

UNDERTAKING FOR DOWNLOADED TENDER DOCUMENT

We here by confirm that, we have downloaded / read the complete set of tender documents /addendum/clarifications along with the set of enclosures hosted on e-tendering portal www.etenders.kerala.gov.in / www.kmrl.co.in. We confirm that we have gone through the tender documents, addendums and clarifications for this work placed upto the date of opening of bids on the e-tendering portal [www.etenders.kerala.gov.in / www.kmrl.co.in]. We confirm our unconditional acceptance for the same and have considered for these in the submission of our financial bid.

Signature of authorised signatory

Section- VA

Annexure-A

DOCUMENTS REQUIRED FOR PROJECT SANCTION

Following documents will be required to be submitted for project sanction:

1. Project Report

(Project report should contain the following)

- Context / background / Introduction
- Project objectives
- Target beneficiaries
- Project strategy / Approach of work & methodology
- Environmental Impact Assessment, if required.
- Site details including photographs with date & time stamping
- Solar resource assessment
- Technology selection (Module, Inverter and BOS)
- Design, Simulation, BOM and layout of SPV plant
- Grid connectivity and metering scheme
- Means of financing and project budget
- Financial, Economic & Risk Analysis
- Time frame / schedule of implementation
- Shadow Analysis

2. Agreement between the bidder and the owner of the Project and Building/Roof top (Notarized original agreement on stamp paper of appropriate value should be enclosed).

All Agreement shall generally have reference to the KMRL Contract KMRL/SYS/SPV-03 – “**Design, Engineering, Manufacturing, Supply, Storage, Civil work, Erection of suitable raised structure with foundation, Testing & Commissioning of the 5.445 MWp(indicative capacity) Rooftop and Ground Mounted Solar PV project including Operation and Comprehensive Maintenance (O&M) of the project in RESCO Model for a period of 25 years on different sites of KMRL**” and Letter of Allocation and provisions as per terms and conditions, technical specification and performance parameter in line with the KMRL RFS Document against which Letter of Allocation has been issued. In addition, it shall indicate the price / tariff payable by the roof top Owner to the developer, payment terms, completion period along with other conditions of contract like insurance, warranty, force majeure, arbitration, jurisdiction, governing law, site access for the developer, and, site access for KMRL officials for the entire plant life.

3. No Objection Certificate from the KMRL for grid connectivity.

Annexure-B

All scheduled Commercial banks based in India and having branch in India

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SECTION- VI

DATED _____, 2019

POWER PURCHASE AGREEMENT

BETWEEN

AND

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT is made at _____ on _____, 2019

Between

_____ **[insert entity name]** a company incorporated in India under the provisions of the Companies Act 1956, with its registered office at

hereinafter referred to as the “**Power Producer**” (which expression shall unless repugnant to the context mean and include it’s successors and assigns);

AND

***Kochi Metro Rail Limited**, a joint venture company of Central Government and Government of Kerala incorporated under the Companies Act, 1956, having its registered office at 8th Floor, Revenue Tower, Park Avenue, Kochi-682011, Kerala, India, hereinafter referred to as the “Purchaser” (which expression shall unless repugnant to the context mean and include its successors and assigns). The Power Producer and the Purchaser are each individually referred to as a “Party” and collectively as the “Parties”.*

WHEREAS;

- A.** The KMRL had invited proposals by its Notice No. [•] dated [•] (the “Tender Notice”) of **Contract KMRL/SYS/SPV-03 – “Design, Engineering, Manufacturing, Supply, Storage, Civil work, Erection of suitable raised structure with foundation, Testing & Commissioning of the 5.445 MWp(indicative capacity) Rooftop and Ground Mounted Solar PV project including Operation and Comprehensive Maintenance (O&M) of the project in RESCO Model for a period of 25 years on different sites of KMRL.”**
- B.** For selection of bidders for Implementation of Roof Top Solar PV System at Depots and Metro Stations of KMRL. KMRL had prescribed the technical and commercial terms and conditions, and invited bids from the shortlisted bidders pursuant to the Tender Notice for undertaking the Project.
- C.** After evaluation of the bids received, the KMRL notified [•] (Consortium/JV) as the Successful Bidder for “Design, Engineering, Manufacture, Supply, Storage, Civil work, Erection, Testing & Commissioning of the rooftop solar PV project including Operation and Comprehensive Maintenance (O&M) of the project for a period of 25 years after commissioning of projects” and has been awarded [•] kWp of capacity as per Technical Specification & other details of Contract:- KMRL/SYS/SPV-03 dated [•] of KMRL, and issued its Letter of Allocation no. [•] dated [•] (hereinafter called the “LOA”) to the Successful Bidder requiring, inter alia, the execution of this Power Purchase Agreement within 30 days of the date of issue thereof.
- D.** Pursuant to clause 3.5 of RFS documents, the Consortium/JV/Successful Bidder has since promoted and incorporated the Project Company (“Power Producer” herein) as a limited company under the Companies Act 2013, and has requested the KMRL vide its letter no. [•] dated [•], supported with its Board Resolution(s) dated [•], to accept the Project Company as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium/JV/Successful Bidder under the

LOA, including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.

- E. By its letter dated [•], supported by its Board Resolution, the said Project Company (Power Producer herein) has also joined in the said request of the Consortium/JV/Successful Bidder to the KMRL to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium/JV/Successful Bidder including the obligation to enter into this Agreement pursuant to the LOA. The Power Producer herein/Project Company has further represented to the effect that it has been promoted by the Consortium /JV/Successful Bidder for the purposes hereof.
- F. The Power Producer herein/Project Company has agreed to install and operate a solar photovoltaic power plant of [•] KW capacity (the “Project”) at the Premises as defined hereinafter and supply the entire Solar Power of the Project to the Purchaser on the terms and conditions contained in this Agreement.
- G. The KMRL has agreed to the said request of the Consortium/JV/Successful Bidder and the Power Producer herein/Project Company, and has accordingly agreed to enter into this Agreement with the Power Producer herein/Project Company for execution of the Project, subject to and on the terms and conditions set forth hereinafter.
- H. The Purchaser has agreed to purchase the entire Solar Power of the Project on the terms and conditions contained in this Agreement.

NOW THEREFORE in consideration of the mutual promises, conditions and covenants set forth herein, the Parties hereby agree as below:

Definitions and Interpretation

1.1 Definitions

In addition to other capitalized terms specifically defined elsewhere in the Agreement or unless the context otherwise requires, the following words and phrases shall be defined as follows:

- (a) **“Actual Monthly Production”** means the amount of energy recorded by the Main Metering System during each calendar month of the Term, pursuant to Section 5.2;
- (b) **“Affiliate”** means with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person;
- (c) **“Agreement”** means this Power Purchase Agreement executed hereof, including the schedules, amendments, modifications and supplements made in writing by the Parties from time to time;
- (d) **“Applicable Law”** means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority in India having jurisdiction over such Person or its property, enforceable by law or in equity, including the interpretation and administration thereof by such Governmental Authority;
- (e) **“Assignment”** has the meaning set forth in Section 14.1;

- (f) **“Business Day”** means any day other than Sunday or any other day on which banks in Kochi (or NCR) are required or authorized by Applicable Law to be closed for business;
- (g) **“Commercial Operation Date”** has the meaning set forth in Section 4.3(b);
- (h) **“Confidential Information”** has the meaning set forth in Section 16.1;
- (i) **“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;
- (j) **“Contingent Liability”** that is not now fixed and absolute but which may become so in case of the occurrence of some future event.
- (k) **“Deemed Generation”** has the meaning set forth in Section 5.3(b);
- (l) **“Delivery Point”** shall be the single point, at a location mutually agreed by the Parties, in line with applicable regulation/rules where Solar Power is delivered by the Power Producer from the System to the Purchaser;
- (m) **“Dispute”** has the meaning set forth in Section 17.8 (b);
- (n) **“Disruption Period”** has the meaning set forth in Section 5.3(b);
- (o) **“Distribution Utility”** means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises;
- (p) **“Due Date”** has the meaning set forth in Section 7.4;
- (q) **“Effective Date”** has the meaning set forth in Section 2;
- (r) **“Estimated Remaining Payments”** means as of any date, the estimated remaining Solar Power Payments to be made through the end of the applicable Term, as reasonably determined by the Power Producer in accordance with Section 7.1;
- (s) **“Expiration Date”** means the date on which the Agreement terminates by reason of expiration of the Term;
- (t) **“Financing Party”** means, as applicable (i) any Person (or its agent) from whom the Power Producer (or an Affiliate of the Power Producer) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide financing to the Power Producer (or an Affiliate of the Power Producer) with respect to the System;
- (u) **“Force Majeure Event”** has the meaning set forth in Section 11.1;
- (v) **“Governmental Approval”** means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority for the purpose of setting up of the

Project and/ or for sale and purchase of Solar Power of the Project pursuant to this Agreement;

- (w) **“Governmental Authority”** means any central, state, regional, district, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government;
- (x) **“Indemnified Persons”** means the Purchaser Indemnified Parties or the Power Producer Indemnified Parties, as the context requires;
- (y) **“Insolvency Event”** means with respect to a Party, that either:
 - (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary proceeding under any insolvency or bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or
 - (ii) It is clarified that a dissolution or liquidation will not be an Insolvency Event if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization, and the resulting company retains creditworthiness similar to the dissolved or liquidated entity and expressly assumes all obligations of the dissolved and liquidated entity under this Agreement and is in a position to perform them;
- (z) **“Installation Work”** means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for the Power Producer at the Premises;
- (aa) **“Invoice Date”** has the meaning set forth in Section 7.2;
- (bb) **“Lender”** means such bank, or other financial institution, including their successors and assignees, who have agreed to provide the Power Producer with debt financing of the Project
- (cc) **“Losses”** means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation);
- (dd) **“Main Metering System”** means all meter(s) and metering devices owned by the Power Producer and installed at the Delivery Point for measuring and recording the delivery and receipt of energy;
- (ee) **“Metering Date”** means the first Business Day of each calendar month subsequent to the month in which the Solar Power is generated by the Power Producer. The billable units shall be equal to the difference between the meter reading on the Metering Date and the meter reading on the previous month’s Metering Date;

- (ff) **“Party”** or **“Parties”** has the meaning set forth in the preamble to this Agreement;
- (gg) **“Performance Ratio”**
- (hh) **“Person”** means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority;
- (ii) **“Power Producer Default”** has the meaning set forth in Section 12.1(a);
- (jj) **“Power Producer Indemnified Parties”** has the meaning set forth in Section 17.2;
- (kk) **“Premises”** means the premises described in Schedule 1 to this Agreement. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1 to this Agreement;
- (ll) **“Purchase Date”** means the date on which title to the System transfers to the Purchaser pursuant to the Purchaser exercising its purchase option under Section 3.2;
- (mm) **“Purchase Price”** means the fee payable by Purchaser to the Power Producer under the circumstances described in Section 3.2, Section 5.3(a) or Section 12.2 (b);
- (nn) **“Purchaser Default”** has the meaning set forth in Section 12.2(a);
- (oo) **“Purchaser Indemnified Parties”** has the meaning set forth in Section 17.1;
- (pp) **“Representative”** has the meaning set forth in Section 16.1;
- (qq) **“Scheduled Completion Date”** has the meaning set forth in Section 4.1 (g);
- (rr) **“Security Interest”** has the meaning set forth in Section 9.2;
- (ss) **“Selectee”** means a new company (i) proposed by the Lenders pursuant to Section 12.1 read with Schedule VI hereof and approved by the Purchaser (ii) or proposed by the Purchaser in accordance with Schedule VI hereof and approved by the Lenders, for substituting the Power Producer for the residual period of the Agreement by amendment of the Agreement or by execution of a fresh power purchase agreement in accordance with the terms and conditions contained in the said Schedule.
- (tt) **“Solar Power”** means the supply of electrical energy output from the System;
- (uu) **“Solar Power Payment”** has the meaning set forth in Section 7.1;
- (vv) **“System/Project”** includes the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, and all other material comprising the Installation Work;

- (ww) “**System Operations**” means the Power Producer’s operation, maintenance and repair of the System performed in accordance the requirements herein;
- (xx) “**Tariff**” means the price per kWh set forth in Schedule II hereto;
- (yy) “**Term**” has the meaning set forth in Section 3.1;
- (zz) “**Transfer Time**” has the meaning set forth in Section 5.3(a).

1.2 **Interpretation**

- (a) Unless otherwise stated, all references made in this Agreement to “Sections”, “Clauses” and “Schedules” shall refer respectively to Sections, Clauses and Schedules of this Agreement. The Schedules to this Agreement form an integral part of this Agreement and shall have effect as though they were expressly set out in the body of this Agreement.
- (b) In this Agreement, unless the context otherwise requires (i) words imparting singular connotation shall include plural and vice versa; (ii) the words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and (iii) the words “hereof”, “hereto”, “herein” and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement.

2. **Effective Date**

This Agreement shall be effective on the day that falls one Business Day after the date of signing of this Agreement.

3. **Term and Termination**

3.1 **Term**

The term of the Agreement shall commence on the Effective Date and shall continue for twenty five (25) years from the Commercial Operations Date (the “**Term**”), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Term, the ownership of the System shall be transferred to the Purchaser free of cost.

3.2 **Purchase Option**

So long as a Purchaser Default shall not have occurred and be continuing, Purchaser has the option to purchase the System by paying the Power Producer the Purchase Price as per Schedule III to this Agreement. To exercise its purchase option, the Purchaser shall, not less than Ninety (90) days prior to the proposed Purchase Date, provide written notice to the Power Producer of Purchaser’s intent to exercise its option to purchase the System on such Purchase Date. In the event Purchaser confirms its

intention to exercise the purchase option in writing to the Power Producer, (i) Purchaser shall pay the applicable Purchase Price to the Power Producer on the Purchase Date, such payment to be made in accordance with any written instructions delivered to Purchaser by the Power Producer for payments under the Agreement, and (ii) the Parties shall promptly execute all documents necessary to (A) cause title to the System to pass to Purchaser on the Purchase Date, free and clear of all liens, and (B) assign all vendor warranties for the System to Purchaser. Upon execution of the documents and payment of the applicable purchase price, in each case as described in the preceding sentence, the Agreement shall terminate automatically and the Purchaser shall become the owner of the System. Upon such termination, the Power Producer shall offer its operations and maintenance (“O&M”) services to the Purchaser and the Parties may enter into an O&M agreement in this regard. The terms and conditions of the O&M agreement will be negotiated in good faith between the Parties.

3.3 Not Used

4. Construction, Installation, Testing and Commissioning of the System

4.1 Installation Work

- (a) The Power Producer will cause the Project Design, Engineering, Manufacture, Supply, Storage Civil work, Erection, Testing & Commissioning of the 5.445 MWp(indicative capacity) Rooftop and Ground Mounted Solar PV project including Operation and Comprehensive Maintenance (O&M) of the project for a period of 25 years after commissioning of projects in accordance with **Contract:-KMRL/SYS/SPV-03** dated of KMRL and the KMRL site wise details attached as Schedule I hereto. The Power Producer shall provide to the Purchaser a bill of materials listing the major equipment constituting the System. Such bill of materials shall be provided within 30 days of the Commercial Operation Date.
- (b) The Power Producer shall have access as reasonably permitted by the Purchaser to perform the Installation Work at the Premises in a manner that minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical.
- (c) It is agreed between the Parties that the Power Producer shall commission the System with a capacity of approximately ____**. Power Producer may construct a System of smaller size if it receives only part approval of government subsidies or for any other material commercial reason, as mutually agreed between the Parties. In the event a System of smaller capacity is eventually agreed to be installed, the clauses pertaining to Purchase Price as set out under this Agreement shall be adjusted proportionately as per mutual agreement between the Parties.
- (d) The Power Producer shall provide and lay the dedicated electrical cables for transmission of Solar Power from the System up to the Delivery Point. Transmission or distribution of Solar Power beyond this point will be the responsibility of the Purchaser. The Delivery Point shall be where the Main Metering System is located.

- (e) Unless otherwise agreed between the Parties, the Power Producer shall not do (a) chipping of rooftop; or (b) water proofing of roof to be disturbed (c) carry out any other modification of the Premises without the written consent of the Purchaser. The Power Producer shall maintain general cleanliness of area around the during construction and operation period of the Project. In case any damages is caused to the equipment / facilities owned by the Purchaser due to the Power Producer, the same shall be made good / rectified by the Power Producer at their cost.
- (f) The Power Producer shall, within thirty (30) days of the Effective Date, submit to the Purchaser shop drawings of the Project for approval (“**Shop Drawings**”). If the Purchaser has any objection/ recommendation in the Shop Drawings, he shall communicate the same to Power Producer within a period of ten (10) days of the date of submission of the Shop Drawings. Any delay will extend the effective date and such approval shall not be unreasonably withheld.
- (g) Subject to any punch-list items which shall be agreed by the Purchaser as not being material to completion of the Project, the Power Producer agrees that it shall achieve the completion of the Project / Commissioning of the Project within 12 Months from the date of issue of Letter of acceptance. (“**Scheduled Completion Date**”) Purchaser shall ensure that sufficient load is available at the Delivery Point to ensure synchronization and drawl of power from System.
- (h) If the Power Producer is unable to commence supply of Solar Power to the Purchaser by the Scheduled Completion Date, other than for the reasons specified in Article 11 and 12.2 (Force Majeure or Purchasers Default), the Power Producer or its contractor shall pay to KMRL genuine **pre-estimated liquidated damages** for the delay in such commencement of supply of Solar Power as per the clause of the KMRL RFS appended as Schedule 7 to this Agreement.
- (i) The Purchaser shall ensure that all arrangements and infrastructure for receiving Solar Power beyond the Delivery Point are ready on or prior to the Commercial Operation Date and is maintained in such state in accordance with applicable laws through the Term of the Agreement.
- (j) Power Producer shall fulfill all obligations undertaken by it under this Agreement

4.2 Approvals and Permits

Each of the Parties shall assist the other Party in obtaining all necessary Government Approvals, third party approvals and permits including but not limited to those listed in Schedule V hereto and any waivers, approvals or releases required pursuant to any applicable CCR.

4.3 System Acceptance Testing

- (a) The Power Producer shall give 15 days advance notice to conduct the testing of the and in the presence of Purchaser’s designated representative conduct testing of the in accordance with procedure as approved by KMRL.
- (b) If the results of such testing indicate that the System is capable of generating electrical energy (**kWp) for 5 continuous hours using such instruments and meters as have been installed for such purposes, then the Power Producer shall send a written notice to Purchaser to that effect, and the date of successful

conducting such tests and injection of Power at Delivery Point shall be the “**Commercial Operation Date.**”

5. System Operations

5.1 The Power Producer as Owner and Operator

The System will be legally and beneficially owned by the Power Producer and will be operated and maintained and, as necessary, repaired by the Power Producer at its sole cost and expense; provided, that any repair or maintenance costs incurred by the Power Producer as a result of Purchaser’s negligence or breach of its obligations hereunder shall be reimbursed in full by Purchaser.

Power Producer shall not be responsible for any work done by others on any part of the System/Project authorized by the Purchaser and not authorized in advance by the Power Producer in writing. Power Producer shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by Purchaser or anyone instructed to do such work by Purchaser. In the event of a problem with the System, as a result of the Purchaser’s actions, for which Power Producer is not responsible as provided in this Agreement, Purchaser may choose and pay Power Producer for diagnosing and correcting the problem at Power Producer or Power Producer’s contractors’ standard rates and charges then in effect.

To get the benefit of CDM/REC from generating Solar power, Power Producer will have be responsible for doing all necessary documentation, payment of fees, and site compliances etc. for registration with concerned departments. If required, the Developer may appoint a consultant who shall follow up for trading CDM/REC in International Exchanges. All the charges for the same shall be borne by Power Producer. The amount accrued thereof shall be divided in the ratio of 20:40:40 (20% to the consultant and 40% each to the Power Producer and Power Purchaser).In case no consultant is appointed, the accruals shall be divided in the ratio of 60:40 (60% to the Power Producer).

5.2 Metering

- (a) The Power Producer shall install the Main Metering System at the Delivery Point for the measurement of electrical energy produced by the System.
- (b) The meter will be read by the Power Producer’s personnel on the Metering Date. The authorized representative of the Purchaser shall be present at the time of meter reading. Both the Parties shall sign a joint meter reading report. However, in case the Joint Meter Reading Report is not signed in the first three Business days of any month due to non-availability of the Purchaser’s authorized representative, the report signed by the Power Producers shall be considered as Joint Meter Reading Report The Parties agree that such Joint meter reading Report shall be final and binding on the Parties.
- (c) The Main Metering System at the Delivery Point and any additional meters required by Applicable Law shall be tested, maintained and owned by the Power Producer.

- (d) The Purchaser may, at its own discretion, install a check meter, at its cost, to verify the measurements of the Main Metering System.
- (e) The risk and title to the Solar Power supplied by the Power Producer shall pass to the Purchaser at the Delivery Point.
- (f) The power producer shall obtain the net metering from DISCOM for this plants installed. The Joint Meter Reading (JMR) will be done after the receipt of net metering permission.

5.3 **System Disruptions**

(a) **Unavailability of Premises**

If, for reasons other than the Power Producer's breach of its obligations herein, the Power Producer ceases to have access rights to the Premises as necessary to operate and maintain the System prior to the Expiration Date, then the Power Producer shall be entitled to terminate the Agreement. Purchaser shall pay the Purchase Price to the Power Producer.

(b) **Roof Repair and other System Disruptions**

In the event that (a) the Purchaser repairs the Premises' roof for any reason not directly related to damage, if any, caused by the System, and such repair requires the partial or complete temporary disassembly or movement of the System, or (b) any act or omission of Purchaser or Purchaser's employees, Affiliates, agents or subcontractors (collectively, a "**Purchaser Act**") results in a disruption or outage in System production, and such events attributable to Purchaser except Force Majeure, then, in either case, Purchaser shall (i) pay the Power Producer for all work required by the Power Producer to disassemble or move the System and (ii) continue to make all payments for the Solar Power during such period of System disruption (for continuous 24 generating hrs.) (the "**Disruption Period**"). For the purpose of calculating Solar Power Payments and lost revenue for such Disruption Period, Solar Power shall be deemed to have been produced at the average rate over the preceding twelve (12) months or, if the disruption occurs within the first twelve (12) months of operation, the average over such period of operation. ("**Deemed Generation**"). Power producer shall inform about the disruption or outage in System production, for reasons attributable to Purchaser in writing with date and time of such occurrence, and purchaser's liability shall start from the date of intimation of disruption or outage in system production, on account of purchaser.

In the event that the Purchaser fails to ensure adequate space for solar equipment to ensure that other structures do not partially or wholly shade any part of the Solar Power Plant and if such shading occurs, the Power Producer may apply for Deemed Generation furnishing the calculation for loss in generation due to such shading supported by the relevant data, which shall be approved by Purchaser within one month of submission failing which the Power Producer shall claim provisional deemed generation till the issue is finally settled.

The developer is responsible for the waterproofing of the roof disturbed/pierced for installation of Rooftop solar Power System for the Whole O&M period (25 Years). To ensure the water proofing a third party inspection jointly with power producer and power purchaser will be conducted annually. The developer should immediately take necessary action to repair any damage to the water proofing. KMRL may impose suitable penalty for the delay caused to resolve the issue.

6. Delivery of Solar Power

6.1 Purchase Requirement

Purchaser agrees to purchase one hundred percent (100%) of the Solar Power generated by the System and made available by the Power Producer to Purchaser at the Delivery Point during each relevant month of the Term. In the event that the Power Purchaser is unable to off take 100% of the electricity generated, when it is generated, then Deemed Generation will apply. Moreover, if any part of the capacity of the Solar Power Plant is unable to operate at full capacity due to non-availability of load, Deemed Generation shall also apply subjected to furnishing of documentary evidence in support of the same.

6.2 Estimated Annual Production

The annual estimate of Solar Power with respect to the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Initial Term is set forth in Schedule IV hereof.

If power producer is not able meet CUF of minimum 17% in any year subject to acceptance degradation in modules as per tender penalty for lower performance shall be levied as per tender clause 3.27.1. If Power Producer does not pay the penalty, the performance bank guarantee is liable to be forfeited as per tender clause 3.15.6 of Tender.

6.3 Suspension of Delivery

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

6.4 Title to the System

Throughout the duration of the Agreement, the Power Producer shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of the Power Producer and shall not attach to or be deemed a part of, or fixture to, the Premises. .

Purchaser covenants that it will use its best efforts to place all parties having an interest in or lien or encumbrance upon the real property comprising the Premises on notice of the ownership of the System and the legal status the System as the personal property of the Power Producer. If there is any mortgage or other security interest created or granted upon the Premises which could reasonably be construed as

attaching to the System as a fixture of the Premises, Purchaser shall procure, at the Power Producer's request, a release from such lien holders.

7. Tariff and Payment

7.1 Consideration

Purchaser shall pay to the Power Producer a monthly payment (the "**Solar Power Payment**") for the Solar Power generated by the System as per the Metering clause 5.2 (b) above during each calendar month of the Term equal to the product of the Actual Monthly Production as recorded in Joint Meter Reading Report for the System for the relevant month multiplied by the Tariff irrespective of (i) whether any or all units of Solar Power has been drawn, consumed or utilized by Purchaser and/or (ii) whether any Solar Power has been injected, whether inadvertently or otherwise, into the grid of the Distribution Utility.

The Power Producer will bill the Purchaser for each kWh metered as above at the Delivery Point, at the Tariff prevailing at that point of time.

In the first three years from the Commercial Operation Date, the Tariff will be equal to **Rs. ** per kWh**

For the sake of simplicity, the second year shall begin from the first date of the month following completion of one year from the Commercial Operation Date so as to maintain a monthly billing cycle. Schedule II provides a detailed year on year tariff schedule.

7.2 Invoice

The Power Producer shall invoice Purchaser on the first day of each month (each, an "**Invoice Date**"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Solar Power Payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement.

7.3 The Invoice to the Purchaser shall include:

- (a) The Solar Power calculations for the relevant billing period;
- (b) Supporting data, documents and calculations in accordance with this Agreement;

7.4 Time of Payment

Purchaser shall pay all amounts due hereunder within Thirty (30) days after the date of the receipt of the invoice in Purchaser's office ("**Due Date**").

7.5 Method of Payment

Purchaser shall make all payments under the Agreement by cheque or electronic funds transfer in immediately available funds to the account designated by the Power

Producer from time to time. All payments made hereunder shall be non-refundable, subject to the applicable tax deduction at source, and be made free and clear of any other tax, levy, assessment, duties or other charges and not subject to reduction, set-off, or adjustment of any kind. If the Purchaser deducts any tax at source, the Purchaser will issue a tax credit certificate as per law.

7.6 Late Payment

In case payment of any Invoice is delayed by the Purchaser beyond its Due Date, a late payment surcharge shall be payable by Purchaser to the Power Producer at the rate of 1% per month ("**Late Payment Surcharge**") calculated on the amount of outstanding payment, calculated on a day to day basis for each day of the delay, compounded on monthly rests. Late Payment Surcharge shall be claimed by the Power Producer through its subsequent Invoice.

7.7 Disputed Payments

In the event that the Purchaser disputes an Invoice, it shall give notice of such a dispute within 15 days of receiving the Invoice setting out details of the disputed amount. The Purchaser shall pay by the Due Date 100% of any undisputed amount and in case the invoice is disputed, the Purchaser shall pay an amount based on average consumption of last three consecutive undisputed Invoices. Amount so recovered shall be subject to final adjustment on resolution of the dispute. Thereafter, the Parties shall discuss and try to resolve the disputed amount within a week of receipt of such notice of dispute. If the Parties resolve the dispute an appropriate adjustment shall be made in the next Invoice. If the dispute has not been resolved by the date of the next Invoice the dispute shall be referred to a committee of one member from each of Purchaser and Power Producer. If the dispute is still not resolved by the next following Invoice it shall be referred to Arbitration.

7.8 Not Used.

7.9 Change in Law:

- (a) For the purpose of this Section 7.9, the term "Change in law" shall mean the occurrence of any of the following events after the Bid due Date, resulting into any additional recurring / non-recurring expenditure by the Power Producer or any income to the Power Producer:
 - (i) 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; or
 - (ii) a change in the interpretation of any Law by any Governmental Authority having the legal power to interpret or apply such Law, or any competent court; or
 - (iii) the imposition of a requirement for obtaining any Government Approvals which was not required earlier; or

- (iv) a change in the terms and conditions prescribed for obtaining any Government Approvals or the inclusion of any new terms or conditions for obtaining such Government Approvals; or
- (v) any introduction of any tax made applicable for supply of power by the Power Producer as per the terms of this Agreement. Any benefit due to change in tax on the sale of solar energy shall be passed on to Purchaser.
- (vi) However change in the rate of any existing tax will not be considered a change in law. Any risk of change of tax rate whatsoever related to the work lies with the power producer.
- (vii) Any benefit arising due to change in above para (i) to (vi) shall be passed on to the purchaser.

But shall not include any change in any withholding tax on income or dividends distributed to the shareholders of the Power Producer.

(b) Application and Principles for computing impact of Change in Law

While determining the consequence of Change in Law under this Article 7.9, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly bill payment, to the extent contemplated in this Article 7.9, the affected Party to the same economic position as if such Change in Law has not occurred and such impact shall be mutually decided.

- (c) Solar Power Payment Adjustment Payment on account of Change in Law Subject to provisions mentioned above, the adjustment in Solar Power Payment shall be effective from:
- (i) The date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or
 - (ii) The date of order/judgment of the competent court or tribunal or Governmental Authority, if the Change in Law is on account of a change in interpretation of Law.

8. **General Covenants**

8.1 **Power Producer's Covenants**

The Power Producer covenants and agrees to the following:

- (a) **Notice of Damage or Emergency**: The Power Producer shall (a) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (b) immediately notify Purchaser once it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.
- (b) **System Condition**: The Power Producer shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Power at a commercially reasonable continuous rate. Subject to there being no Purchaser Default, the Power Producer shall provide 24X7 onsite / offsite monitoring and maintenance of the System throughout the period of this agreement at no additional cost

- (c) The System shall meet minimum guaranteed generation with Performance Ratio (PR) at the time of commissioning and related Capacity Utilization Factor (CUF) as per the daily normalized irradiance levels of the location during the O&M period. PR shall be minimum of 75% at the time of inspection for initial Project acceptance.
- (d) **Governmental Approvals:** While providing the Installation Work, Solar Power and System Operations, the Power Producer shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by the Power Producer and to enable the Power Producer to perform such obligations.
- (e) The interconnection of the rooftop solar system with the network of the distribution licensee shall be made as per the technical standards for connectivity of distributed generated resources regulations as may be notified by the competent authority. The interconnection of the rooftop solar system shall be as per the contracted load and/or respective voltage level applicable to the Purchaser as per the provisions of the guidelines issued by the competent authority.
- (f) **Health and Safety:** The Power Producer shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Solar Power, and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property.

8.2 Power Producer's Representatives

During the subsistence of this Agreement, the Power Producer undertakes to respond to all questions, concerns and complaints of the Purchaser regarding the System in a prompt and efficient manner. The Power Producer designates the following individual as its representative pertaining to performance of this Agreement till the Commercial Operation Date:

Name:

Telephone:

E-mail:

The Power Producer designates the following individual as its representative and primary point of contact pertaining to performance of this Agreement following the Commercial Operation Date till termination:

Name: _____ – Project Manager

Telephone: +91 _____

E-mail: _____