



POWER PURCHASE AGREEMENT

FOR

**SETTING UP OF 15 MW SOLAR PV POWER PLANT WITH 7MW/14 MWH BESS
ON RAILWAY LAND AT BUTIBORI, NAGPUR, MAHARASHTRA
UNDER TARIFF BASED COMPETITIVE BIDDING
ON LONG TERM**

from Grid Connected Solar Project with Energy

Storage System

Between

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

Nodal Railway

..... [Insert month and year]

Ref No: -REMCL/Rly/Storage/2021

Date: - 30.05.2021

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

Between

..... [Insert name of the Solar Power Developer], a Company incorporated under the Companies Act 1956 or Companies Act 2013, having its registered office at

.....[Insert address of the registered office of Solar Power Developer](here in after referred to as “**Solar Power Developer or SPD**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **First Part**;

And

The Nodal Railway, having its Head office at (hereinafter referred to as “**NODAL RAILWAY**” or “**Procurer**” or “**Buyer**” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the Second Part;

The SPD and NODAL RAILWAY are individually referred to as ‘Party’ and collectively referred to as ‘Parties’

WHEREAS:

A. Railways had resolved to execute solar generation project of 15 MW PV plant coupled with 7 MW / 14 MWH capacity including operation and maintenance (O&M) of the system(s) for a period of 25 years after commissioning of project, on Design, Build, Finance, Operate and Transfer (DBFOT) basis, located at Railway land near Butibori Railway station at Nagpur in Maharashtra in accordance with the Terms and Conditions to be set forth in a Power Purchase Agreement (PPA) to be entered into.

B. REMC Ltd. on behalf of Railways had accordingly invited proposals in a

single stage bidding process. In the bidding process, through [tender notice/ Request for Selection No: REMCL/Rly/Storage/2021 dt. 30.05.2021 applicants were shortlisted for the evaluation of their Price Bid. The successful bidder with lowest Price Bid will execute the solar project including operation and maintenance (O&M) of the system(s) for a period of 25 years after commissioning of project, on design, build, finance, operate and transfer (DBFOT) basis.

- C.** REMC Ltd. on behalf of Railways had prescribed the technical and financial eligibility criteria and invited application in the “Request for Selection” format. Price Bids of shortlisted bidders were opened.
- D.** After evaluation of the bids received, REMC Ltd. on behalf of Railways had accepted the Bid of the {selected bidder / Consortium} and issued its Letter of Award No. dated (hereinafter called the “LOA” or “Letter of Award”) to the {selected bidder/ Consortium} requiring, inter alia, the execution of this Power Purchase Agreement within [] days of the date of issue thereof.
- E.** {The selected bidder / Consortium has since promoted and incorporated the SPD as a limited liability company under the Companies Act 2013, and has requested Railways to accept the SPD as the entity which shall undertake and perform the obligations and exercise the rights of (the selected bidder / Consortium under the LOA,} including the obligation to enter into this Power Purchase Agreement pursuant to the LOA for executing the Project.
- F.** By its letter dated, the SPD has also joined in the said request of (the selected bidder / Consortium) to Railways to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Power Purchase Agreement pursuant to the LOA. The SPD has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof}.
- G.** Railways has agreed to the said request of the {selected bidder / Consortium and the} SPD and has accordingly agreed to enter into this Power Purchase Agreement with the SPD for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth

hereinafter.

- H. Related to actions by SPD, it agrees to adhere to the timelines as stipulated under Schedule 3 of the Agreement.
- I. In case of delays of Project Development work for reasons not attributed to the SPD, the Railway shall determine the extension of the dates set forth in the Project completion at their discretion.

Now, therefore, in consideration of the foregoing and the respective covenants and agreements set forth in this Power Purchase Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follow.

NOTE: Bidders may note that terminology related to some of the terms may not be relevant. Similarly, some of the elaborations in this document will also not be applicable. Minor changes in PPA like specific requirements for SPD and Railway, will be incorporated before signing of the Agreement with the Railways. Bidders may be required to form an appropriate Special Purpose Vehicle (SPV) to execute the PPA and implement the project. All decisions regarding acceptance and verification of documents regarding SPV shall be taken by Railways. *(This section is only for the purpose of overview and may be deleted before signing of the Agreement with the Successful Bidder.)*

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Act” or “Electricity Act, 2003”	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
“Adjusted Equity”	<p>shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “Reference Date”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date;</p> <p>i. On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date;</p> <p>ii. An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”);</p> <p>iii. After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three percent) thereof at the commencement of each month following the COD [reduction of 1% (one percent) per quarter of an year] and</p>

	<p>the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date;</p> <p>For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the PPA period is extended, but the revision on account of WPI shall continue to be made.</p>
"Agreement" or "PowerPurchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	Unless otherwise stated, Appropriate Commission shall mean MERC / CERC;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to SPD and NODAL RAILWAY, a day other than Sunday or a statutory holiday, on which the banks remain open for business in nodal railway;
"Buying Entity"	Shall mean Nodal Railway (NR), which shall also mean Nodal Zonal Railways, who agreed to purchase the solar power from SPD;
"Battery Energy Storage System(BESS)"	Shall mean an energy storage system based on commercially available electrochemical storage media comprising of unit batteries, including battery management system (BMS), auxiliaries, (if any) installed by the SPD as a part of the Project
"Capacity Utilization Factor"	shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable

or “CUF”	<p>Energy Sources) Regulations, 2009 as amended from time to time; However, for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity;</p> <p>In any Contract Year, if ‘X’ MWh of energy has been metered out at the Delivery Point for ‘Y’ MW Project capacity, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) \times 100\%$;</p>
“CERC”	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
“Change in Law”	Shall have the meaning as cribbed thereto in Article 12 of this Agreement;
“Commissioning”	<p>means successful operation of the Project / Works by the Developer, for the purpose of carrying out Performance Test(s) as defined in Bid document or as per requirement of Applicable Commission/ Agency/ Railways.</p> <p>The Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into TSS / STU, in line with the Commissioning procedures defined in the Bid document;</p>
“Commercial Operation Date (COD)”	Shall mean the date on which the commissioning certificate is issued upon successful commissioning (as per provisions of this Agreement) of the Project;
“Competent Court of Law”	shall mean any court or tribunal or any similar judicial or quasi- judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
“Consents, Clearances and Permits”	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;

“Consultation Period”	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of SPD Preliminary Default Notice or NODAL RAILWAY Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
“Contract Year”	<p>shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that:</p> <ul style="list-style-type: none"> i. in the financial year in which the Schedule ii. d Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and iii. provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement
"Contracted Capacity"	shall mean 15 MW Solar PV plant with 7 MW/ 14 MWH BESS contracted with NODAL RAILWAY for supply by the SPD to NODAL RAILWAY at the Delivery Point from the Solar Power Project. It shall be equal to the Project Capacity as defined;
“Day”	shall mean a day, if not a Business Day, the immediately succeeding Business Day.
“Debt Due”	<p>shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:</p> <ul style="list-style-type: none"> i. The principal amount of the debt provided by the Senior

	<p>Lenders under the Financing Agreements for financing the Total Project Cost (the 'Principal') but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date.</p> <p>ii. All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (i) above until the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Utility Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost.</p> <p>Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken.</p> <p>Provided further that the Debt Due, on or after COD, shall in no case exceed 80%(eighty percent) of the Total Project Cost.</p>
<p>"Delivery Point/Interconnection Point/Metering Point"</p>	<p>"shall mean the point or points at the voltage level of 25kV or 220 kV of the Traction Sub-station of Railways / 220KV of the Sub-station of STU (MSETCL), Maharashtra including the dedicated transmission line connecting the land based solar power Project with the substation system as specified in the RfS document. Metering shall be done at this inter-</p>

	<p>connection point where the power is injected into. For interconnection with grid and metering, the SPD shall abide by the relevant CERC / MERC (Maharashtra Electricity Regulatory Commission) Regulations, Grid Code and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time or orders passed there under by the appropriate commission or CEA.</p> <p>Pursuant to Article 4.2, all charges and losses related to Transmission of power from project up to Delivery Point (including but not limited to open access, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power charges etc.) as notified by the competent authority / regulator shall be borne by the SPD. In case it is paid by NODAL RAILWAY, the same shall be recovered from the SPD (as applicable). Beyond the Delivery Point all charges and losses as notified by the competent authority / regulator from time to time shall be borne by the Buying Entity.</p>
"Dispute"	shall mean any dispute or difference of any kind between NODAL RAILWAY and the SPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
"Due Date"	Due Date shall mean the forty-fifth (45th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hard copy and duly acknowledged by the NODAL RAILWAY or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the NODAL RAILWAY.
"Effective Date"	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;

"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time alongwith amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Accounts"	shall mean the state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month(as per their prescribed methodology),including the revisions and amendments thereof or where such state energy accounts are not issued, Joint Meter Reading(JMR) will be considered; NODAL RAILWAY reserves the right to choose from any of the above i.e.JMR /SEA, based on the acceptance of the same by the Buying Entity;
"Event of Default"	shall mean the events as defined in Article13 of this Agreement;
"Expiry Date"	Shall mean the date occurring twenty-five (25) years from the Scheduled Commissioning Date subject to that the supply of power shall be limited for a period of 25 years from the Scheduled Commissioning Date unless extended by the Parties as per this Agreement;
"Financial Closure"	shall mean compliance with the requirements under Article 3.1 of this Agreement;
"Financing Agreements"	shall mean the agreements pursuant to which the SPD has sought financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in any way increasing the liabilities of NODAL RAILWAY;
"Force Majeure" or "Force Majeure Event"	Shall have the meaning as cribbed there to in Article11of this Agreement;
"Guidelines: or	shall mean the Guidelines for Tariff Based Competitive

"Scheme"	Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects issued by the Ministry of Power on 3 rd August 2017, including subsequent amendments and clarifications;
"Grid Code" / "IEGC" or "State Grid Code"	shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub- section(1) of Section 86 of the Electricity Act 2003, as applicable;
"Indian Governmental Instrumentality"	Shall mean the Government of India, Governments of state, and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the above state Government(s) or both, any political sub- division of any of them; including any court or Appropriate Commission(s) or tribunal or judicial orquasi-judicial body in India;
"Insurances"	shall mean the insurance cover to be obtained andmaintained by the SPD in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	shall mean the single Point at the voltage level of 25kV of the Traction Sub-station of Railways /220KV of the Sub-station of STU (MSETCL),Maharashtra including the dedicated transmission line connecting the land based solar power Project with BESS with the substation system as specified in the RfS document. Metering shall be done at this interconnection point where the power is injected into. For interconnection with grid and metering, the SPD shall abide by the relevant CERC / MERC (Maharashtra Electricity Regulatory Commission) Regulations, Grid Code and Central Electricity Authority (Installation and Operation of Meters) Regulations,2006 as amended and revised from time to time.
"Invoice" or "Bill"	shall mean either a Monthly Bill / Supplementary Bill or a

	Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
"Joint Control"	shall mean a situation where none of the promoter shareholders has at least 51 % shareholding in the paid-up share capital and voting rights in the SPD, and the control is exercised jointly;
"MERC"	Shall mean the Maharashtra Electricity Regulatory Commission of India, constituted under sub – section (i) of Section 82 of the Electricity Act, 2003, or its successors;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
"Law"	Shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
"MNRE"	shall mean the Ministry of New and Renewable Energy, Government of India;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Party" and "Parties"	Shall have the meanings ascribed thereto in the recital to this Agreement;
"Payment Security Mechanism"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Performance"	shall mean the irrevocable unconditional bank guarantee,

Bank Guarantee”	submitted by the SPD to NODAL RAILWAY in the form attached hereto as Schedule 1;
“Power Project” or “Project”	Shall mean the land based solar power generation facility with BESS comprising single unit at single location, having single point of injection into the grid at Interconnection/ Delivery/ Metering Point. The Project shall include all units and auxiliaries such as water supply, treatment or storage facilities, bay(s) for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility, whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power to NODAL RAILWAY;
“Preliminary Default Notice”	Shall have the meaning as cribbed there to in Article13 of this Agreement;
“Project Capacity”	shall mean the maximum AC capacity of the Project at the point of injection on which the Power Purchase agreement has been signed.
“Project Site”	Shall mean the land plot/s offered by Indian Railways for the purpose of this project and for which the Land Use Authorization Letter shall be issued by REMC Ltd. / NR as stated in the RfS. The project site can be a single plot or more than one plots, as per design of the SPD.
"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

	<p>of:</p> <p>a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project.</p> <p>b) the requirements of Indian Law; and the physical conditions at the site of the Power Project</p>
"RBI"	shall mean the Reserve Bank of India;
"RBI Letter of Mandate"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Rebate"	shall have the same meaning as ascribed thereto in Article 10.3.4 of this Agreement;
"Rupees", "Rs.", "₹"	shall mean Indian rupees, the lawful currency of India;
"Scheduled Commissioning Date" or "SCD" of the Project	Shall mean.....[Insert Date that is eighteen (18) months from the Effective Date of this Agreement as applicable];
"SERC"	shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Subsection (1) of Section 83 of the Electricity Act 2003;
"Solar Photovoltaic Project" or "Solar PV Project"	shall mean the solar photovoltaic power project that uses sunlight for conversion into electricity and that is being set up by the SPD to provide Solar Power to NODAL RAILWAY as per the terms and conditions of this Agreement;
"Land based Solar Power"	shall mean power generated from the Land based Solar Photovoltaic Power Project;
"NODAL RAILWAY (NR)"	shall mean Nodal Zonal Railway signing PPA with SPD;
"Tariff"	Shall have the same meaning as provided for in Article 9

	of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

1.2 Interpretation

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

- 1.1.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures
- 1.1.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement
- 1.1.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000)
- 1.1.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect
- 1.1.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment

of money, whether present or future, actual or contingent

- 11.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests
- 11.7 "Rupee", "Rupees", "Rs" or new rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India
- 11.8 The "Winding-up", "dissolution", "insolvency, or" reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, Winding-up, reorganization, dissolution, arrangement, protection or relief of debtors
- 11.9 Words importing the singular shall include the plural and vice versa
- 11.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented
- 11.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time
- 11.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time
- 11.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall

be interpreted in a harmonious manner so as to give effect to each part

- 11.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement
- 11.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty-five (365) days;
- 11.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement
- 11.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 11.18 This Agreement and other documents such as Request for Selection Documents, Guidelines including subsequent clarifications, amendments, and further clarifications in regard to the tender shall be read in conjunction with each other and interpreted in harmonious manner. However, in case of any mismatch/contradiction between provisions of different documents, following shall be the order of precedence:
1. Power Purchase Agreement
 2. RfS Documents

ARTICLE 2: TERM OF AGREEMENT

2.1 Effective Date

21.1 This Agreement shall come into effect from (Enter the date of the issuance of Authorisation Letter to the SPD for authorizing Use of Land by SPD, or any further date, as applicable) and such date shall be referred to as the Effective Date.

21.2 Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be the due fulfilment of the following:

The Conditions Precedent required to be satisfied by Railways shall be deemed to have been fulfilled when Railways shall have:

- (a) provided approval for the general arrangement Drawings submitted by the SPD along with the notice, to enable the SPD to install the solar project in accordance with the Specifications and Standards and subject to the terms and conditions specified in such approval;
- (b) provided approval for the power evacuation scheme submitted by the SPD along with the notice, in accordance with the Specifications and Standards and subject to the terms and conditions specified in such approval;
- (c) provided approval for land utilization plan submitted by the SPD along with the notice, in accordance with the Specifications and Standards and subject to the terms and conditions specified in such approval;

21.3 The Conditions Precedent required to be satisfied by the SPD prior to the Commissioning shall be deemed to have been fulfilled when the SPD shall have:

- (a) provided Performance Security Bank Guarantee to the Nodal Railway;
- (b) provided a notice to Railways on meeting their conditions precedent along with a general arrangement drawing, interconnection and

power evacuation plan, land utilization plan and project completion schedule to be approved by Railways.

- (c) The SPD shall obtain or apply (as applicable) for all Consents, Clearances, Approvals and Permits required for construction of the Project as per the terms of this Agreement. The SPD shall also obtain all Consents, Clearances and Permits required for operation and supply of power to NR before Commissioning of the Project;
- (d) delivered to SPD from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in relevant clauses of this Agreement; and
- (e) delivered to Railways a legal opinion from the legal counsel of the SPD with respect to the authority of the SPD to enter into this Agreement and the enforceability of the provisions thereof;

2.2 Term of Agreement

- 221 Subject to Article 2.3 and 2.4 of this Agreement, this Agreement shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period at least one hundred eighty (180) days prior to the Expiry Date, on mutually agreed terms and conditions.
- 222 The SPD is required to take away their plants on reaching the Expiry Date as per the Clause 5.1.5 of the RfS.

2.3 Early Termination

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

2.4 Survival

The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by

necessary implication, which are to survive after the Expiry Date or termination including those under Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 16 (Governing Law and Dispute Resolution), Article 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

ARTICLE 3: CONDITIONS SUBSEQUENT

3.1 Satisfaction of conditions subsequent by the SPD

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

- a. The SPD shall make Project financing arrangements for its Projects(s) and shall provide necessary certificates to REMC Ltd. in this regard.

The SPD shall submit to REMC Ltd. the relevant documents as stated above, complying with the Conditions Subsequent, within twelve (12) months from the Effective-Date.

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

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

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

- 3.2.3 For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.
- 3.2.4 In case of inability of the SPD to fulfil the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfilment of the Conditions Subsequent and Financial Closure as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.

- 3.2.5 Provided that due to the provisions of this Article 3.2.4, any increase in the time period for completion of conditions subsequent and financial closure mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Commissioning Date.

3.3 Performance Bank Guarantee

- 3.3.1 The SPD shall submit the Performance Bank Guarantee @ Rs. 8Lakh per MW at least 7 days prior to signing the PPA.
- 3.3.2 The Performance Bank Guarantee (PBG) having validity from the date of submission of PBG until Thirty Three (33) months from the Effective Date, to be furnished under this Agreement shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement, as per format provided in Schedule 1.
- 3.3.3 The failure on the part of the SPD to furnish and maintain the Performance Bank Guarantee shall be a material breach of the term of this Agreement on the part of the SPD.
- 3.3.4 If the SPD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement or any further extension thereof granted by NODAL RAILWAY, subject to conditions mentioned in Article 4.5, NODAL RAILWAY shall encash the Performance Bank Guarantee equivalent to the penalty leviable as on the date of encashment without prejudice to the other rights of NODAL RAILWAY under this Agreement.

3.4 Return of Performance Bank Guarantee

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

ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 SPD's Obligations

- a) The SPD undertakes to be responsible, at SPD's own cost and risk, for:
- b) The SPD shall be solely responsible and make arrangements for development of the Project and for Connectivity up to the delivery point at the Sub Station of TSS of Railways or STU (MSETCL), as the case may be for confirming the evacuation of power by the Scheduled Commissioning date and all clearances related thereto;
- c) Obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. The Solar Power Developer shall, on his own, obtain permissions/ sanctions from Government authorities, if any required for establishing the project.
- d) Designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.
- e) the commencement of supply of power up to the Contracted Capacity to NODAL RAILWAY no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement.
- f) Connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point; The SPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at Interconnection/ Metering / Delivery Point.
- g) Owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15.
- h) Maintaining its controlling shareholding (controlling shareholding shall mean more than 50% of the voting rights and paid-up share capital)

prevalent at the time of signing of PPA up to a period of one(1) year after Commercial Operation Date of the Project in line with the provisions of the RfS; However transfer of controlling shareholding within the same Group Companies will be allowed with the permission of NODAL RAILWAY after COD subject to the condition that the management control remains within the same Group Companies;and

- i) Fulfilling all obligations undertaken by the SPD under this Agreement.
- j) Obtaining Long Term Access (LTA), where applicable, for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement.
- k) The SPD shall be responsible to for directly coordinating and dealing with NODAL RAILWAY and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Solar Power and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the SPD and NODAL RAILWAY are Grid connected entities.
- l) The SPD shall fulfil the technical requirements according to criteria mentioned under Annexure II–Technical requirement for Grid Connected Solar PV Power Stations under Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects, issued by Ministry of Power, vide resolution no.23/27/2017-R&R dated 03.08.2017 and its amendments issued thereof.
- m) Further, the Project being implemented under this Agreement shall fulfil the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof,
- n) As part of scheduling of power from the Project, the SPD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces, including NODAL RAILWAY, as per the Regulations in force. NODAL RAILWAY may facilitate in identification of any discrepancy and assist the SPD for its early rectification without any liability on NODAL RAILWAY. The SPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less

payment of invoices.

4.2 Information regarding InterconnectionFacilities

- 4.2.1** The SPD shall be required to obtain all information from the concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the SPD's side of the Delivery Point to enable delivery of electricity at the Delivery Point. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the SPD at his owncost.
- 4.2.2** Penalties, fines and charges imposed by the NODAL RAILWAY under any statute or regulation in relation to delay in commissioning of Project shall be payable by the SPD to the extent the delay is attributable to theSPD.
- 4.2.3** The responsibility of getting connectivity with the transmission system up to the Interconnection Point, will lie with the SPD.The transmission of power upto the point of interconnection where the metering is done for energy accounting shall be the responsibility of the SPD at his own cost. The maintenance of Transmission system up to the designated point as per the applicable terms and conditions shall be the responsibility of the SPD. All costs and charges including but not limited to the losses up to and including at the Interconnection Point associated with this arrangement will also be borne by the SPD.
- 4.2.4** Void.
- 4.2.5** The arrangement of connectivity shall be made by the SPD through a dedicated transmission line. The entire cost of transmission including cost of construction of line, any other charges, losses etc. from the Project up to the Interconnection Point will be borne by the SPD. In case of non-availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the SPD, provisions of Article 4.10 shall beapplicable.

4.2.6 Void.

4.2.7 Land arrangements:

- a. Railways land as the identified project site shall be provided by Nodal Railway through the Authorization Letter. The issuance date of this letter would be the Effective Date. This land includes areas for establishment of PV plant, evacuation infrastructure, main control room, BESS, etc. as necessary for the proposed project.

4.3 Purchase and sale of Contracted Capacity

4.3.1 Subject to the terms and conditions of this Agreement, the SPD undertakes to sell to NODAL RAILWAY and NODAL RAILWAY undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.

4.3.2 Void.

4.4 Right to Contracted Capacity & Energy

4.4.1 The SPD will declare the CUF of the project and will be allowed to revise the same once within first year after COD of the project. Thereafter, the CUF for the Project shall remain unchanged for the entire term of the PPA. The declared annual CUF shall in no case be less than 17%. It shall be the responsibility of the SPD, entirely at its cost and expense to install such number of Solar panels and associated equipment (including arrangement of extra land for such installation) as may be necessary to achieve the required CUF, and for this purpose SPD shall make its own study and investigation of the GHI and other factors prevalent in the area which have implication on the quantum of generation. SPD shall maintain generation so as to achieve annual CUF within + 10% and -17% of the declared value till the end of 10 years from COD, subject to the annual CUF remaining minimum of 15%, and within +10% and -20% of the declared value of the annual CUF thereafter till the end of the PPA duration of 25 years. The lower limit will, however, be relaxable by Nodal Railway to the extent of non-availability of grid for evacuation which is beyond the control of the

SPD. The annual CUF will be calculated every year from 1st April of the year to 31st March next year.

For avoidance of any doubt, the CUF and the related conditions for supply of power pertains to the complete solar power project that includes BESS. A special condition for BESS operation, as part of the overall CUF guarantee is mentioned in the article 4.4.4.

4.4.2 Shortfall in Supply: The compensation due to shortfall in supply shall be applied to the amount of shortfall in supply during the Contract Year. The amount of compensation shall be equal to the compensation payable (including RECs) by the buying entity towards non - meeting of RPOs, which shall ensure that the buying entity is offset for all potential costs associated with low generation and supply of power under the PPA, subject to a minimum of 25% (twenty-five percent) of the cost of this shortfall in energy terms, calculated at PPA tariff. The amount being equal to the compensation payable by the buying Entity for not meeting RPO is only a measure of damage. It shall not be construed that the compensation is payable by SPD only if the buying Entity are required to pay compensation for such not meeting of RPO or that the buying Entity or the SPD shall be required to prove or establish such payment of compensation for not meeting the RPO. SPD shall agree that the methodology specified herein above for calculation of liquidated damages payable by the SPD for shortfall in supply is a genuine and accurate pre-estimation of the actual loss that will be suffered by buying Entity. SPD shall further acknowledge that a breach of any of the obligations contained herein result in injuries and that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this document is a genuine and reasonable pre-estimate of the damages that may be suffered by Buying Entity in each case specified under this Agreement. However, this compensation shall not be applicable in events of Force Majeure identified under the PPA with Buying Entity (Nodal Railway), affecting supply of power by the SPD.

4.4.3 Excess Supply: Any excess supply over and above 10% of declared

annual CUF may be purchased by Nodal Railway at the PPA tariff. However, the SPD shall in format least 30 days in advance of such excess supply to buying Entity, to enable buying Entity to take necessary actions for the acceptance of this excess supplied energy. Buying Entity shall be required to intimate its approval/refusal to the SPD, for buying such excess supply not later than 7 days of receiving the above offer from the SPD. While the SPD would be free to install DC solar field as per his design of required output, including his requirement of auxiliary consumption, he will not be allowed to sell any excess power to any other entity other than buying Entity. In case at any point of time, the peak of capacity reached is higher than the rated capacity and causes disturbance in the system at the point where power is injected, the SPD will have to forego the excess generation and reduce the output to the rated capacity to ensure compliance with grid requirement.

4.4.4 In addition to the overall supply conditions mentioned in the Articles 4.4.1, 4.4.2 and 4.4.3 the SPD shall be ensuring the supply of required energy at the rated power in the non-solar hours as mentioned in the user case in Annexure A of the RfS. The supply of power through BESS would be accounted for in the overall supply conditions mentioned in the articles mentioned above. The BESS stored power shall be supplied for 2 hours in the first year at the rated power of 7 MW and shall not be less than 1.5 hours at the end of battery life. Hours of the day, when the BESS shall supply power to the grid, is as mentioned in the Table 1 of Annexure A of the RfS.

In case of shortfall in the BESS stored power supply in a year in the PPA period, when overall plant CUF is within the predefined acceptable range, the SPD shall be liable to pay the buying entity a compensation towards damage due to the shortfall of supplied energy in terms of MWh.

Shortfall in BESS exported energy shall be calculated as:

$$\text{Shortfall in BESS exported energy} = [14 \text{ MWH} \times (100 - 2n)] -$$

BESS exported energy

Where,

n = year in which the shortfall is calculated (between 1 and 10)

BESS exported energy = energy as per the meter reading

The compensation shall be calculated as:

Shortfall in BESS exported energy (KWh) x [50% x Tariff of the PPA (INR)]

Where Tariff is as per Article 9.0 of the PPA

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

4.5 Extensions of Time

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

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

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

4.5.2 Subsequent to grant of connectivity, in case there is a delay in grant /

operationalization of LTA and / other is a delay in readiness of the substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the transmission network until SCD of the Project, and it is established that:

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

The above shall be treated as delays beyond the control of the SPD and SCD for such Projects shall be revised as the date as on 30 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or operationalization of LTA. Decision on requisite extension on account of the above factor shall be taken by NODAL RAILWAY.

4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of 180 days from the date of the Force Majeure Notice, any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.10. In case neither party terminates the Agreement under this clause, the Agreement shall stand terminated on the expiry of twelve (12) months of the continuation of the Force Majeure event unless the parties mutually agree to extend the Agreement for the further period.

4.5.4 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred, any Party

may raise the Dispute to be resolved in accordance with Article 16.

4.5.5 As a result of such extension on account of Article 4.5.1 or Article 4.5.2, the newly determined Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.

4.5.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond the date pursuant to Article 4.6.2.

4.5.7 Delay in commissioning of the project beyond the scheduled commissioning date for reasons other than those specified in Article 4.5.1 & Article 4.5.2 shall be an event of default on part of the SPD and shall be subject to the consequences specified in the Article 4.6.

4.6 Liquidated Damages not amounting to penalty for delay in Commissioning

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

- (a) Delay beyond the Scheduled Commissioning Date upto (& including) the date as on 6 months after the Scheduled Commissioning Date: The total PBG amount shall be en-cashed on per day basis and proportionate to the balance capacity not commissioned. In case of calculation of liquidated damages, a 'month' shall comprise 30 days.

4.6.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee shall be limited to 6 months after the SCD of the Project. In case, the

Commissioning of the Project is delayed beyond 6 months after the SCD, it shall be considered as an SPD Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced / amended to the Project Capacity Commissioned within 6 months after the SCD and the PPA for the balance Capacity will stand terminated and shall be reduced from the project capacity.

4.6.3 The SPD further acknowledges that the amount of the liquidated damages fixed is genuine and reasonable pre-estimate of the damages that may be suffered by NODAL RAILWAY as specified under this Agreement.

4.6.4 Deleted.

4.7 Acceptance/Performance Test

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

4.8 Third Party Verification

4.8.1 The SPD shall be further required to provide entry to the site of the Power Project free of all encumbrances at all times during the Term of the Agreement to NODAL RAILWAY and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the SPD at the site of the Power Project.

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

4.9 Breach of Obligations

4.9.1 The Parties herein agree that during the subsistence of this Agreement,

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

4.10 Generation compensation for Off-take constraints

4.10.1 Generation Compensation in offtake constraint due to Transmission Infrastructure not complete/ ready (Transmission constraint): After the Scheduled Commissioning Date, subject to the submission of documentary evidences from the Competent Authority, if the plant is ready in all respects including the dedicated transmission line to be established by the SPD to connect to the grid but the necessary power evacuation /transmission infrastructure is not ready, for reasons not attributable to the SPD, leading to offtake constraint, the generation compensation shall be restricted to the following and there shall be no other claim, directly or indirectly against NODAL RAILWAY:

Transmission Constraint	Provision for Generation Compensation
If the Project is ready but the necessary power evacuation / transmission infrastructure is not ready, leading to offtake constraint	<p>a. The normative CUF of 17% (Seventeen per cent) or committed CUF, whichever is lower, for the period of grid unavailability, shall be taken for the purpose of calculation of generation loss. Corresponding to this generation loss, the excess generation by the SPD in the succeeding 3 (three) Contract Years, shall be procured by NODAL RAILWAY at the PPA tariff so as to offset this loss.</p> <p>b. If the transmission delay is directly attributable to the organization building the transmission network and some penalty is imposed on him, then a part of that penalty may be utilized by NODAL RAILWAY for compensating the generation loss.</p>

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

4.10.2 Generation Compensation in offtake constraints due to Grid

Unavailability: During the operation of the plant, there can be some periods where the Project can generate power but due to temporary transmission unavailability, the power is not evacuated, for reasons not attributable to the Solar Power Developer. In such cases, subject to the submission of documentary evidences from the competent authority, the generation compensation shall be restricted to the following and there shall be no other claim, directly or indirectly against NODAL RAILWAY:

Duration of Grid unavailability	Provision for Generation Compensation
Grid unavailability in a contract year as defined in the PPA: (only period from 8 am to 6 pm to be counted):	<i>Generation Loss = [(Average Generation per hour during the Contract Year) × (number of hours of grid unavailability during the Contract Year)]</i> Where, Average Generation per hour during the Contract Year (kWh) = Total generation in the Contract Year (kWh) ÷ Total hours of generation in the Contract Year.

The excess generation by the SPD equal to this generation loss shall be procured at the PPA tariff so as to offset this loss in the succeeding 3 (three) Contract Years.

4.10.3 Offtake constraints due to Backdown:

- (a) The Solar Power Developer and the Buying Entity shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. The Government of India,

asper Clause 5.2(u) of the Indian Electricity Grid Code (IEGC) provides for status of “must-run” to solar power projects. Accordingly, no solar power plant, duly commissioned, should be directed to back down by STU (MSETCL)/ Load Dispatch Centre (LDC). In case such eventuality of Backdown arises and any clarifications or amendment thereto, except for the cases where the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions, the Solar Power Developer shall be eligible for a Minimum Generation Compensation, from Buying Entity, restricted to the following and there shall be no other claim, directly or indirectly against NODAL RAILWAY:

Duration of Backdown	Provision for Generation Compensation
Hours of Backdown during a monthly billing cycle.	<p><i>Generation Compensation = 100% of [(Average Generation per hour during the month) X (number of backdown hours during the month)] X PPA tariff</i></p> <p>Where, Average Generation per hour during the month (kWh) = Total generation in the month (kWh) ÷ Total hours of generation in the month</p>

The SPD shall not be eligible for any compensation in case the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions.

- (b) The Generation Compensation shall be paid as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA)/SEA/JMR.

It is hereby clarified that for the purpose of Article 4.10, “generation” shall mean scheduled energy based on Energy Accounts.

- (c) No back-down / curtailment to be ordered without giving formal / written instruction for the same.
- (d) The details of back-down / curtailment, including justifications for such curtailment, to be made public by the concerned Load Dispatch Centre / STU (MSETCL).

ARTICLE 5: SYNCHRONIZATION, COMMISSIONING AND COMMERCIAL OPERATION

5.1 Synchronization, Commissioning and Commercial Operation

- 5.1.1 The SPD shall give NODAL RAILWAY at least sixty (60) days' advanced preliminary written notice and at least thirty (30) days' advanced final written notice, of the date on which it intends to synchronize the Power Project to the GridSystem.
- 5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the SPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.1.3 The synchronization equipment and all necessary arrangements/equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the SPD at its generation facility of the Power Project at its own cost. The SPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation / Grid System and checking / verification is made by the concerned authorities of the Grid System.
- 5.1.4 The SPD shall immediately after each synchronization / tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code under intimation to NODAL RAILWAY. In addition, the SPD will inject in-firm power to grid time to time to carry out operational / functional test prior to commercial operation. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of theProject.
- 5.1.5 The SPD shall commission the Project as detailed in "Schedule 2: Commissioning Procedure" within eighteen (18) Months of the Effective Date. Declaration of COD shall only be done subject to the

demonstration of the compliances as per Schedule- 2 and subsequent upon the successful visit by the Commissioning Committee.

5.1.6 Part commissioning of the Project shall not be accepted by REMC Ltd.&NODAL RAILWAY.

5.1.7 The Parties agree that for the purpose of commencement of the supply of electricity by SPD to NODAL RAILWAY, liquidated damages for delay etc., the Scheduled Commissioning Date as defined in this Agreement shall be the relevant date.

ARTICLE 6: DISPATCH AND SCHEDULING

6.1 Dispatch and Scheduling

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

ARTICLE 7: METERING

7.1 Meters

- 7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the SPD and STU (MSETCL) / NODAL RAILWAY shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.
- 7.1.2 The SPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at SPD's side of Delivery Point.
- 7.1.3 In addition to ensuring compliance of the applicable codes, the SPD shall install Main & Check meters at the Delivery Point, along with Stand-by meter(s) as per the applicable Central / State regulations.
- 7.1.4 Void.

7.2 Reporting of Metered Data and Parameters

- 7.2.1 The grid connected Solar PV power plants will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the Project.
- 7.2.2 Online arrangement would have to be made by the SPD for submission of above data regularly for the entire period of this Power Purchase Agreement to the SLDC, NODAL RAILWAY and the concerned Ministry or concerned agency as per applicable regulation / directions.
- 7.2.3 Reports on above parameters on monthly basis (or as required by regulation / guidelines) shall be submitted by the SPD to Ministry of New and Renewable Energy/ NODAL RAILWAY/National Institute of Solar Energy through NODAL RAILWAY for entire period of PPA.

ARTICLE 8: INSURANCES

8.1 Insurance

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

8.2 Application of Insurance Proceeds

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

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

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

8.3 Effect on liability of NODAL RAILWAY

- 83.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense

which is insured or not or for which the SPD can claim compensation, under any Insurance shall not be charged to or payable by Buyer. It is for the SPD to ensure that appropriate insurance coverage is taken for payment by the insurer for the entire loss and there is no under insurance or short adjustment, etc.

ARTICLE 9: APPLICABLE TARIFF

9.1 The SPD shall be entitled to receive the Tariff of Rs. / kWh [Insert the Tariff discovered through the bidding process conducted by REMC Ltd. on behalf of NODAL RAILWAY], fixed for the entire term of this Agreement, with effect from the SCD, for the power sold by the SPD to the Buying Entity for the scheduled energy as reflected in the Energy Accounts. In case of early commissioning prior to SCD, NODAL RAILWAY may purchase energy supplied till SCD at **[Insert Tariff]/kWh**. In this case the Applicable Tariff for the commissioned Project shall be Rs. _____/kWh **[Insert PPA Tariff]** from and including the SCD.

9.2 Any excess supply over and above energy specified in Article 4.4.1, will be purchased by Nodal Railway at the tariff as per Article 9.1, provided Buying Entity consents to buy such excess supply. However, the SPD shall in format least 30 days in advance of such excess supply to buying Entity, to enable buying Entity to take necessary actions for sale of this excess generated energy.

Buying Entity shall be required to intimate its approval/refusal to the SPD, for buying such excess supply not later than 7 days of receiving the above offer from the SPD. In case at any point of time, the peak of capacity reached is higher than the rated capacity and causes disturbance in the system at the point where power is injected, the SPD will have to forego the excess generation and reduce the output to the rated capacity to ensure compliance with grid requirement.

ARTICLE 10: BILLING AND PAYMENT

10.1 General

- 10.1.1 NODAL RAILWAY shall set up a payment security mechanism as provided in the Article 10.4 of this agreement in order to ensure timely payment to the SPDs.
- 10.1.2 From the commencement of supply of power, NODAL RAILWAY shall pay to the SPD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with Article 9. All Tariff Payments by NODAL RAILWAY shall be in Indian Rupees.
- 10.1.3 For the purpose of payment of the bills raised by the SPD, in case Energy Account is published on cumulative basis, payment to the SPD for the energy delivered shall be apportioned based on JMR taken for the SPD's Project at the Pooling substation/metering point, wherever applicable.
- 10.1.4 The SPD shall be required to make arrangements and payments for import of energy (if any) as per applicable regulations.

10.2 Delivery and Content of Monthly Bills/Supplementary Bills

- 10.2.1 The SPD shall issue to NODAL RAILWAY hard copy of a signed Monthly Bill / Supplementary Bill for the immediately preceding Month / relevant period based on the issuance of Energy Accounts along with all relevant documents (payments made by SPD for drawal of power, payment of reactive energy pact, Metering charges or any other charges as per guidelines of MERC/CERC, if applicable).
Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts (jointly signed) issued by NODAL RAILWAY which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy as per Energy Accounts and the Applicable Tariff. Energy drawn from the grid will be regulated as per the regulations of MERC.

10.2.2 As per applicable regulation(s) of the Appropriate Commission, all charges pertaining to obtaining open access and scheduling of power, if any, shall be borne by the SPD.

10.3 Payment of Monthly Bills

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

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

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

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

10.3.3 Late Payment Surcharge

In the event of delay in payment of a Monthly Bill by NODAL RAILWAY beyond thirty (30) days of its Due Date, Railways shall pay interest for the period of delay, calculated at a rate equal to MCLR + 2% on

amounts payable. The Late Payment Surcharge shall be claimed by the SPD through the Supplementary Bill.

10.3.4 Subject to the Article 9 of this Agreement, in the event of early Commissioning of the Project and subject to acceptance by NODAL RAILWAY, the payment for the power fed to the grid may be accounted from the date of COD, but SPD would be allowed to raise Bills against such power only from the Scheduled Commissioning Date or COD whichever is later subject to the conditions as stipulated in Article9.

10.3.5 Rebate

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

- a) A Rebate of 1.5% shall be payable to the NODAL RAILWAY for the payments made within a period of 10 (ten) days of the presentation of Bill through email.
- b) Any payments made after ten (10) days of the date of presentation of Bill through email mail up to the Due Date shall be allowed a rebate of 1%.
- c) For the above purpose, the date of presentation of Bill shall be the next Business Day of delivery of the Bill through email at NODAL RAILWAY.
- d) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc. and on Supplementary Bill.

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

10.4 Payment Security Mechanism

- (a) The Nodal Railway shall set up and maintain in favour of the SPD, in respect of payment of the Monthly Bills and / or Supplementary Bills, a Monthly unconditional, revolving and irrevocable RBI Letter

of Mandate, substantially in the format set out in Schedule 4, which may be drawn upon by the SPD in accordance with this Article.

(b) Not later than 15 (fifteen) Days prior to the date of issue of the Commissioning Certificate, the Nodal Railway through RBI at New Delhi shall open a Letter of Mandate in favour of the SPD, to be made operative from a date, which is at least 15 (fifteen) Days prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Mandate shall have a term of 12 (twelve) Months and shall be renewed as explained below, for an amount equal to:

- i. for the first 12 (twelve) Month period commencing from the date of issuance of the Commissioning Certificate equal to (the energy quantum equivalent to the Guaranteed Energy Offtake x 2/12) x the Tariff; and
- ii. for each subsequent 12 (twelve) Month period, equal to 1.25 times the average 2 (two) Month's Tariff Payments billing of the preceding 12 (twelve) Month period; Provided that the SPD shall not draw upon the RBI Letter of Mandate prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill and shall not make more than one drawl in a Month.
- iii. In the last year of operation, Letter of Mandate may be issued only for 6 months to ensure that any dues of the buying entity are recovered from the pending bills.

Provided that if at any time, the RBI Letter of Mandate amount falls short of the amount specified in Article 10.4 (b) the Nodal Railway shall restore such shortfall within 15 (fifteen) Days of the shortfall.

- (c) The Nodal Railway shall cause the RBI issuing the Letter of Mandate to communicate to the SPD, in writing regarding establishing of such irrevocable RBI Letter of Mandate. The buying entity shall ensure that the RBI Letter of Mandate shall be renewed not later than 30 (thirty) Days prior to its expiry.
- (d) All costs relating to opening and maintaining the RBI Letter of Mandate shall be borne by the Nodal Railway.

(e) If any Monthly Bill or Supplementary Bill or part thereof is not paid on or before the Due Date, then the SPD may draw upon the RBI Letter of Mandate, and accordingly the bank shall pay without any reference or instructions from the Nodal Railway, the unpaid amount under such Monthly Bill and/or Supplementary Bill or part thereof, if applicable, as the case may be, by presenting to the bank, the following documents:

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

10.5 Disputed Bill

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

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

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

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

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

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

10.5.5 Upon receipt of the Bill Disagreement Notice by the NODAL RAILWAY under Article 10.5.4, authorized representative(s) of the NODAL RAILWAY and SPD shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

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

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

10.6 Quarterly and Annual Reconciliation

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

10.6.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year, as the case may be, has been finally verified and adjusted, the SPD and NODAL RAILWAY shall jointly sign such reconciliation statement. Within fifteen

(15) days of signing of a reconciliation statement, the SPD shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

10.7 Payment of Supplementary Bill

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

- i) Adjustments required by the Energy Accounts (if applicable); or
- ii) Change in Law as provided in Article 12, or
- iii) Payment under Article 4.10, And such Supplementary Bill shall be paid by the other Party.

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

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

ARTICLE 11: FORCE MAJEURE

11.1 Definition of Force Majeure

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

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

11.2 Categorization of Force Majeure Events:

11.2.1 Natural Force Majeure Event

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

- inspection of the Project land; or
- d) any event or circumstances of a nature analogous to any of the events as specified under Article 11.2.1 (a), 11.2.1 (b) and 11.2.1(c).

11.2.2 Non-Natural Force Majeure Event

- a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;
- b) nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its contractors;
- c) nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the SPD, as a result of which the SPD or its shareholders are deprived(wholly or partly)of their rights or entitlements under the Power Purchase Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the SPD or the SPD related parties;
- d) action of a Government Authority having Material Adverse Effect including but not limited to Change in Law,only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article12 of this Agreement; any unlawful or unauthorized or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of theSPD or any of the clearance, license, authorization to be obtained by the contractors to perform the irrespective obligations under the relevant PPA and/or the Project Documents; provided that such delay, modification, denial, refusal or revocation did not result from the SPD's or any contractor's inability or failure to

comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, license, authorization, as the case maybe.

11.3 Force Majeure Exclusions

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

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

11.4 Notification of Force Majeure Event

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

notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

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

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

11.5 Performance Excused

11.5.1 The Affected Party, to the extent rendered unable to perform its obligations so part of the obligation thereof under the PPA as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.

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

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

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

underlying Force Majeure Event.

11.6 No Liability for Other Losses

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

11.7 Resumption of Performance

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

11.8 Duty to Perform and Duty to Mitigate

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

11.9 Available Relief for a Force Majeure Event

Subject to this Article 11:

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

Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.5;

- c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
- d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

11.10 Termination Due to Force Majeure Event

11.10.1 Termination due to Natural Force Majeure Event

- a) If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Natural Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Natural Force Majeure Event is likely to continue beyond such 180 (one hundred and eighty) Day period or any extended period agreed in pursuance of Article 11.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the PPA, and the termination shall take effect from the date on which such decision is taken.
- b) Without prejudice to the provisions of Article 11.10.1.(a) above, the Affected Party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the PPA in its sole discretion by issuing a notice to that effect.
- c) On termination of the PPA pursuant to Article 11.10.1(b):
 - i. No Termination Compensation shall be payable to the SPD.
 - ii. The SPD shall be eligible for undisputed payments under

outstanding Monthly Bill(s) before the occurrence of Force Majeure Event.

11.10.2 Termination due to Non-Natural Force Majeure Event

- a) Upon occurrence of a Non-Natural Force Majeure Event, the SPD shall, at its discretion, have the right to terminate the PPA forthwith after the completion of the period of 180(one hundred and eighty) Days from the date of the Force Majeure Notice.
- b) On termination of the PPA pursuant to Article 11.10.2(a):
 - i. NODAL RAILWAY shall pay to the SPD, 'Force Majeure Termination Compensation' equivalent to the amount of the Debt Due and the 110% (one hundred and ten per cent) of the Adjusted Equity, as defined in the PPA, and takeover the Project assets.
 - ii. the SPD shall be eligible for undisputed payments under outstanding Monthly Bill(s) before the occurrence of Force Majeure Event.

ARTICLE 12: CHANGE IN LAW

12.1 Definitions

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

In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after the last date of the bid submission, including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Solar Power Developer; or (v) any change in the rates of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up the solar power project and supply of power from the Solar Power project by the SPD which have a direct effect on the Project.

However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any with holding tax on income or dividends distributed to the shareholders of the SPD.

In the event a Change in Law results in any adverse financial loss/ gain to the Solar Power Generator then, in order to ensure that the Solar Power Developer is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Solar Power Developer / Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

It the event of any decrease in the recurring/ nonrecurring expenditure by the SPD or any income to the SPD on account of any of the events as indicated above, SPD shall file an application to the appropriate commission no later than sixty (60) days from the occurrence of such event, for seeking approval of Change in Law. In the event of the SPD failing to comply with the above requirement, in case of any gain to the SPD, NODAL RAILWAY shall withhold the monthly tariff payments on immediate basis, until compliance of the above requirement by the SPD.

12.2 Relief for Change in-law

- 12.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in-law.
- 12.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.
- 12.2.3 In case of Change in Law on account of Article 12.1, subject to Approval granted vide Article 12.2.1, the SPD shall be entitled for increase / decrease in the Applicable Tariff. This Increase /decrease in Applicable Tariff shall be for an amount equivalent to INR 0.002/kWh (0.2 Paisa/kWh) for every Increase/decrease of INR 01 (one) lakh / MW in the Project cost corresponding to the Contracted Capacity, which shall be effected based on the documentary evidence submitted to the concerned authority.

ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

13.1 SPD Event of Default

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

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

if

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

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

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

(ii) if

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

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

- (c) the SPD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the SPD will not be a SPD Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the SPD and expressly assumes all obligations of the SPD under this Agreement and is in a position to perform them; or
- (ii) the SPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from NODAL RAILWAY in this regard; or
- (iv) except where due to any NODAL RAILWAY's failure to comply with its material obligations, the SPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPD within thirty (30) days of receipt of first notice in this regard given by NODAL RAILWAY.
- (v) change in controlling shareholding before the specified time frame as mentioned in Article 4.1.1 of this Agreement; or
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SPD.
- (vi) except where due to any NODAL RAILWAY's failure to comply with its material obligations, the SPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPD within thirty (30) days of receipt of first notice in this regard given by NODAL RAILWAY.

13.2 NODAL RAILWAY Event of Default

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

RAILWAY:

- (i) NODAL RAILWAY fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the SPD is unable to recover the amount outstanding to the SPD through the RBI Letter of Mandate,
- (ii) NODAL RAILWAY repudiates this Agreement and does not rectify such breach even within a period of sixty(60)days from a notice from the SPD in this regard; or
- (iii) except where due to any SPD's failure to comply with its obligations, NODAL RAILWAY is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by NODAL RAILWAY within sixty (60) days of receipt of notice in this regard from the SPD to NODAL RAILWAY; or if
 - NODAL RAILWAY becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of sixty (60) days, or
 - any winding up or bankruptcy or insolvency order is passed against NODAL RAILWAY, or
 - NODAL RAILWAY goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that it shall not constitute a NODAL RAILWAY Event of Default, where such dissolution or liquidation of Buyer or NODAL RAILWAY is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to NODAL RAILWAY and expressly assumes all obligations of NODAL RAILWAY and is in a position to perform them; or;
- (iv) Occurrence of any other event which is specified in this Agreement to be a material breach or default of NODAL RAILWAY.

13.3 Procedure for cases of SPD Event of Default

- 13.3.1 Upon the occurrence and continuation of any SPD Event of Default under Article 13.1, NODAL RAILWAY shall have the right to deliver to the SPD, with a copy to the representative of the lenders to the SPD with whom the SPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (NODAL RAILWAY Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice
- 13.3.2 Following the issue of a NODAL RAILWAY Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 13.3.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the SPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, NODAL RAILWAY may terminate this Agreement by giving a written Termination Notice of sixty (60) days to the SPD.
- 13.3.5 Subject to the terms of this Agreement, upon occurrence of a SPD Event of Default under this Agreement, the SPD shall be liable to pay to NODAL RAILWAY, liquidated damages, as provided in Article 4.6 of the PPA for failure to commission within stipulated time and Article 4.4 for failure to supply power in terms of the PPA. For other cases, the SPD shall be liable pay to NODAL RAILWAY, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity. NODAL RAILWAY shall have the right to recover the said damages by way of forfeiture of bank guarantee, if any, without prejudice to resorting to any other legal course or

remedy. In addition to the levy of damages as aforesaid, the lenders in concurrence with the NODAL RAILWAY, may exercise their rights, if any, under Financing Agreements, to seek substitution of the SPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the SPD and performing the obligations of the SPD. However, in the event the lenders are unable to substitute the defaulting SPD within the stipulated period, NODAL RAILWAY may terminate the PPA and may acquire the Project assets for an amount equivalent to 90% of the Debt Due or less as mutually agreed, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets. Provided that any substitution under this Agreement can only be made with the prior consent of NODAL RAILWAY including the condition that the selectee meets the eligibility requirements of Request for Selection(RfS) issued by REMC Ltd. and accepts the terms and conditions of this Agreement.

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

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

13.4 Procedure for cases of NODAL RAILWAY Event of Default

- 13.4.1 Upon the occurrence and continuation of any NODAL RAILWAY Event of Default specified in Article 13.2, the SPD shall have the right to deliver to NODAL RAILWAY, a SPD Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 13.4.2 Following the issue of a SPD Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 13.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 13.4.4 After a period of two hundred ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary, NODAL RAILWAY under intimation to the SPD shall novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the SPD, or if no offer of novation is made by NODAL RAILWAY within the stipulated period, then the SPD may terminate the PPA and at its discretion require NODAL RAILWAY to take over the Project assets by making a payment of the termination compensation equivalent to the amount of the Debt Due and 110% (one hundred and ten per cent) of the Adjusted Equity less Insurance Cover, if any.
- 13.4.5 Provided further that at the end of three (3) months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the SPD. In the event of termination of PPA, any damages or charges payable to the STU, for the connectivity of the plant, shall be borne by the Railways.

13.5 Not Used.

ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1 Indemnity

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

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

14.1.2 NODAL RAILWAY shall defend and hold the SPD harmless against:

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

14.2 Procedure for claiming Indemnity

14.2.1 Third party claims

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

entitled to be indemnified.

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

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

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

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

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

14.3 Indemnifiable Losses

- 14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the

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

14.4 Limitation on Liability

14.4.1 Except as expressly provided in this Agreement, neither the SPD nor NODAL RAILWAY 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 the irrelative insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or any thing 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 NODAL RAILWAY, SPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

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

14.5 NODAL RAILWAY's Liability

14.5.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and accept that the NODAL RAILWAY is to purchase the electricity from the SPD and, therefore, the performance of the obligations of the NODAL RAILWAY under this Agreement shall be subject to the ability of the SPD obligations assumed under this Power Purchase Agreement. It is however, specifically agreed that the payment of money becoming due from the NODAL RAILWAY to the SPD under this Agreement for supply of Solar Power to the extent of the Contracted Capacity shall be asper:

- (i) the recourse under the Payment Security Mechanism provided in the PPA, as follows:
 - a) RBI Letter of Mandate opened by the NODAL RAILWAY in line with the provisions of Article 10.4 of the PPA.
 - b) NODAL RAILWAY shall discharge the tariff payment obligation in terms of the provisions of this Agreement.

14.5.2 The parties agree that in respect of the obligations other than the tariff payment obligation specifically mentioned herein above, in the event the SPD has any claim against the NODAL RAILWAY, in regard to the performance of any obligation of the NODAL RAILWAY under this Agreement, or enforcement of any right of the SPD against the NODAL RAILWAY under this Agreement.

14.6 Duty to Mitigate

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

ARTICLE 15: ASSIGNMENTS AND CHARGES

15.1 Assignments

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

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

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

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

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

In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a New

Entity, an amount of Rs. 10 Lakh per Project+ 18% GST per transaction as Facilitation Fee (non-refundable) shall be deposited by the SPD to NODAL RAILWAY.

15.2 PermittedCharges

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

ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION

16.1 Governing Law

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

16.2 Amicable Settlement

16.2.1 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) a description of the Dispute;
- (ii) the grounds for such Dispute; and
- (iii) all written material in support of its claim.

16.2.2 The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 16.2.1(i), furnish:

- (i) counterclaims and defenses, if any, regarding the Dispute; and
- (ii) all written material in support of its defenses and counterclaim.

16.2.3 Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 16

- (i) if the other Party does not furnish any counter claim or defence under Article 16
- (ii) or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 16.2.1.
- (iii) the Dispute shall be referred for dispute resolution in accordance

with Article 16.3.

16.3 DisputeResolution

16.3.1 Dispute resolution

- i. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 16.2.
- ii. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

16.3.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the representative of Nodal Railway to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the representative of Nodal Railway or without the intervention of the representative of Nodal Railway, either Party may require such Dispute to be referred to [Insert the designation of the Person authorized in this behalf] and the Chairman of the Board of Directors of the SPD for amicable settlement, and upon such reference, the said persons shall meet no later than [7 (seven)] days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the [7 (seven)] day period or the Dispute is not amicably settled within [15 (fifteen)] days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within [30 (thirty)] days of the notice in writing referred to in Clause 16.2.1 or such longer period as may be mutually agreed by the

Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 16.

16.4 Arbitration

- i. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 16.2, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Clause 16.4.2. 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 Act. The venue of such arbitration shall be [Delhi], and the language of arbitration proceedings shall be English.
- ii. There shall be a Board of [3 (three)] arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the [2 (two)] arbitrators so selected, and in the event of disagreement between the [2 (two)] arbitrators, the appointment shall be made in accordance with the Rules.
- iii. The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 33 shall be final and binding on the Parties as from the date it is made, and the SPD and Nodal Railway agree and undertake to carry out such Award without delay.
- iv. The SPD and Nodal Railway agree that an Award may be enforced against the SPD and/or Railways, as the case may be, and their respective assets wherever situated.
- v. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

16.5 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the SPD and Railways (Nodal Railway), all Disputes arising after such constitution

shall, instead of reference to arbitration under Clause 16.4, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

16.6 Parties to Perform Obligations

16.6.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission and save as the Appropriate Commission may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

ARTICLE 17: MISCELLANEOUS PROVISIONS

17.1 Amendment

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

17.2 Third Party Beneficiaries

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

17.3 Waiver

- 17.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorized representative of such Party.
- 17.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or there relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

17.4 Confidentiality

- 17.4.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:
- a) to their professional advisors;
 - b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or

- c) disclosures required under Law, without the prior written consent of the other Party.

17.5 Severability

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

17.6 Notices

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

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

Address :

Attention :

Email :

Fax. No. :

Telephone No. :

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

(i) Address :

Attention

Email :

Fax. No. :

Telephone No. :

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

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

17.7 Language

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

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

17.8 Restriction of Shareholders / Owners' Liability

17.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in

the Indian Companies Act, 2013.

17.9 Taxes and Duties

- 17.9.1 The SPD shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the SPD, contractors or their employees that are required to be paid by the SPD as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.
- 17.9.2 NODAL RAILWAY shall be indemnified and held harmless by the SPD against any claim that may be made against NODAL RAILWAY in relation to the matters set out in Article 17.9.1.
- 17.9.3 NODAL RAILWAY shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the SPD by NODAL RAILWAY on behalf of SPD.

17.10 Independent Entity

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

17.11 Compliance with Law

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation

or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

17.12 Void.

17.13 Breach of Obligations

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

17.14 Order of priority in application

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

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

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

For and on behalf of For and on behalf of

[NODAL RAILWAY]

[SPD]

Name, Designation and Address

Name, Designation and Address

Signature with seal

Signature with seal

Witness:

Witness:

1.

1.

2.

2.

SCHEDULE 1: FORMAT OF THE PERFORMANCE BANK GUARANTEE

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

In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected Solar Power Developer') submitting the response to RfS inter alia for selection of the Project of the capacity of 15 MW Solar PV Power Plant with 7MW/14 MWh BESS on railway land at Butibori, Nagpur, Maharashtra under [Insert name of the RfS], for supply of power

there from on long term basis, in response to the RfS dated.....issued by Railway Energy Management Company Limited (hereinafter referred to as REMC Ltd.) and REMC Ltd. considering such response to the RfS of.....[insert the name of the selected Solar Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Solar Power Project of the Solar Power Developer and issuing Letter of Intent No ----- to (Insert Name of selected Solar Power Developer) as per terms of RfS and the same having been accepted by the selected SPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Solar Power Developer or a Project Company, M/s ----- {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable]. As per the terms of the RfS, the.....[insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to NODAL RAILWAY at [Insert Name of the Place from the address of the NODAL RAILWAY] without demure forthwith on demand in writing from NODAL RAILWAY or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees-----

[Total Value] only, on behalf of M/s.....[Insert name of the selected Solar Power Developer / Project Company]

This guarantee shall be valid and binding on this Bank upto and including.....and shall not be terminable by notice or any change in the constitution of the Bank or the term of contractor by any other reasons whatsoever and our liability hereunder shall

not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. _____ only.

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

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

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

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by
----- [Insert name of the selected Solar

Power Developer / Project Company as applicable] and/or any other person. The Guarantor Bank shall not require NODAL RAILWAY to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against NODAL RAILWAY in respect of any payment made hereunder.

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

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

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

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

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

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. (Rs. only) and it shall remain in force until (Provide for two additional months after the period of guarantee for

invoking the process of encashment) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if NODAL RAILWAY serves upon us a written claim or demand.

Signature _____ Name__

Power of Attorney No. _____

For

_____[Insert Name of the Bank]__

E-mail ID of the bank:

Banker's Stamp and Full Address. Dated this _ day of ____, 20__

Witness:

1. Signature

Name and Address

2. Signature

Name and Address

Notes:

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

SCHEDULE 2: COMMISSIONING PROCEDURE:

❖ Capacity of Solar PV Projects:

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

Sr. No.	Solar PV Project Capacity Bid	Minimum DC Arrays Capacity to be installed	BESS Capacity @C/10	BESS PCU Capacity	Minimum Rated Inverter Capacity*	Maximum AC Capacity Limit at Delivery point
1	15 MW	21 MWp	14MWH	7 MW	15 MW	15 MW

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

- ii) The SPD shall be required to demonstrate compliances with the “Technical Requirements for Grid Connected Solar PV Power Plants” as mentioned in the RfS and Guidelines.
- iii) Higher DC capacity arrays can also be allowed, subject to the condition that the AC capacity limit as mentioned in (i) above for scheduling at the Delivery Point as per Article 4.4 “Right to Contracted Capacity & Energy” of the PPA is complied with.
- iv) For commissioning of the Project, cumulative capacity of DC arrays, cumulative (power and energy) capacity of BESS and cumulative capacity of the inverters (and PCUs) installed shall be considered. Part commissioning of the Project is not allowed.
- v) If supply at any time exceeds the maximum permissible AC capacity at delivery point, the excess supply during that period may not be considered under PPA.

Appendix - A1

1. Commissioning Procedure

- i) At the time of commissioning, the Commissioning Committee shall verify compliance of technical parameter of the Project as per Annexure A of the RfS document.
- ii) SPDs shall give to the Buying Entity / REMC Ltd. at least 60 (Sixty) Days advance preliminary written notice and at least 30 (Thirty) Days advance final written notice, of the date on which it intends to synchronize the Power Project to the Grid System. The SPD shall be solely responsible for any delay or non-receipt of the notice by the concerned agencies, which may in-turn affect the Commissioning Schedule of the Project.
- iii) A Solar PV Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into the grid.
- iv) SPD shall ensure that the equipment up to the rated Capacity has been installed and completed in all respects before the Schedule Commissioning Date. The same shall be verified by the Committee during their visit to the Project and documented as per prescribed format.

2. Documents to be submitted to Buying Entity:

The SPD will have to submit the following documents (duly signed and stamped by authorized signatory) well in advance prior to the scheduled commissioning date. The SPD shall also have to submit the hardcopies to REMC Ltd./NR if asked by REMC Ltd./NR for verification/ crosscheck.

- 1. Covering Letter
- 2. Board Resolution for Authorized Signatory.
- 3. All supporting documents towards meeting the technical compliance along with data sheet/ warranty certificates/ contract agreement etc. as mentioned in Annexure-A of the RfS.

4. Installation report duly signed by the authorized signatory as per Appendix - A2.
5. Plant Layout clearly mentioning the details of rows and number of modules in each row.
6. Electrical Inspector report along with all annexures/ attachments. It would be the responsibility of the SPD to collect the certificate.
7. SPD shall ensure Connectivity to the grid from concerned TSS authority / Transmission Utility / DISCOM. Connectivity report from such concerned authority.
8. Synchronization Certificate as per prescribed format issued by respective TSS authority / Transmission Utility / DISCOM for ascertaining injection of power into grid.
9. Supporting document for "Consent to Operate"
10. Snap Shots of the Plant from various angles shall be taken for covering installation of important components of the solar power plant and made part of Installation Report. Reading of all the inverters (instantaneous and total generation) along with its serial number of a particular date.
11. Relevant document from Buying Entity / REMC Ltd. acknowledging successful data communication between plant end and Buying Entity/ REMC Ltd..
12. After the submission of the documents by SPD, REMC Ltd. shall verify the documents and intimate/ reply with remarks. In case any additional supporting / revised documents are asked by REMC Ltd., the same have to be submitted by the SPD.
13. Only after all the required documents are verified by REMC Ltd., the SPD shall have to submit/ update on the portal the proposed commissioning date along with commissioning order issued by REMC Ltd. / NR.
14. After the proposed commissioning date along with commissioning order is submitted, the commissioning committee shall visit the site within 07 working days to verify the technical compliance on site as per the information submitted by the SPD. In case the committee finds discrepancy / deviation from the information submitted by the SPD during on site verification, the committee shall schedule its next visit only on the next available date as per the availability of all the committee members.
15. SPD shall have to submit the as-built drawing after the commissioning prior to

theCOD.

16. SPD shall have to push the required plant related data to REMC Ltd. / NR designated server in xml/json formats. Additionally, SPD shall also provide the login details / SCADA login to REMC Ltd. / NR for online real time data monitoring prior toCOD.
17. Early Commissioning of a Solar Project prior to the scheduled commissioning date is permitted on written acceptance of power by Buying Entity. In order to facilitate this, SPD shall inform the Buying Entity / NR and REMC Ltd. well in advance the date on which it intends to synchronize the Power Project to the Grid System. The SPD shall be required to give an advance notice of at least 90 days prior to the proposed commissioningdate.
18. Joint Meter Reading (JMR) shall be taken at Delivery Point / plant premise at the time of connectivity of the Project with Grid. This shall include information of respective meters installed at delivery/ interconnection point and pooling substation/plantpremises.
19. SPD is permitted to schedule the Commissioning of only the full Project as per the elaborated commissioning procedure.
20. SPD shall demonstrate the proposed BESS application.
21. SPD shall demonstrate the BESS integration to the grid and operation performance according to the stated purpose.

Solar Power Developers would be required to plan commissioning/synchronization with grid at least10(Ten)Days ahead of the last permissible date for commissioning. If not done so, whole responsibility for not meeting the deadline for commissioning on account of inability of the Committee to visit the project site for commissioning rests solely on thedeveloper.

Note: The commissioning procedure may change subject to any guidelines from Buying Entity.

Appendix – A2

INSTALLATION REPORT

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

Sr. No.		
I	Capacity of the Plant (MW)	
	Capacity of the Plant (MWp)	
II	Module Technology used (Mono/ Multi Crystalline/ Thin Film/ Others; please specify along with capacity of each type)	
III	Rating of individual module (Wp)	
IV	Tilt angle (from horizontal) at which array is installed	
V	Number of modules installed of each type	
VI	Source(s) of the cells installed of each type	
VII	Source(s) of the Modules installed of each type	
VIII	Number of PCUs/ Inverters installed	
IX	Source of the PCUs/Inverters (Name of supplier with address)	
X	Rating of PCUs/ Inverters	
XI	Date of Installation of Full Capacity	
	PV Arrays	
	PCUs/ Inverters	
	Transformers	
	BESS	
XII	BESS: Storage Technology used	

	BESS Ratings (Power and Energy with C-rates) and No. of Battery Module Packs	
	BESS: PCU (Nos. and Ratings)	
	OEM Recommended DoD	
	Unit Battery Technical Specifications: Nominal Voltage: Cut-off Voltage:	
	Battery Cycle Life (at OEM Recommended DoD)	
	Operating Temperatures	

Appendix – A3

Full Commissioning Certificate of Solar PV Power Project

(To be issued by the REMC Ltd. / NR)

This is to certify that <M/s> having its registered office at..... has successfully commissioned the project consisting of 15 MW Solar PV Power Plant with 7MW/14 MWh BESS on railway land at Village -----, Tehsil/Taluka ----- & Dist.-----

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

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

SCHEDULE 3: PROJECT TIMELINES:

The timeline schedule shall be added here and agreed by the SPD.

SCHEDULE 4: RBI LETTER OF MANDATE FORM

Letter of Mandate

Sr. No.

Date:

To, The Regional Director

Reserve Bank of India Banking Department

_____ Regional Office

Dear Sir,

Mandate to debit account

1. We hereby authorize Reserve Bank of India (RBI) to unconditionally debit our account no. _____ maintained with RBI, even if the balance is negative, by an amount not exceeding _____ (Amount in Figures and Words) and credit the amount to _____ (Name of State Electricity Board) account no. _____ maintained at _____ (name of bank) under advice to us after a claim / claims is/are raised to RBI in writing by the Solar Power Developer (SPD) stating that _____ (Name of Railways unit) have committed default in settling the dues of _____ (Name of SPD) relating to payment of electric charges. The claim may be raised by _____ (Name of SPD) in full or in parts.
2. We understand that RBI will not obtain any other documents from the SPD to verify the commitment pf default, other than the debit claim from the SPD. Further, we agree to bear any losses/ claims that may arise directly or indirectly on account of the RBI acting on instruction/mandate and RBI in no case will be a party in any dispute arising between us and the SPD for any debit claim raised by the SPD.
3. The authority shall continue in force till the close of business on _____ (date) or until we shall have expressly revoked it by notice in writing delivered to you and you have acknowledged receipt of such notice, whichever is earlier.
4. A copy of this Letter of Mandate may be handed over to SPD.

(Authorised signatory)

Seal of the Office

Name:

Designation:

Forwarding Letter of Mandate to SPD

<Name and Address of SPD>

Dear Sir/Madam,

Forwarding Letter of Mandate

1. We are in receipt of an unconditional mandate no. _____ dated _____ (copy enclosed) from _____ (Name of Government Department) to debit their account maintained with Reserve Bank of India after a claim/claims in full or in part is/are raised to RBI in writing by your office stating that _____ (Name of Government Department) have committed default in setting the dues of _____ (Name of SPD) relating to payment of electric charges.
2. The authority of debit mandate shall continue in force till the close of business on _____ (date) or until _____ (Name of Government Department) shall have expressly revoked it by notice in writing delivered to RBI and the said notice has been acknowledged as received by RBI, whichever is earlier.
3. We inform that RBI in no case will be a party in any dispute arising between _____ (Name of Government Department) and your office related to the claims submitted by your office.

For and on behalf of RBI

Authorised Signatory

Authorized Signatory

Authorized Signatory

Note: The indicative format is subject change by Nodal Railway in consultation with SPD.

SCHEDULE-5: INTEGRITY PACT

Between

Nodal Railway hereinafter called the “Employer” for Execution stage AND M/s_____ hereinafter referred to as "The Bidder/Contractor". Shall sign the integrity pact with Successful Developer at the time of signing of PPA. The relevant provisions pertaining with execution of project in this pact shall be applicable. This pact begins when both parties have legally signed it. It expires for the Developer when his Bid Security / Earnest Money is released after signing of PPA with successful bidder.

Preamble

The Employer intends to award, under laid down organizational procedures, contract/s for “Setting up of upto.....MW Solar PV Power plant in Railway Land under Tariff Based Competitive Bidding” The Employer values full compliance with all relevant laws and regulations, and economic use of resources, and of fairness and transparency in his relations with the Bidder/s and/or contractor/s.

In order to achieve these goals, the Employer will appoint an Independent External Monitor (IEM) who will monitor the execution of the contract for compliance with the principles mentioned above.

Section 1 – Commitments of the Employer

(1) The Employer commits himself to take all measures necessary to prevent corruption and to observe the following principles:-

- 1.No employee of the Employer, personally or through family members, will in connection with the execution of the contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.

The Employer will, during the tender process, treat all Bidders with equity and reason. The Employer will in particular, before and during the tender process, provide to all Bidders the same information and will not provide to any Bidder confidential/additional information through which the Bidder could obtain an advantage in relation to the contract execution.

2. The Employer will exclude from the process all known prejudiced persons.

If the Employer obtains information on the conduct of any of his employees which is a criminal offence under the IPC (Indian Penal Code) /PC (Prevention of Corruption) Act, or if there be a substantive suspicion in this regard, the Employer will inform its Chief Vigilance Officer and in addition can initiate disciplinary action.

Section 2 – Commitments of the Bidder/Contractor

- (1) The Bidder/Contractor commits himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation during the contract execution.
3. The Bidder/Contractor will not directly or through any other person or firm, offer, promise or give to any of the Employer’s employees involved in the execution of the contract or to any third person any material or other benefit which he is not legally

entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the execution of the contract.

4. The Bidder/Contractor will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions, to restrict competitiveness or to introduce cartelization in the bidding process.
5. The Bidder/Contractor will not commit any offence under the relevant IPC/PC Act; further the Bidder/ Contractor will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Employer as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
6. The Bidder/Contractor will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
7. Foreign bidders shall disclose the name and address of agents and representatives in India.
8. Indian Bidders shall disclose their foreign principals or associates.

- (2) The Bidder/ Contractor will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3- Disqualification from tender process and exclusion from future contracts

If the Bidder/Contractor, before award or during execution has committed a transgression through a violation of Section 2 above, or in any other form such as to put his reliability or credibility in question, the Employer is entitled to disqualify the Bidder/Contractor from the tender process or take action as per the procedure mentioned in the "Guideline on banning of business dealing" annexed and marked as **Annexure "A"** below.

Section 4- Compensation for Damage

If the Employer has terminated the contract during execution in terms of the provisions under Section 3, the Employer shall be entitled to demand and recover from the Contractor the damages equivalent to Earnest Money Deposit, Security Deposits already recovered and Performance Guarantee, which shall be absolutely at the disposal of the Employer.

Section -5 Previous transgression

- (1) The Bidder/ Contractor declares that no previous transgression occurred in the last 3 years with any other Company in any country conforming to the Anti-Corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
- (2) If the Bidder/Contractor makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in "Guideline on banning of business dealing".

Section -6 Equal treatment of all Bidders/Contractors/Sub-Contractors

- (1) The Bidder/Contractor undertakes to demand from all partners/sub-contractors (if permitted under the conditions/ clauses of the contract) a commitment to act in

conformity with this Integrity Pact and to submit it to the Employer before signing the contract.

- (2) The Bidder/ Contractor confirms that any violation by any of his partners/sub-contractors to act in conformity with the provisions of this Integrity Pact can be construed as a violation by the Bidder/Contractor himself, leading to possible Termination of Contract in terms of Section 4.

The Employer will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7- Criminal charges against violating Bidders/Contractors/Sub-Contractors

If the Employer obtains knowledge of conduct of a Bidder, Contractor or Partners/Sub-Contractor, or of an employee or a representative or an associate of a Bidder, Contractor or Sub-Contractor, which constitutes corruption, or if the Employer has substantive suspicion in this regard, the Employer will inform the same to its Chief Vigilance Officer.

Section -8 Independent External Monitor/Monitors

- (1) The Employer shall appoint competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The Monitor is not subject to instructions by the representatives of the parties and will perform his functions neutrally and independently. He will report to the (Designated officer of Nodal Railway).
- (3) The Bidder/Contractor accepts that the Monitor has the right of access without restriction to all Project documentation of the Employer including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Partners/Sub-Contractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder/Contractor/Partners/Sub-Contractor with confidentiality.
- (4) The Employer will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Employer and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- (5) As soon as the Monitor notices or has reason to believe that violation of the agreement by the Employer or the Bidder/ Contractor, has taken place, he will request the Party concerned to discontinue or take corrective action, or to take any other relevant action. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner or refrain from action or tolerate action.
- (6) As far as possible, the Monitor will submit a written report to the Designated officer of Nodal Railway within 10 days from the date of reference or intimation to him by the Employer and should the occasion arise, submit proposal for correcting problematic situations.

- (7) If the Monitor has reported to the Designated officer of Nodal Railway of a substantiated suspicion of an offence under relevant IPC/PC Act, and the Designated officer of Nodal Railway has not, within reasonable time, taken visible action to proceed against such offender or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- (8) Issues like warranty / guarantee etc. shall be outside the purview of IEMs.
- (9) The word Monitor would include both singular and plural.

Section – 9 Pact Duration

This pact begins when both parties have legally signed it. It expires for the Contractor when his Bid Security / Earnest Money is released after issuing of Letter of Award to the successful bidder, and for all other Tenderers six months after the LOA has been awarded.

If any claim is made/lodged during this time the same shall be binding and continue to be valid despite the lapse of this pact specified above unless it is discharged/determined by Designated officer of Nodal Railway.

Section 10 Other Provisions

- (1) This agreement is subject to Indian Law. Place of performance and jurisdiction shall be as stated in the Contract Agreement.
- (2) Changes and supplements as well as termination notices need to be made in writing.
- (3) If the Contractor is a partnership or a consortium, this agreement must be signed by the Partner in charge/ Lead Member nominated as being in charge and who holds the Power of Attorney signed by legally authorized signatories of all the partners/Members. The Memorandum of Understanding /Joint Venture Agreement will incorporate a provision to the effect that all Members of the Consortium will comply with the provisions in the Integrity Pact to be signed by the Lead Member on behalf of the Consortium. Any violation of Section 2 above by any of the Partners/Members will be construed as a violation by the consortium leading to possible Termination of Contract in terms of Section 4
- (4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- (5) A person signing the IP shall not approach courts while representing the matters to IEMs and he/she will await their decision in the matter.
- (6) In case of sub-contracting, the principal contractor shall take the responsibility of the adoption of IP by the sub-contractor.

Designated officer of Nodal Railway Agent / Power of Attorney Holder

(For & on behalf of the Employer)(For the Bidder/Contractor)

(Office Seal)

(Office Seal)

Place:

Date:

Witness 1:
(Name & Address) -----

Witness 2
(Name & Address) -----

