheme; (see SCHEDULE 2)
- D. 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;
- E. delivered to the Authority from {the Consortium Members, their respective} confirmation, in original, of compliance with the equity lock-in condition set out in Article 6.42.
- F. delivered to 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.
- G. 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. Document deliverable list with approval category and submission timelines
 - iv. Procurement plan and activities
 - v. Quality Assurance Plan (QAP)
 - vi. Dispatch Plan
 - vii. Construction schedule and methodology

5.3. The developer shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and Authority shall provide to the Developer all the reasonable cooperation as may be required to the Developer for satisfying the Conditions Precedent.

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

¹ Environmental Clearances, Approvals for Power Evacuation and any other clearances that may be required as per applicable laws.

5.5. 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. Entered into the Power Purchase Agreement (PPA) with the concerned HESCOM for supplying energy generated from the Rooftop Solar PV Power plant on Net Metering basis at the Tariffs as approved by KERC (“**PPA Tariff**”). (see **SCHEDULE 7** for details)
- B. Granted the permission to the Developer for access to the rooftops of the government buildings under its jurisdiction; (see **SCHEDULE 13** for details)
- C. Granted the permission to the Developer for access to all electrical metering and electrical interconnection points across all the government buildings which are to be developed as per this Agreement;
- D. Opened an Escrow account for receiving the revenue receipts from HESCOM and making monthly payments to the Developer. Sample Escrow Agreement format is annexed at **SCHEDULE 6**.

5.6. 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 5.5 within the period of 90 (Ninety) days, 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 period of 30 (thirty) days, Developer at its discretion may terminate this Agreement, whereupon Authority shall return the Performance Security submitted by the Developer.

5.7. 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 5.2 within the period of 90 days 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 30 (thirty) days, the Authority at its discretion may terminate this Agreement.

5.8. 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 up to 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 equal to INR 11,55,000 (Rupees Eleven Lakh Fifty Five Thousand Only), valid for a period of 12 months. The Performance Security shall be extended one month prior to the expiry of the present Performance Security. This shall be continued till the end of the Concession period.
- 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 17.

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 across all the seventeen government buildings.

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

6. ARTICLE 6: OBLIGATIONS OF THE DEVELOPER

- 6.1. Subject to and on the terms and conditions of this Agreement, the Developer shall at its own cost and expense;
- A. Satisfy themselves on the availability of the PPA agreement between individual government buildings and HESCOM for each site to be developed under this Agreement. In case, any site does not have a signed PPA, then the Developer shall support the respective government building in executing the PPA before going ahead with the commissioning of the Solar PV Power System.
 - B. 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; (see **SCHEDULE 1** for exhaustive “Scope of Work)
 - C. observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder;
 - D. comply with all Applicable Laws and obtain applicable consents, clearances and permits (including renewals as required) in the performance of its obligations under this Agreement and maintaining all Applicable Permits in full force and effect during the Term of this Agreement;
 - E. commence supply of power no later than the Scheduled Commissioning Date and continue the supply of power throughout the term of the Agreement;
 - F. connect the Solar Rooftop PV with the grid at the Interconnection Facilities as per the Net Metering scheme.
 - G. The Developer shall submit progress reports in the format provided by the Independent Consultant/third party consultant, every fortnight from the Effective Date till the COD.
 - H. 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 each location.
 - I. own the Solar Rooftop PV throughout the Term of Agreement and keep it free and clear of encumbrances, except those expressly permitted under Article 22;
 - J. Comply with the equity lock-in conditions set out in Clause 6.4; and
 - K. be responsible for all payments related to any taxes, cess, 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.

- L. Submit the following documents/drawings to the Authority/Independent Consultant / Third Party Inspector:
- Inspection reports as per the approved QAP
 - Warranty certificates
 - Basic and Detailed Engineering drawings
 - Monthly progress reports in the format provided by the Authority/its authorized representative/Third Party Inspector
 - O&M Plan 30 (Thirty) days prior to Scheduled Commissioning Date
 - As-built drawings within 15 (fifteen) days from COD
 - Any Other requirements set out in **SCHEDULE 1**.
- M. Incorporate comments of the authorized representative of the 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.
- 6.2. The Developer shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 6.3. 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:
- 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/Clearances and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - 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; (see **SCHEDULE 8**)
 - 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
 - not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement.

6.4. Equity Lock-In Conditions

- A. The shareholding as on the Effective Date is as follows:

Name of Shareholder	Description of Shareholding

- B. 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:

In case the Selected Bidder is a Consortium then,

- i. Members of the Consortium shall collectively hold at least 51% of subscribed and paid up equity share capital of the 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.

OR

In case the Selected Bidder is a Single Entity then,

The Selected Bidder shall hold at least 51% (fifty one percent) of subscribed and paid up equity share capital of the Developer, until third anniversary of the commercial operations date of the Project and 26% shareholding of the SPV for the remaining duration of the Agreement Period. This condition is applicable only in case the single business entity incorporates an SPV to execute the Project Development and Implementation Agreement and implement the Project.

- C. 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.

6.5. 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.

6.6. Connectivity to the Grid

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

6.7. Purchase and Sale of Contracted Capacity

Subject to the terms and conditions of this Agreement, the Developer undertakes to generate and transmit power to the Authority. Furthermore, the Developer shall transmit any surplus power to the Grid on Net-Metering basis adhering to the terms and condition of the PPA between the Authority and HESCOM. The Authority has executed a PPA with HESCOM and confirms that the PPA shall be valid for 25 years from the date of commissioning of the Plant commensurate with the tenure of this PDIA.

6.8. Extensions of Time

- A. In the event that the Developer is prevented from performing its obligations under

Clause 6.1 by the Scheduled Commissioning Date due to:

- i. Any Authority Event of Default; or
- ii. Force Majeure Events affecting the Authority; or
- iii. Force Majeure Events affecting the Developer,

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to the limit prescribed in Clause 6.8.B and Clause 6.8.C 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.

- B. In case of extension occurring due to reasons specified in clause 6.8.A.i, 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.
- C. In case of extension due to reasons specified in Article 6.8.A.ii and iii, 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 17.

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 or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 23.

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

6.9. Liquidated Damages for Delay in Commencement of Supply of Power

- A. 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 COD. The liquidated damages shall be equivalent to the revenue loss to the individual building due to non-commissioning of the Project within six (6) months of the signing of the agreement.

Liquidated Damages = (The Average Energy Consumption during any year of operation computed on daily basis) x {Retail Tariff x Discount over Retail Tariff}

The maximum time period allowed for achieving COD with payment of Liquidated Damages shall be limited to three month after the scheduled COD. In case of delay beyond this time period for the reasons attributable to the inefficiency of the bidder would amount to forfeiture of Performance Security and termination of 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.

- B. The maximum time period allowed for achieving COD with payment of Liquidated Damages shall be limited to three month after the scheduled COD. In case, the achievement of COD is delayed beyond 9 months, it shall be considered as a 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.

6.10. Acceptance/Performance Test

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 HESCOM or Chief Electrical Inspectorate, Government of Karnataka to carry out testing and certification for the Solar Rooftop PV Project.

6.11. Third Party Verification

- A. 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 Authority, its authorized representatives including representatives from the Independent Consultant, HESCOM, 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.
- B. The Developer shall submit to Independent Consultant, with a copy to the Authority the following documents:
 - i. Project Organization structure detailing the escalation matrix and communication protocol.
 - ii. Level 2 schedule for the Solar Rooftop PV Project execution
 - iii. Document deliverable list with approval category and submission timelines
 - iv. Quality Assurance Plan (QAP)
 - v. Procurement and dispatch plan
 - vi. Construction schedule and methodology
 - vii. O&M Plan
- C. On receipt of comments/suggestions from the Independent Consultant and /or Authority on any of the above documents, the Developer shall incorporate the same and re-submit the same for approval.
- D. 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.
- E. 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.
- F. The Independent Consultant and/or third party 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.
- G. The Independent Consultant and/or third party 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

standards specified in **SCHEDULE 2**, it may seek clarifications from Developer or require the works to be stopped or to comply with the instructions of such third party.

6.12. 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.

6.13. 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 (KEREC) from time to time, shall be levied by the Authority on Developer for non-supply of power to HESCOM.

6.14. 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 Authority buildings (see **SCHEDULE 12**). In particular, the Developer shall develop, implement and administer a surveillance and safety program 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 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.

7. ARTICLE 7: OBLIGATIONS OF THE AUTHORITY

7.1. Obligations of the Authority

- A. 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.
- B. The Authority shall release payments to the Developer as per the procedure set out in Article 12.
- C. 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:
 - i. 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 (see **SCHEDULE 9**);
 - ii. not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;
 - iii. act reasonably, while exercising its discretionary power under this Agreement;
 - iv. support, cooperate with and facilitate the Developer in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - v. provide permission to the Developer to enter the government building premises and give complete access to the rooftop of the buildings of the individual government buildings mentioned in **SCHEDULE 3** during the term of this Agreement subject to conditions specified in **SCHEDULE 8**; and
 - vi. provide free access to the electrical metering points and electrical interconnection points across all the government buildings where rooftop solar PV power plant are to be developed as per this Agreement.

8. ARTICLE 8: REPRESENTATIONS AND WARRANTIES

8.1. Representation 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;
- A. 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.

- B. 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.
- C. 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.

8.2. Representation and Warranties of the Authority

Authority represents and warrants to the Developer that:

- A. _____ 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. The Agreement constitutes Authority's legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

8.3. Obligation to Notify Change

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

9. ARTICLE 9: SYNCHRONIZATION, COMMISSIONING AND COMMERCIAL OPERATION

9.1. Developer's duties in this regard shall include the following:

- A. The Developer shall provide at least 15 (fifteen) days advanced written notice to the Authority of the date on which it intends to commission each of the individual 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 / HESCOM 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.

10. ARTICLE 10: POWER DISPATCH

- 10.1. The Project shall be required to maintain compliance to the applicable KERC grid code and any supplementary requirements and directions, if any, as specified by HESOCM.

11. ARTICLE 11: METERING

11.1. Meters

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.

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.

11.2. Measurement of Energy

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

11.3. Reporting of Metered Data and Parameters

- A. 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.
- B. 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.
- C. The Developer shall enable generation data monitoring through web-portal access to the Authority/HESCOM/ Independent Consultant. The Developer shall also provide training to Authority/HESCOM/ Independent Consultant for using the web portal.
- D. 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 Authority and any of its assignee /HESCOM.
- E. Reports on above parameters on monthly basis shall be submitted by the Developer to the Authority/HESCOM through the Authority for the term of this Agreement.

12. ARTICLE 12: INSURANCES

12.1. Insurance 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.

12.2. Insurance During operation and Maintenance

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 Development Rights;
- 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.

12.3. The Developer shall insure against any damages that may be caused to the rooftop of the government buildings at the time of construction of Solar Rooftop or during the operation and maintenance period of 25 (twenty five) years as per the term of this Agreement.

12.4. 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 premium 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.

12.5. Applicable Insurance Proceeds

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.

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 Authority shall have no claim on such proceeds of such Insurance.

12.6. Effect on Liability of 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 Authority.

13. ARTICLE 13: APPLICABLE TARIFF RECEIVABLE BY DEVELOPER AND SHARING OF CLEAN DEVELOPMENT MECHANISM BENEFITS

13.1. Energy Consumed by the Authority

For the energy supplied by the Developer and consumed by the Authority, the Developer shall be entitled to receive payment from the Authority through the Escrow account at the rate of applicable Retail Tariff as determined by KERC every year and after applying a discount of% (Discount over Retail Tariff) as proposed by the Developer in their Financial Bid, provided the Developer meets the Operational Standards as specified in SCHEDULE 2 and in accordance with the terms of this Agreement during the period between COD and the Expiry Date.

13.2. Energy Exported to the Grid

For the energy supplied by the Developer and exported to the Grid on Net-metering basis, the Developer shall be entitled to receive payment from HESCOM through the Escrow account as per the terms and conditions of the Power Purchase Agreement (see **SCHEDULE 7**) after sharing Rs 0.50/- per unit with the Authority.

13.3. Sharing of Clean Development Mechanism (CDM) Benefits

The Project shall be eligible to CDM claims and all such CDM claims shall be reported to the Authority/HESCOM 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.

14. ARTICLE 14: BILLING AND PAYMENT

14.1. General

- A. 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.
- B. On achievement of COD and thereon commencement of supply of power, HESCOM shall pay to the Authority the monthly Tariff Payments based on the excess Net Energy supplied to the grid, on or before the Due Date, in accordance with the Power Purchase Agreement between HESCOM and the Authority.
- C. Authority shall open an Escrow Account as specified in **SCHEDULE 6** in which the revenue receipts from HESCOM will be deposited.
- D. All Tariff Payments by Authority to the Developer shall be in Indian Rupees.

14.2. Delivery and Content of Monthly Bills/Supplementary Bills

The Developer shall issue to the Authority a signed monthly bill/Supplementary Bill for the immediately preceding Month between the 5th day and 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.

14.3. Calculation of Revenue

Each monthly bill shall be a lump-sum amount that will be paid subject to the Developer performing obligations as per the Design and Operational Standards as mentioned in **SCHEDULE 2**.

- A. For Energy Supplied from the Rooftop Solar PV System and Consumed by the Authority:

Amount to Developer from Authority against energy consumed from Solar PV System = (Energy Consumed from the Rooftop Solar PV Plant) x (Applicable Retail Tariff for the year as per KERC) x (Discount over Retail Tariff as per the Financial quote)

- B. For Energy Supplied from the Rooftop PV System and Exported to the Grid:

Amount to Developer from net export of energy = (Net energy exported on net-metering basis) x (PPA Tariff payable by HESCOM – Rs 0.50)

- C. The Total Monthly Payment to the Developer shall be the sum of **A.** and **B.** as mentioned above.

14.4. When the Developer Performs Below the Design and Operational Standards as Mentioned in **SCHEDULE 2**:

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 in terms of the applicable Retail Tariff for the year and the excess 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.

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.

There will be a Quarterly and Annual Reconciliation as per Clause 14.7 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.

14.5. Payment of Monthly Bills

Subject to Clause 14.1, the Authority shall make monthly payment for the bill raised by the Developer.

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.

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 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 bank account at [Insert name of place](The "**Developer's Designated Account**") for all Payments (including Supplementary Bills) to be made by Authority to the Developer, and notify Authority of the details of such account at least 90 (ninety) days before the dispatch of the first Monthly bill

14.6. Disputed Bill

- A. 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 14.7.

- B. If the Authority 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 clause 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:
 - i. the details of the disputed amount;
 - ii. its estimate of what the correct amount should be; and
 - iii. all written material in support of its claim.
- C. If the Developer agrees to the claim raised in the Bill Dispute Notice issued pursuant to Clause 14.6.B, 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.
- D. If the Developer does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Clause 14.6.B, it shall, within 15 (fifteen) days of receiving the Bill Dispute Notice, furnish a notice (the "**Bill Disagreement Notice**") to the Authority providing:
 - i. reasons for its disagreement;
 - ii. its estimate of what the correct amount should be; and
 - iii. all written material in support of its counter-claim.
- E. Upon receipt of the Bill Disagreement Notice by the Authority under Clause 14.6.D, authorized representatives of the Authority and Developer shall meet and make best endeavors to amicably resolve such dispute within 15 days of receipt of the Bill Disagreement Notice.
- F. If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Clause 14.6.D, the matter shall be referred to Dispute resolution in accordance with Article 22.
- G. 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.

14.7. Quarterly and Annual Reconciliation

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.

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 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 22.

14.8. Payment of Supplementary Bill

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,

14.9. 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.

15. ARTICLE 15: FORCE MAJEURE

15.1. Definitions

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

A. Affected Party

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

B. Force Majeure

- i. 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:
- ii. 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);
- iii. 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;
- iv. compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Developer or of the Contractors;
- v. 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
- vi. 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.

15.2. Force Majeure Exclusions

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.

15.3. Notification of Force Majeure Event

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.

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.

15.4. Duty to Perform and Duty to Mitigate

To the extent not prevented by a Force Majeure Event pursuant to Clause 15.1.B, 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.

15.5. Available Relief for a Force Majeure Event

Subject to this Article 15:

- 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 nor 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.

16. ARTICLE 16: CHANGE IN LAW

16.1. Definitions

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

“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.
- F. **“Change in Law”** 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.

16.2. Relief for Change in Law

The aggrieved Party shall be required to approach the HESCOM / KERC for seeking approval of Change in Law. 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 both the Parties.

17. ARTICLE 17: TERMINATION

17.1. Termination for Developer Default

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 COD, for any reason whatsoever;
- B. The condition relating to equity lock-in period specified in Clause 6.4 of this Agreement is not complied with;
- C. the Performance Security has been appropriated in accordance with Clause 5.8 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 Authority and HESCOM dated _____ and as annexed at **SCHEDULE 7** is terminated as a result of the default attributable to the Developer under this Agreement; 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.

17.2. Procedure for Cases of Developer Event of Default

- A. Upon the occurrence and continuation of any Developer Event of Default under Clause 17.1, 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.
- B. 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.
- C. During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- D. 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.

17.3. Obligation of Parties

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;

- A. 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,
- B. the termination payment, if any, payable by the Authority in accordance with the following Clause 17.4 is paid to the Developer on the Termination Date, and

- C. 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.

17.4. Termination Payment

- A. Upon Termination on account of a Developer Event of Default after COD, the Authority 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.
- B. 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.
- C. 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.
- D. In the event of Expiry of the Agreement period, 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.

17.5. Rights of Authority on Termination

Upon Termination of this Agreement for any reason whatsoever, the Authority shall upon making the Termination Payment, if any, to the Developer have the power and authority to:

- A. enter upon and take possession and control of the Project Facilities forthwith;
- B. prohibit the Developer and any person claiming through or under the Developer from entering upon/ dealing with the Project Facilities;

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 regularization 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.

17.6. 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.

17.7. Senior Lenders' Step-In Rights

- A. 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.
- B. 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 favorable to the Authority than those prevailing at the time of substitution, and
 - ii. be for the remaining Agreement Period only.
- C. 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.
- D. 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.

17.8. Termination due to Force Majeure

If the Force Majeure Event or its effects continue to be present beyond the period as specified in Clause 6.8, 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.

18. ARTICLE 18: DEFECTS LIABILITY AFTER TERMINATION

18.1. 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 Maintenance Requirements. 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.

18.2. Retention in Escrow Account

- A. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 12.2.B, a sum equal to 5% (five per cent) of the total Realizable 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 18.1.
- B. Without prejudice to the provisions of Clause 18.2.A, 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 18.2.A 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.
- C. The Developer may, for the performance of its obligations under this Article 18, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 18.2.A or 18.2.B, 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 18. Upon furnishing of a Performance Security under this Clause 17.2.C, the retention of funds in the Escrow Account in terms of Clause 18.2.A or 18.2.B, as the case may be, shall be dispensed with.

19. ARTICLE 19: COMPENSATION FOR BREACH OF AGREEMENT

19.1. Compensation for Default by the Developer

Subject to the provisions of Clause 19.4, 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 19.1 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.

19.2. Compensation for Default by the Authority

Subject to the provisions of Clause 19.4, in the event of the Government 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.

19.3. Compensation Terms

Compensation payable under this Article 19 shall be in addition to, and not in substitution for, or derogation of Termination Payment, if any.

19.4. 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.

20. ARTICLE 20: DIVESTMENT OF RIGHTS AND INTEREST

20.1. Divestment Requirements

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 Maintenance Requirements; provided that in the event of Termination during the Construction Period, 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 licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programs 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.

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.

20.2. Inspection and Cure

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 Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Developer's cost for this purpose. Defaults, if any, in the Maintenance Requirements 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 20.

20.3. Cooperation and Assistance on Transfer of Project

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.

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.

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 20.1.A 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.

20.4. Vesting Certificate

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.

20.5. Additional Facilities

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

20.6. Divestment Cost

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 favor 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.

In the event of any dispute relating to matters covered by and under this Article 20, the Dispute Resolution Procedure shall apply.

21. ARTICLE 21: LIABILITY AND INEMNIFICATION

21.1. Developer Indemnity

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

- A. any and all third party claims against the 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 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)

21.2. Authority Indemnity

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

- A. any and all third party claims against 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 Developer from third party claims arising by reason of a breach by the Authority of any of its obligations.

21.3. Procedure for Claiming Indemnity

A. Third Party Claims

Where the indemnified party is entitled to indemnification from the indemnified party pursuant to Clause 21.1.A or 21.2.A, the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Clause 21.1.A or Clause 21.2.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 22.4; 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 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 favor of the Indemnified Party.

The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Clause 21.1.A or Clause 21.2.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 defense of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defense, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

21.4. Indemnifiable Losses

Where an Indemnified Party is entitled to Indemnifiable Losses from the indemnified party pursuant to Clause 21.1.B or 21.2.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 21, such event shall constitute a payment default under Article 17.

21.5. Limitation on Liability

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

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

21.6. Duty to Mitigate

The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 21.

22. ARTICLE 22: GOVERNING LAW AND DISPUTE RESOLUTION

22.1. 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 Hubballi Dharwad.

22.2. Amicable Settlement and Dispute Resolution

- A. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (“**Dispute**”) by giving a written notice (“**Dispute Notice**”) to the other Party, which shall contain:
 - i. description of the Dispute;
 - ii. the grounds for such Dispute; and
 - iii. all written material in support of its claim.
- B. The other Party shall, within 30 (thirty) days of issue of Dispute Notice issued under Clause 22.2.A, furnish:
 - i. counter-claim and defenses, if any, regarding the Dispute; and
 - ii. all written material in support of its defenses and counter-claim.
- C. Within 30 (thirty) days of issue of Dispute Notice by any Party pursuant to Clause 22.2.A if the other Party does not furnish any counter claim or defense under Clause 21.2.B or 30 (thirty) days from the date of furnishing counter claims or defense by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within 30 (thirty) days from the later of the dates mentioned in this Clause 22.2.C, the Dispute shall be referred for dispute resolution in accordance with Article 22.3.

22.3. Dispute Resolution by HESCOM

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 HESCOM, such Dispute shall be submitted to adjudication by the HESCOM.

22.4. 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 Hubballi Dharwad 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 both 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.

22.5. Performance during Dispute

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.

23. ARTICLE 23: ASSIGNMENT AND CHARGES

23.1. Assignments

- A. 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.
- B. 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.
- C. 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.

24. ARTICLE 24: MISCELLANEOUS

24.1. 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 24.1 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.

24.2. Confidentiality

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.

24.3. 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).

24.4. Waiver

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.

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.

24.5. Exclusion of Implied Warranties

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.

24.6. Survival

Termination shall,

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

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

24.7. 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.

24.8. 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.

24.9. 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.

24.10. 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.

24.11. Successors and Assign

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

24.12. 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 [insert location of concerned Authority office building] 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 the _____ 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 [insert location of concerned Authority office building] 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.

24.13. 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.

24.14. Counterparts

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

25. ARTICLE 25: INDEPENDENT CONSULTANT

25.1. Appointment of Independent Consultant

The Authority has agreed for the role of ‘facilitator’ by HDSCL and for the role of ‘project management consultant (PMC)’ by M/s PricewaterhouseCoopers Pvt Ltd & Consortium, during the construction and O & M Periods of this agreement. The HDSCL shall appoint an ‘independent consultant’ before the exit of M/s PricewaterhouseCoopers Pvt Ltd & consortium after end of their agreement, substantially in accordance with the selection criteria set forth in **SCHEDULE 5**, to be the Independent Consultant under this Agreement (the "Independent Consultant").

Duties and Functions

The Independent Consultant/PMC shall be responsible for providing the Project Monitoring and Consulting services during the Construction period as well as during the Operational phase of the Project during the period of this agreement.

The Independent Consultant/PMC shall submit regular periodic reports every month to the Authority in respect of its duties and functions.

25.2. Termination of Appointment

If the Developer has reason to believe that the Independent Consultant/PMC is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the HDSCL/Authority and seek termination of the appointment of the Independent Consultant/PMC. Upon receipt of such representation, the HDSCL/Authority shall hold a tripartite meeting with the Developer and Independent Consultant/PMC 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/PMC is terminated hereunder, the HDSCL/Authority shall appoint forthwith another Independent Consultant in accordance with Clause 25.1.

25.3. Authorized Signatories

The Authority shall require the PMC/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 PMC/Independent Consultant shall be valid and effective only if signed by any of the designated persons; provided that the PMC/Independent Consultant may, by notice in writing, substitute any of the designated persons by any of its employees.

25.4. 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.

26. ARTICLE 26: ACCOUNTS AND AUDIT

26.1. Audited Accounts

The Developer shall maintain books of accounts recording all its receipts (including all Realizable 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.

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.

26.2. Appointment of Auditors

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.

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.

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 any time, another firm (the "**Additional Auditors**") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

26.3. 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.

26.4. Set-Off

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.

26.5. Dispute Resolution

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.

27. ARTICLE 27: DEFINITIONS

27.1. 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.

"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;

"Arbitration Act" means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

"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 undersub – 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 (B)

"Consortium Member" means a company specified in Recital (B) 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:

A. 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

B. 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;

“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;

"Discount over Retail Tariff" shall have the same meaning as provided for in Article 12 of this Agreement.

"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 intapes, discs, drawings, computer programs, 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, cess, 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

"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;

"GoI" 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 HESCOM or HESCOM 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 equipment, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 10, the Metering System required for supply of power as per the terms of this Agreement.

“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 KERC;

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

“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 (C);

“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 Single Business Entity/Consortium, declared as Selected Bidder under the RFP and the SPV, if any formed by such Selected Bidders, with whom the Power Purchase Agreements are executed in accordance with the provisions of the RFP to undertake any Project(s) thereunder.

"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 HESCOM 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 1.633 MW, located across the colleges and universities buildings owned/occupied by the Authority spread across the State of Karnataka.

This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; Whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement

"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 list this Agreement. The list is annexed in of Warehouses that are to be developed as per **SCHEDULE 3** 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

“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 pari 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, cess, 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;

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

"Tests" means the tests to be carried out in accordance with the Specifications and Standards or the Maintenance Requirements and as finalized 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.

"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)

SIGNED, SEALED AND DELIVERED

For and on behalf of Developer by

(Signature)

(Name)

(Designation)

In presence of Witnesses:

1.

2.

SCHEDULE 1: SCOPE OF WORK

(See Articles – 3.1.C, 5.2.D, 6.1.B and 6.1.L)

1. Scope of Work

A. Site Survey and Layout Planning

The developer shall conduct an independent, thorough survey of all premises enlisted Schedule B. This survey shall have two aims:

- It will validate the findings of the initial site survey provided by the Authority.
- Based on this survey, the developer is expected to submit the following plans for review to the nodal agency: (a) Equipment Layout Diagram, (b) Single Line Diagram (SLD) and (c) Wire and Earthing Layout Diagram.

A. Design, Development and Procurement of Components

Once, the layouts are approved, the developer shall design, develop and procure all the components required for installing the solar photovoltaic system.

C. Transportation of Components

The developer shall transport all the necessary components to the specific premises.

D. Finance

The developer shall finance the entire project and maintain a maximum debt to equity ratio of 70:30.

E. Installation and Commissioning of System

The developer shall install the entire system up to AC distribution board along with net metering and any necessary arrangement for integration grid and protection during grid failure.

F. Operation and Maintenance Over the Design Period

The developer shall monitor and control the system by recording the following data for the PV system:

- At Inverter Level – The data of the inverter shall either be read from their display or be extracted by connecting USB or RJ45 cables or wirelessly using Wi-Fi, Radio Frequency, Bluetooth or third party equipment using GSM/GPRS.
- At Meter Level – The system shall also be continuously monitored using a bidirectional or net meter. This may be done once during a billing cycle or on a real-time basis using wired or wireless communication.

F. Decommissioning

The developer shall decommission the PV panels at the end of their operating life. This shall include removal of all the components of the system from all the premises and safely disposing them.

H. Training/Recruiting Personnel

The developer shall recruit and/or train competent personnel to perform all abovementioned tasks – site survey, layouts, design, installation, operation, maintenance and decommissioning.

2. Operation and Maintenance Schedule

The PV shall be maintained as per the Inspection and Maintenance Schedule given below:

Component	Activity	Description	Frequency	Personnel
PV Module	Cleaning	Clean any bird droppings/ dark spots on module	Immediately	Trained Technician

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Rooftop Of Selected HDMC Owned Buildings**

	Cleaning	Clean PV modules with plain water or isopropyl alcohol for removing oil/ grease stains.	Fortnightly or as per the site conditions	Trained Technician
PV Array	Inspection	Check the PV modules and rack for any damage. Note down location and serial number of damaged modules.	Annual	Trained Technician
	Inspection	Determine if any new objects, such as vegetation growth, are causing shading of the array and move them if possible.	Annual	Trained Technician
	Vermin Removal	Remove bird nests or vermin from array and rack area.	Annual	Trained Technician
Junction Boxes	Inspection	Inspect electrical boxes for corrosion or intrusion of water or insects. Seal boxes if required. Check position of switches and breakers. Check operation of all	Annual	Electrician

Component	Activity	Description	Frequency	Personnel
		protection devices.		
Wiring	Inspection	Inspect cabling for signs of cracks, defects, loose connections, overheating, arcing, short or open circuits,	Annual	Electrician

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Rooftop Of Selected HDMC Owned Buildings

		and ground faults.		
Inverter	Inspection	Observe instantaneous operational indicators on the faceplate of the inverter to ensure that the amount of power being generated is typical of the conditions. Inspect Inverter housing or shelter for physical maintenance, if required.	Monthly	Electrician
Inverter	Service	Clean or replace any air filters.	As needed	Electrician
Instruments	Validation	Spot-check monitoring Instruments (pyranometer etc.) with standard instruments to ensure that they are operational and within specifications.	Annual	PV Specialist
Transformer	Inspection	Inspect transformer oil level, temperature gauges, breather, silica gel, meter, connections etc.	Annual	Electrician
Tracker (if present)	Inspection	Inspect gears, gear boxes, bearings as required.	Annual	Trained Technician
	Service	Lubricate tracker mounting bearings, gearbox as required.	Bi-annual	Trained Technician

Component	Activity	Description	Frequency	Personnel
Plant	Monitoring	Daily Operation and Performance Monitoring	Daily	Site in Charge
Spare Parts	Management	Manage inventory of spare parts	As needed	Site in Charge
Log Book	Documentation	Document all O&M activities in a workbook	Continuous	Site in Charge

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Rooftop Of Selected HDMC Owned Buildings

		available to all service personnel		
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SCHEDULE 2: TECHNICAL SPECIFICATIONS

(See Articles – 3.2, 5.2.C, 6.11.G, 13.2, 14.3 and 14.4)

Quality certification and standards for grid-connected rooftop solar PV systems are essential for the successful implementation of this technology. Hence, all components of the solar PV system must conform to the relevant standards and certifications given below:

1. SOLAR PHOTOVOLTAIC MODULES:

- A. The PV modules used should be made in India².
- B. 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-1 - requirements for construction & Part 2 - requirements for testing, for safety qualification or equivalent IS.
- C. As the PV modules will be installed in a highly corrosive atmosphere throughout their lifetime, they must conform to IEC 61701.
- D. The total solar PV array capacity should not be less than allocated capacity (kWp) and should comprise of solar crystalline modules of minimum 300 watts. Module capacity less than minimum 300 watts shall not be accepted
- E. Protective devices against surges at the PV module shall be provided. Low voltage drop bypass diodes shall be provided.
- F. PV modules must be tested and approved by one of the IEC authorized test centers.
- G. The module frame shall be made of corrosion resistant materials, preferably having anodized aluminium.
- H. The bidder shall carefully design & accommodate requisite numbers of the modules to achieve the rated power in his bid. HDSC/owners shall allow only minor changes at the time of execution.
- I. The rated output power of any supplied module shall have tolerance within +/- 3%.
- J. 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.
- K. 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 bypass 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.

- L. I-V curves at STC should be provided by bidder.

² Examples of Indian Vendors – Moser Baer, IndoSolar, Vikram Solar.
Hubballi Dharwad Smart City Limited

M. Modules deployed must use a RF identification tag. The following information must be mentioned in the RFID used on each module. This should be inside the laminate only.

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

N. Warranties:

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

Performance Warranty:

The PV modules must be warranted for their output peak watt capacity, which should not be less than 90% at the end of ten (10) years and 80% at the end of twenty-five (25) years³.

2. 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 output. However to accommodate more capacity the angle inclination may be reduced until the plant meets the specified performance ratio requirements.

³ For example, if the original peak installed capacity is 1288 kW, the minimum peak installed capacities at the end of ten and twenty-five years should be 1159kW and 1030 kW, respectively.

- 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. 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 HDSCL. 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, and nuts and bolts. Aluminium structures also can be used which can withstand the wind speed of respective wind zone. 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.

3. JUNCTION BOXES (JBs)

- A. The junction boxes are to be provided in the PV array for termination of connecting cables. The Junction 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.
- E. All fuses shall have DIN rail mountable fuse holders and shall be housed in thermoplastic IP 65 enclosures with transparent covers.

4. 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.

5. 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	+/- 5 Hz

6. 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.

7. 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	+/- 5 Hz
Ambient temperature considered	-20° C to 50° C
Humidity	95 % Non-condensing
Protection of Enclosure	IP-20(Minimum) for indoor. IP-65(Minimum) for outdoor.
Grid Frequency Tolerance range	+/- 5 Hz
Grid Voltage tolerance	-0.20.15
No-load losses	Less than 1% of rated power
Inverter efficiency(minimum)	>93% (In case of 10 kW or above with in-built galvanic isolation) >97% (In case of 10 KW or above without in-built galvanic isolation)
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 10kW 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. Anti-islanding (Protection against Islanding of grid): The PCU shall have anti islanding protection in conformity to IEEE 1547/UL 1741/ IEC 62116 or equivalent BIS standard.

- F. Successful Bidders shall be responsible for galvanic isolation of solar roof top power plant (>100kW) with electrical grid or LT panel.
- G. In PCU/Inverter, there shall be a direct current isolation provided at the output by means of a suitable isolating transformer. If Isolation Transformer is not incorporated with PCU/Inverter, there shall be a separate Isolation Transformer of suitable rating provided at the output side of PCU/PCU units for capacity more than 100 kW.
- H. The PCU/ inverter generated harmonics, flicker, DC injection limits, Voltage Range, Frequency Range and Anti-Islanding measures at the point of connection to the utility services should follow the latest CEA (Technical Standards for Connectivity Distribution Generation Resources) Guidelines.
- I. 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.
- J. The MPPT units environmental testing should qualify IEC 60068-2 (1, 2, 14, 30)/ Equivalent BIS standard. The junction boxes/ enclosures should be IP 65 (for outdoor)/ IP 54 (indoor) and as per IEC 529 specifications.
- K. The PCU/ inverters should be tested from the MNRE approved test centre/ NABL/ BIS/ IEC accredited testing- calibration laboratories. In case of imported power conditioning units, these should be approved by international test houses.

8. 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.

9. DATA ACQUISITION SYSTEM / PLANT MONITORING

- A. Data Acquisition System shall be provided for each of the solar PV plant above 10 kWp capacity.
- B. 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.
- C. 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.

- D. 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
- E. The following parameters are accessible via the operating interface display in real time separately for solar power plant:
 - i. AC Voltage.
 - ii. AC Output current.
 - iii. Output Power
 - iv. Power factor.
 - v. DC Input Voltage.
 - vi. DC Input Current.
 - vii. Time Active.
 - viii. Time disabled.
 - ix. Time Idle.
 - x. Power produced
- F. 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.
- G. 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.
- H. 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.
- I. 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.
- J. Computerized AC energy monitoring shall be in addition to the digital AC energy meter.
- K. 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.
- L. All instantaneous data shall be shown on the computer screen.
- M. Software shall be provided for USB download and analysis of DC and AC parametric data for individual plant.
- N. Provision for instantaneous Internet monitoring and download of historical data shall be also incorporated.
- O. 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.
- P. Ambient / Solar PV module back surface temperature shall be also monitored on continuous basis.
- Q. 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.

- R. Remote Monitoring and data acquisition through Remote Monitoring System software at the owner / HDSCL 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 bidder.
- S. The bidders shall be obligated to push real-time plant monitoring data on a specified intervals (say 15 minute) through open protocol at receiver location (cloud server) in XML/JSON format, preferably. Suitable provision in this regard will be intimated to the bidders.

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 HESCOM for the connectivity, technical feasibility, and synchronization of SPV plant with distribution network and submit the same to HDSCL before commissioning of SPV plant.
- D. Reverse power relay shall be provided by bidder (if necessary), as per the local HESCOM requirement.

11. POWER CONSUMPTION:

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 HDSCL. Decisions of appropriate authority like HESCOM, state regulator may be followed.

12. PROTECTIONS

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

A. 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 NFC 17-102:2011 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.

B. SURGE PROTECTION

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

C. EARTHING PROTECTION

Each array structure of the PV yard should be grounded/ earthed properly as per IS: 3043-1987. In addition the lightning arrester/masts should also be

earthed inside the array field. Earth Resistance shall be tested in presence of the representative of Department/HDSCL as and when required after earthing by calibrated earth tester. PCU, ACDB and DCDB should also be earthed properly. 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.

D. GRID ISLANDING:

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.

A manual disconnect 4-pole 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:

- A. Shall meet IEC 60227/IS 694, IEC 60502/IS1554 standards
- B. Temp. Range: -100°C to +800°C
- C. Voltage rating 660/1000V
- D. Excellent resistance to heat, cold, water, oil, abrasion, UV radiation
- E. Flexible
- F. 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 (2%)
- G. For the DC cabling, XLPE or, XLPO insulated and sheathed, UV-stabilized single core multi-stranded flexible copper cables shall be used; Multi-core cables shall not be used.
- H. For the AC cabling, PVC or, XLPE insulated and PVC sheathed single or, multi-core multi-stranded flexible copper cables shall be used; Outdoor AC cables shall have a UV-stabilized outer sheath.
- I. The cables (as per IS) should be insulated with a special grade PVC compound formulated for outdoor use. Outer sheath of cables shall be electron beam cross-linked XLPO type and black in color.
- J. The DC cables from the SPV module array shall run through a UV-stabilized PVC conduit pipe of adequate diameter with a minimum wall thickness of 1.5mm.
- K. Cables and wires used for the interconnection of solar PV modules shall be provided with solar PV connectors (MC4) and couplers
- L. All cables and conduit pipes shall be clamped to the rooftop, walls and ceilings with thermo-plastic clamps at intervals not exceeding 50 cm; the minimum DC cable size shall be 4.0mm² copper; the minimum AC cable size shall be 4.0 mm² copper. In three phase systems, the size of the neutral wire size shall be equal to the size of the phase wires.

- M. 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. In addition, cable drum no. / Batch no. to be embossed/ printed at every one meter.
- N. Cable Jacket should also be electron beam cross-linked XLPO, flame retardant, UV resistant and black in color.
- O. All cables and connectors for use for installation of solar field must be of solar grade which can withstand harsh environment conditions including High temperatures, UV radiation, rain, humidity, dirt, salt, burial and attack by moss and microbes for 25 years and voltages as per latest IEC standards. DC cables used from solar modules to array junction box shall be solar grade copper (Cu) with XLPO insulation and rated for 1.1kV as per relevant standards only.
- P. The ratings given are approximate. Bidder to indicate size and length as per system design requirement. All the cables required for the plant shall be provided by the bidder. Any change in cabling sizes if desired by the bidder shall be approved after citing appropriate reasons. All cable schedules/ layout drawings shall be approved prior to installation.
- Q. Multi Strand, Annealed high conductivity copper conductor PVC type 'A' pressure extruded insulation or XLPE insulation. Overall PVC/XLPE insulation for UV protection Armored 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.
- R. The total voltage drop on the cable segments from the solar PV modules to the solar grid inverter shall not exceed 2.0%.
- S. The total voltage drop on the cable segments from the solar grid inverter to the building distribution board shall not exceed 2.0%.

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
Above 10kW and up to 100 kW	415V – three phase
Above 100Kw	At HT/EHT level (11kV/33kV/66kV) as per HESCOM rules

- A. The maximum permissible capacity for rooftop shall be 1 MW for a single net metering point.
- B. Utilities may have voltage levels other than above, HESCOMS may be consulted before finalization of the voltage level and specification be made accordingly.
- C. For large PV system (Above 100 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:

- A. 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 HDSCL/ owner.

- B. 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 signages 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 HDSCL/ owner.

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:

- A. 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.
- B. Approved ISI and reputed makes for equipment be used.
- C. For complete electro-mechanical works, bidders shall supply complete design, details and drawings for approval to HDSCL/owners before progressing with the installation work

19. PLANNING AND DESIGNING:

- A. 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 HDSCL/Owner for approval.
- B. HDSCL 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.
- C. The bidder shall submit preliminary drawing for approval & based on any modification or recommendation, if any. The bidder shall submit 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

- A. The Contractor shall furnish the following drawings Award/Intent and obtain approval
- B. General arrangement and dimensioned layout
- C. Schematic drawing showing the requirement of SV panel, Power conditioning Unit(s)/ inverter, Junction Boxes, AC and DC Distribution Boards, meters etc.
- D. Structural drawing along with foundation details for the structure.
- E. Itemized bill of material for complete SV plant covering all the components and associated accessories.
- F. Layout of solar Power Array
- G. 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 up to 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 HESCOMs.

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.

23.DISPLAY BOARD

The bidder has to display a board at the project site (above 25 kWp) mentioning the following:

- A. Plant Name, Capacity, Location, and Date of commissioning, estimated Power generation.
- B. Financial Assistance details from HDSCL/MNRE/Any other financial institution apart from loan. This information shall not be limited to project site but also be displayed at site offices/head quarter offices of the successful bidder.
- C. The size and type of board and display shall be approved by Engineer-in-charge before site inspection.

SCHEDULE 3: SITE DETAILS

(See Articles – 1.2.A, 5.8.A, 7.1.C and 27)

1 kWp to 10 kWp

Sl No.	Name of building	HDMC RR No.	Tariff Category	Net / Gross metering	Area in Sqm	Sanctioned load	Solar capacity in Kwp
1	Karnataka one centre, Hubli.	R428430C	LT Commercial - LT3	Net	89	3.00	3.00
2	Old Hubli main road Commercial Complex.	R34212C, R30076C, R37459C, R30079C	LT Commercial - LT3	Net	280	3.00	3.00
3	Town Hall, Hubli.	3607C	LT Commercial - LT3	Net	120	4.21	4.21
4	Swimming pool building, dwd.	MP497	LT Industrial - LT5	Net	143	19.00	10.00
5	HD one HDMC zonal office 4, dwd.	409819c	LT Commercial - LT3	Net	324	10.00	10.00

> 10 kWp to 50 kWp

Sl No.	Name of building	HDMC RR No.	Tariff Category	Net / Gross metering	Area in Sqm	Sanctioned load	Solar capacity in Kwp
1	HDMC Building, Hubli.	577CG	LT Commercial - LT3	Net	327	27.12	25.00
2	Glass House park, Hubli.	HT259	LT Commercial - LT3	Net	150	25.00	25.00
3	Chitiguppi new building, Hubli.	141770	LT2A	Gross	900	35.00	35.00
4	Kannada Bhavan, Hubli.	143385C	LT Commercial - LT3	Net	470	75.00	45.00

> 50 kWp to 100 kWp

Sl No.	Name of building	HDMC RR No.	Tariff Category	Net / Gross metering	Area in Sqm	Sanctioned load	Solar capacity in Kw
1	Kala bhavan,dwd.	HTD103	HT2B/ commercial	Net	818	330.00	80.00
2	Sanskritik Bhavan,New cotton market,Hubli.	HT 347	HT2B/ commercial	Net	1311	250.00	100.00

Capacity	Number of Buildings covered	Total kWp to be installed
1 kWp to 10 kWp	5	30.21
> 10 kWp to 50 kWp	4	130.0
> 50 kWp to 100 kWp	2	180.0
Total	11	340.21

SCHEDULE 4: PERFORMANCE SECURITY

(See Article – 25.1)

PROFORMA OF BANK GUARANTEE

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

In favor 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 Project Development and Implementation Agreement (the “Agreement”) being entered into between 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:

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

1. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ of all its obligations relating to the Project 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.

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 authorized to execute this Guarantee pursuant to the power granted under _____.

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

SIGNED AND DELIVERED

by _____ **Bank**

by the hand of Shri _____ its _____ and
authorized official.

SCHEDULE 5: SELECTION OF INDEPENDENT CONSULTANT

1. Selection of Independent Consultant

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.

Through the TPT the Authority has already appointed HDSCL / PricewaterhouseCoopers Pvt Ltd Consortium as the PMC during the construction and O & M Periods during the tenor of this agreement.

2. Fee and Expenses

In determining the nature and quantum of duties and services to be performed by the Independent Consultant during the Development / Construction Period and the Operational Period, payments to the Independent Consultant shall be borne by the Developer in accordance with the provisions of this Agreement.

The nature and quantum of duties and services to be performed by the Independent Consultant during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Consultant on account of fee and expenses during the Operation Period, including the construction shall be borne by the Developer.

3. 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 6: ESCROW AGREEMENT

(See Articles – 5.5.D and 14.1.C)

THIS ESCROW AGREEMENT is entered into on this the day of 20.....

AMONGST

1 **LIMITED**, a company incorporated under the provisions of the Companies Act, 19 ..and having its registered office at..... (herein after referred to as the “**Developer**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2name and particulars of Lenders’ Representative and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3name and particulars of the Escrow Bank and having its registered office at.....(hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4 HDSCL represented by its Chairman and having its principal offices at (hereinafter referred to as the “**Facilitator**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

(A) The Authority has entered into Project Development And Implementation Agreement dated with the Developer (the “**Project Development And Implementation Agreement (“PDIA”)**”) on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement

(B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C) The PDIA requires the Developer to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

DEFINITIONS AND INTERPRETATION

1.1 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:

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Project Development And Implementation Agreement**” means the Project Development And Implementation Agreement (“**PDIA**”) referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Developer, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Developer asking the latter to cure the breach or default specified in such notice;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Article

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually;

“Payment Date” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the PDIA shall, unless repugnant to the context, have the meaning ascribed thereto in the PDIA.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the PDIA shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Developer hereby appoints the Escrow Bank to act as trustee for Authority and Facilitator /HDSCL , the Lenders’ Representative and the Developer in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Developer hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for HDSCL, the Lenders’ Representative and the Developer, and applied in accordance with the terms of this Agreement. No person other than Authority and Facilitator /HDSCL, the Lenders’ Representative and the Developer shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Developer, Senior Lenders or HDSCL with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, Authority and Facilitator /HDSCL, the Lenders' Representative and the Developer or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Developer shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Developer shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Developer. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Authority and Facilitator /HDSCL, the Lenders' Representative and the Developer in the monies held in the Escrow Account are set forth in their entirety in this Agreement and Authority and Facilitator /HDSCL, the Lenders' Representative and the Developer shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Developer

The Parties hereto acknowledge and agree that upon substitution of the Developer with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Developer under this Agreement on and with effect from the date of substitution of the Developer with the Nominated Company.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Developer

3.1.1 The Developer agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and HDSCL;

all funds received by the Developer from its share-holders, in any manner or form;

any other revenues from, rentals, deposits or capital receipts, as the case may be, or in respect of the Project; and

all proceeds received pursuant to any insurance claims.

3.1.2 The Developer may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by Authority and Facilitator /HDSCL

Authority and Facilitator /HDSCL agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

Any monies disbursed by Authority and Facilitator /HDSCL to the Developer;

Termination Payments:

Provided that, notwithstanding the provisions of Clause, Authority and Facilitator /HDSCL shall be entitled to appropriate from the aforesaid amounts, any amount due and payable to it by the Developer, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Developer in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Agreement Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Developer may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out there from on the Payment Date(s):

all taxes due and payable by the Developer for and in respect of the Project;

all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

O&M Expenses incurred by Authority and Facilitator /HDSCL, if any provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Project Development and Implementation Agreement and that the amounts claimed are due to it from the Developer;

Facilitation Fee, if any due and payable to Authority and Facilitator /HDSCL;

monthly proportionate provision of Debt Service due in an Accounting Year;

all payments and Damages certified by Authority and Facilitator /HDSCL as due and payable to it by the Developer pursuant to the Project Development and Implementation Agreement, including repayment of Revenue Shortfall Loan;

monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;

any reserve requirements set forth in the Financing Agreements; and

balance, if any, in accordance with the instructions of the Developer.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Developer shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the PDIA, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Developer for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Facilitation Fee;
- (d) all payments and Damages certified by HDSCL as due and payable to it by the Developer pursuant to the PDIA, including] repayment of Revenue Shortfall Loan and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 39 of the PDIA;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the PDIA; and
- (j) balance, if any, in accordance with the instructions of the Developer:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement,

delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Developer during the period of Suspension under Article 36 of the PDIA. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Developer under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Developer.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Developer and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Developer upon a certificate signed by or on behalf of the Developer;

may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Developer or any other person hereunder or in connection herewith; and

shall, within 5 (five) business days after receipt, deliver a copy to the Developer of any notice or document received by it from the Lenders' Representative in connection herewith.

Keep Authority and Facilitator /HDSCL informed about all developments in Bank Account and Loans of the Developer, invite Authority and Facilitator /HDSCL to attend and participate in all monitoring meetings , endorse copies of all notices addressed to the Developer and copy to Authority and Facilitator /HDSCL , share copies of all the meetings etc.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Developer (an “Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders’ Representative:

- (a) the Developer commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Developer causes the Escrow Bank to transfer funds to any account of the Developer in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Developer commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the PDIA.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Developer in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Developer may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders’ Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders’ Representative and arrangements are made satisfactory to the Lenders’ Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Developer and the Lenders’ Representative made on or after the payment by the Developer of all outstanding amounts under the PDIA and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Developer. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Developer shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Developer in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

9.1.1 The Developer will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Developer of any of its obligations under this Agreement or on account of failure of the Developer to comply with Applicable Laws and Applicable Permits.

9.1.2 The Authority will indemnify, defend and hold the Developer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Developer's obligations under the PDIA or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3 The Escrow Bank will indemnify, defend and hold the Developer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Developer's obligations under the PDIA other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Waiver of sovereign immunity

The Authority 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 Authority 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 judgement 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 judgement that may be made or given in connection therewith).

11.3 Priority of agreements

In the event of any conflict between the PDIA and this Agreement, the provisions contained in the PDIA shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another 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.

11.5.2 Neither the failure by any 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 any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

(a) shall 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, shall 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.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 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 dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail are set out under its name on the signing pages here to. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorized representatives

Each of the Parties shall, by notice in writing, designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

11.13 Original Document

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

**SIGNED, SEALED AND
DELIVERED
For and on behalf of
DEVELOPER by:**

**SIGNED, SEALED AND
DELIVERED
For and on behalf of
SENIOR LENDERS by the Lenders'
Representative:**

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

**SIGNED, SEALED AND
DELIVERED
For and on behalf of**

**SIGNED, SEALED AND
DELIVERED
For and on behalf of**

ESCROW BANK by:

FACILITATOR by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

In the presence of:

1.

2.

SCHEDULE 7: PPA BETWEEN DEVELOPER AND HESCOM

(See Articles – 5.5.A, 13.2 and 17.1.M)

To be added later

SCHEDULE 8: RIGHT OF WAY, SITE RULES AND FACILITIES AT SITE

(See Articles – 6.3.C and 7.1.C)

1. Right of Way

The authority shall identify a suitable right of way to transport the project's components to each rooftop and intimate the developer. This shall be done after consulting the appropriate person/persons at each premise. However, the developer shall transport components to the rooftop in a way that causes minimum disruption to normal activities at the site.

2. Specific Right of Way

Should there be any further constraints to carry the components to the rooftop in one or more premises, the developer shall establish an appropriate access route to the rooftop. For example, the developer shall construct a temporary scaffolding structure or avail crane services. The developer shall consult the pertinent person/persons in each premise before resorting to these measures.

3. Site Rules

A. Watching and Lighting

The developer shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

B. Working at Night and on Holidays

Unless otherwise provided in the Contract, no work shall be carried out during the night and on public holidays of the country where the Site is located without prior written consent of the Employer, except where work is necessary or required to ensure safety of the Facilities or for the protection of life, or to prevent loss or damage to property.

C. Completion of Work

As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Technical Specifications, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.

D. Commissioning

The developer shall issue notices to the rooftop owner and HESCOM immediately preceding the commissioning of any of the seventeen facilities.

E. Safe Working Conditions and Damage Cover

The developer shall conduct all activities with the highest conformance to general construction safety standards to prevent damage, in whole or part, to the building or any of its components or injury to its workers, building inhabitants or the general public.

F. Site Specific Rules/ Guidelines

The developer shall consult and adhere to any site-specific rules/ guidelines pertaining to any period of the project.

4. Facilities at Site

A. Rooftop Access

The rooftop owners shall allow access to its rooftop to authorized personnel of the developer's team during the normal daytime working hours. Access may be granted to conduct work outside normal working hours and on holidays only if the developer makes such a demand in writing and the rooftop owner permits it. The exhaustive list of all premises is given in Schedule B of this document.

B. Access to Metering Point

The rooftop owners shall allow the developer to access their metering points to conduct any necessary installations of bidirectional or net meters required in this project.

C. Utilities and Services

The rooftop owner is not obligated to let the developer share its utilities – access to toilets, water, electricity, etc. However, the rooftop owners will be encouraged to do so within reasonable demands of the developer.

**SCHEDULE 9: CLEARANCES TO BE OBTAINED BY THE DEVELOPER WITH
ASSISTANCE FROM THE PMC AND FACILITATOR**

(See Articles – 5.2.A and 7.1.C)

The developer shall have the primary obligation in obtaining the following clearances/NOCs:

1. PWD Structural Report

The Authority will provide a clearance certificate regarding the structural soundness of each identified building. This will ensure the building can safely sustain the added weight of the solar PV system.

2. HESCOM NOC

The Authority shall also provide a clearance certificate issued by HESCOM which formally grants permission to install a rooftop PV system and generate and feed power into is existing grid.

HDSCL and its appointed PMC shall co-ordinate, facilitate and assist the developer in obtaining the above-mentioned clearances/NOCs.

Note: Acquiring any clearances not mentioned above shall be the sole responsibility of the developer and no other authority shall have any obligations in this regard.

**SCHEDULE 10: CLEARANCES TO BE OBTAINED BY THE BIDDER
INDEPENDENTLY**

(See Article – 5.2.A)

1. The developer shall obtain all the necessary approvals / consents / clearances (apart from those specified in **SCHEDULE 9**) required for erection, testing, commissioning, and O&M of the project including Grid connectivity. Hubballi Dharwad Smart City Limited shall not have any responsibility in this regard.
 - a) NOC from HESCOM for grid connectivity.
 - b) Approval on Solar metering system from HESCOM
 - c) NOC from Karnataka State Fire and Emergency Services
 - d) Method of Installation of Solar Panels on existing structures of buildings from PWD and Building Owners
 - e) Electrical Installation from Chief Electrical Inspector, Hubballi Dharwad
2. The developer shall bear and pay all taxes, duties, levies and charges assessed on the contractor, its subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.
3. Price bids are invited inclusive of taxes and duties. However, Tax exemptions including certificates of any sort, if available may be dealt with the concerned Department of Government of India by the developer. Hubballi Dharwad Smart City Limited in no case will be responsible for providing any tax exemptions to the bidder.

SCHEDULE 11: MANDATORY PROJECT MILESTONES

Time	Designated Activity
To	Signing of Project Development And Implementation Agreement
To + 2 months	Submit: (a) Equipment Layout Diagram, (b) Single Line Diagram (SLD) and (c) Wire and Earthing Layout Diagram after thorough site survey.
To + 7 months	Issue Completion of Installation and Commissioning Notice to Rooftop Owner and HESCOM.
To + 8 months OR T_{START}	All Rooftop Installations must be functional, and the gross peak power should equal that mentioned in the Project Development And Implementation Agreement.
T_{START} + 5 years	Comprehensive PV Module Audit to ascertain output depreciation.
T_{START} + 10 years	Comprehensive PV Module Audit to ascertain output depreciation. (The peak power output must meet condition set out in Section 1.1.4, point b) of SCHEDULE 1.
T_{START} + 15 years	Comprehensive PV Module Audit to ascertain output depreciation
T_{START} + 20 years	Comprehensive PV Module Audit to ascertain output depreciation. (The peak power output must meet condition set out in Section 1.1.4, point b) of SCHEDULE 1.
To + 24 years 10 months or TEND	Prepare and submit to the client, a suitable decommissioning plan to safely remove and dispose PV panels from all premises.
TEND + 1 month	Implement decommissioning plan and safely remove and dispose PV panels from all premises.
To + 25 years	End of Project Development And Implementation Agreement

SCHEDULE 12: GOVERNMENT POLICIES, GUIDELINES AND BEST PRACTICES

(See Article – 6.14)

Policy/ Guideline	Brief Description	Link
Government of Karnataka: Solar Policy 2014 – 2021	Document No. : EN 21 VSC 2014 dated 22.05.2014	< http://kredlinfo.in/solargrid/Solar%20Policy%202014-2021.pdf >
Government of Karnataka Amendments to Solar Policy 201 – 2021	Document No. : EN 49 VSC 2016 dated 12.01.2017	< http://kredlinfo.in/policy/Karnataka%20Solar%20Policy%202014-21-(as%20amended).pdf >
Ministry of New and Renewable Energy: Best Practices for Solar Rooftop Installations	Year Published: 2016	< http://mnre.gov.in/filemanager/UserFiles/Best-Practices-Guide-on-State-Level-Solar-Rooftop-Photovoltaic-Programs.pdf >
Government of India Tariff Policy	Document part of the Electricity Act, 2003 dated 28.01.2016	< http://www.kseboa.org/downloads/Government%20Orders/tariff_policyresolution_dated_28012016.pdf >
Karnataka Electricity Regulatory Commission, Tariff Order	Document dated 08.05.2017	< https://www.karnataka.gov.in/kerc/Court%20Orders/Tariff%202017/MSEZ/Revised%20Order%20MSEZ%20dated%2008.05.2017.pdf >

**SCHEDULE 13: MEMORANDUM OF UNDESTANDING BETWEEN
FACILITATOR (HDSCL) AND ROOFTOP OWNERS**

(See Article – 5.5.B)

To be added later

SCHEDULE 14: TRIPARTITE AGREEMENT

(See Article – 25.1)

TRIPARTITE AGREEMENT

BY AND AMONGST

The Hubballi Dharwad Electricity Supply Company (HESCOM)

(as “Utility”)

And

Developer/ Project Financer

(as the “Solar Rooftop Developer”)/ **Project Financer**

And

Rooftop Owner

(as “The Rooftop Owner”)

TRIPARTITE AGREEMENT:

This Irrevocable Tripartite Agreement (“**TPA**”) is made on this [•] day of [•] (“**Effective Date**”)at[•]

.....

BY AND AMONGST

Solar Roof top Developer, a company incorporated under the laws of India, having its registered office at [•], represented through its authorized signatory [•], (hereinafter referred to as the “**Developer**”, which expression shall, unless it be repugnant to the subject or the context thereof, be deemed to mean and include its successors and permitted assigns) (Party 1);

OR

Project Financer, a financial institution engaged in the business of financing solar or infrastructure projects in India, having its registered office at [•], represented through its authorized signatory [•],

(hereinafter referred to as the “**Project Financer**”, which expression shall, unless it be repugnant to the subject or the context thereof, be deemed to mean and include its successors and permitted assigns);(Party 1);

Hubballi Dharwad Smart City Limited

AND

Roof top Owner, Consumer of RR No/ Consumer ID No.an individual or partnership firm /

HUF or trust or a company incorporated under the laws of India, having their residence or registered office at [●], represented through its authorized signatory [●], (hereinafter referred to as the “**Rooftop Owner**” which expression shall, unless it be repugnant to the subject or the context thereof, be deemed to mean and include its successors and permitted assigns);(Party 2);

AND

The HUBBALLI DHARWAD ELECTRICITY SUPPLY COMPANY (HESCOM), responsible for power distribution in 8 districts of Karnataka, with its office at Paradigm Plaza, AB Shetti circle, Bengaluru – 575 001. HESCOM is represented through its authorized signatory [●], in its capacity as the coordinator for the implementation of the Karnataka Solar Rooftop Program being implemented across the state of Karnataka (Party3);

As the context may require, the HESCOM (the Utility), the Solar Rooftop Developer / Project Financer and the Rooftop Owner, may hereinafter be referred to individually as a “**Party**”, and collectively as the “**Parties**”.

WHEREAS:

- A. The Government of Karnataka, with the aim of harnessing its solar potential, announced its Solar Policy 2014-2021 during May 2014. The Solar Policy targets development of 400 MW of solar rooftop capacity by 2018 within the state.
- B. The Karnataka Electricity Regulatory Commission (KERC) has issued Tariff order on 10.10.2013 under Net-metering concept for the Net-energy exported to the grid.
- C. The Rooftop owner has entered into PPA with HESCOM on dated for installing Solar RTPV on his roof top and exporting excess energy to the grid.
- D. The Utility, while acting as the coordinating agency for the Karnataka Solar Rooftop Program, is facilitating the development and deployment of solar rooftop installations in its licensee area including the interconnection of the solar PV rooftop installations with the grid besides signing the Power Purchase Agreement (PPA).
- E. The Utility will make payment, to the Rooftop Owner (with a valid consumer number), an amount equal to the Net energy exported for the billing cycle times the tariff at which the PPA has been signed by the Utility and the Rooftop Owner. The payment will be made by the utility to the Rooftop Owner (Utility Consumer) to a designated bank account. The Rooftop Owner will designate an account for the purposes of receiving this payment from the utility.
- F. Solar rooftop projects can be developed either through investments by the Rooftop Owner or by a third party Developers/Project Financers who has been allowed by the Rooftop Owner to develop the project on said Owners premises. Third party

investments provide a viable alternative for financing and facilitating the deployment of solar rooftop projects.

- G. Under this framework, the Developer/ Project Financers will have the first lien upon the cash flows generated and received from the sale of excess power to the Utility. The TPA will allow

(1) the utility to route the payment for excess solar energy exported to a consumer defined ESCROW Account; and (2) allow the Developer/ Project Financer to have first right over the payments received from the utility.

- H. Therefore the Parties are now desirous of entering into this TPA setting out the duties and obligations of the Utility, the Developer /Project Financer and the Rooftop Owner inter-se for the purpose of the implementation of the rooftop installations in the Utility's licence area(s).

- I. The Rooftop owner (Consumer id RRno) intends to put up solar plant on his Roof has entered into PPA with HESCOM vide no. on dated

NOW THEREFORE, in consideration of, and subject to the mutual covenants, the Parties agree as follows:

1. PURPOSE AND INTERPRETATION

Under the proposed model of development of third party rooftop solar projects, the Rooftop Owner will enter into a Power Purchase Agreement (PPA) with Utility (from now on known as Agreement 1) and will also execute a MOU back to back with the Developer / Project Financers (from now on known as Agreement 2).

CHANGE IN DUTIES AND OBLIGATIONS

2.1. The Developer/ Project Financer and the Rooftop Owner hereby agree and undertake to inform the Utility of any changes, in writing, in any of the aforesaid duties and obligations, within 30 (thirty) days of such change.

2.2 The Utility hereby agree and undertake to inform the Developer/ Project Financer and the Rooftop Owner of any changes, in writing, in any of the aforesaid roles, duties and obligations, within 30 (thirty) days of such change.

TERMINATION

3.1 This TPA shall automatically stand terminated at the end of completion of 25 years of rooftop solar project operations, or (b) with mutual consent of both the parties i. e. Developer and Rooftop owner.

3.2 The Rooftop owner and developer with mutual consent shall have the right to terminate this agreement (TPA) at any time by serving a written notice 30 (thirty) days in advance to ESCOM.

4. VALIDITY OF OTHER PROVISIONS

4.1 The other provisions of the Power Purchase Agreement vide ref no..... dated on (Agreement 1) between the Rooftop Owner and the Utility and the Agreement 2 (MOU) between the Rooftop Owner and the Developer/ Project Financer, as may be applicable herein, shall be *mutatis mutandis* applicable on the Parties.

5. All the three parties mutually agreed for successful running of SRTPV activity as per the tariff order 10.10.2013 issued by the commission and its subsequent amendments issued if any from time to time.

5.1 First party (Rooftop owner) and second party (developer/ financier) have mutually agreed and open a joint account herein referred as ESCROW account in Bank with A/c No..... with IFSC(Bank A/c).

5.2 As per the MOU between parties(1) and (2) i.e Roof top owner and developer / Financier vide letter dated and letter of rooftop owner to HESCOMDated..... the request to remit all the payments/ bills/ receivables arising pertaining to his solar project to the said account only.

5.3 HESCOM will transfer the proceeds towards the net exported energy as per the Tariff determined by KERC to the said ESCROW account. The aforesaid joint a\ / ESCROW account will continue till expiry of TPA and cannot be closed without mutual consent of developer / financier and Rooftop owner.

5.4 The third party HESCOM understands the relevance and importance of the same and through this agreement/ undertakes (accepted) to remit all the payments/ bills/ receivables pertaining to the said project to the said ESCROW account only.

“ This agreement shall be an irrevocable agreement. To dissolve this agreement or to make any changes / amendments in this agreement the mutual consent of all the parties in writing shall be required”.

IN WITNESS WHEREOF this Tripartite Agreement has been executed on the day and year first above written.

DEVELOPER/ PROJECT FINANCER/ ROOFTOP OWNER

FINANCER

Authorised Representative:
Designation:
Signature:

Authorised Representative:
Designation:
Signature:

Company Seal:

Witness:
Name:
Signature:

Witness:
Name:
Signature:

UTILITY

Authorised Representative:
Designation:
Signature:

Company Seal:

Witness:

Name:

Signature:

