

adhered to as per the Terms and Conditions of SPIA.

#### **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 Procurer and Procurer undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.

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

- 4.4.1 Procurer, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the SPD beyond the contracted capacity. SPD has declared annual CUF -----% for the Project at the time of submission of response to RfS. The SPDs is allowed to revise the annual CUF-----% once within first year of COD. 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 panel 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 -15% of the declared value till the end of 10 years from COD, subject to the annual CUF remaining minimum of 15% and within +10% and -20% of the declared value of the annual CUF thereafter till the end of the PPA duration of 25 years

The annual CUF will be calculated every year form 1<sup>st</sup> April of the year to 31<sup>st</sup> march next year. If for any contract year it is found that the SPD has not been able to generate minimum energy corresponding to the value of annual CUF within the permissible lower limit of CUF declared by the SPD, on account of reasons primarily attributable to the SPD, such shortfall in performance shall make the SPD liable to pay the compensation to procurer equal to 25% of the cost of this shortfall in energy terms, calculated at PPA Tariff.”

#### **4.4.2 Purchase of excess energy**

In case the availability is more than 10% of the declared annual CUF, Solar Power Generator will be free to sell it to any other entity provided first right

of refusal will vest with the Procurer(s). In case the Procurer purchases the excess generation, it will do so at 75% (seventy-five per cent) of the PPA tariff.

#### **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 STU/Procurers Event of Default; or
- b) Force Majeure Events affecting STU/Procurers , 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 STU/Procurer through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or Procurers, or till such time such Event of Default is rectified by STU/Procurers.

4.5.2 Subject to the Article 3.2.1 and 4.6.2, the SPD shall be required to intimate UPNEDA /Procurer about the possible delays in allotment of Land or Connectivity in the Solar Park by the SPIA at least 45 days before the scheduled date. UPNEDA can extend the time for financial closure up to 3 months, without any financial implications to the SPD, as brought out in Article 3.2.2.

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 three (3) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.

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 by, any Party may raise the Dispute to be resolved in accordance with Article 17.

4.5.5 As a result of such extension, 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 6 months or the date determined 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 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 If the SPD is unable to commence supply of power to Procurer by the Scheduled Commissioning Date other than for the reasons specified in Article 4.5.1 and 4.5.2, the SPD shall pay to UPNEDA, Liquidated damages for the delay in such commencement of supply of Power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:

In case of delay in commissioning of the Project beyond the SCD upto (& including) the date as on 21 months from the Effective Date of the PPA (as applicable), as part of the liquidated damages, the total PBG amount for the Project shall be encashed on per-day basis and proportionate to the balance capacity not commissioned.

.

4.6.2 The maximum time period allowed for commissioning of the full Project Capacity without encashment of Performance Bank Guarantee shall be limited to 15 months from the Effective Date of this Agreement. Subject to clause 11 of this PPA, delay in commissioning, beyond the Scheduled Commissioning Period shall involve penalties, on the SPD, as detailed below:

- a) For Delay in commissioning upto 6 (six) months from Scheduled Commissioning Period, encashment of Performance Bank Guarantee (PBG) on per day basis and proportionate to the capacity not commissioned.
- b) For Delay in commissioning beyond six months from Scheduled Commissioning Period, SPD Event of Default, as per clause 13.1 of this PPA, shall be considered to have occurred and the contracted capacity shall stand reduced to the project capacity commissioned upto SCD + 6 (six) months. The PPA for the balance capacity not commissioned shall be terminated.

- (ii). In case of, any delay in handing over land to the Solar Power Developer (SPD) by SPIA in accordance with the given timelines, shall entail a corresponding extension in financial closure and scheduled commissioning date, provided that the maximum extension shall be limited to a period of 1 year commencing from the expiry of date of handing over of balance 10% of land.

4.6.3 It is presumed that, the tariff will be adopted by the Appropriate Commission within 60 days of submission of Application/Petition. However, any delay in adoption of tariff by the Appropriate Commission, beyond 60 (sixty) days, shall entail a corresponding extension in scheduled commissioning date.”

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

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

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

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

5.1.1 The SPD shall give the concerned UPLDC/SLDC and Procurer and SPIA at least sixty (60) days' advanced preliminary written notice and at least thirty (30) days' advanced final written notice, of the date on which it intends to synchronize the Power Project to the Grid System.

5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the SPD to the Grid System when it meets all the connection conditions prescribed in applicable Uttar Pradesh Grid Code then in effect and otherwise meets all other Indian/State 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 of Transco/DISCOM and checking/verification is made by the Transco/DISCOM 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 State Grid Code. In addition, the SPD will inject in-firm power to grid time to time to carry out operational/ functional test prior to commercial operation. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.

5.1.5 The SPD shall commission the Project within Fifteen (15) Months from the Effective Date

**5.1.6 Part Commissioning** – In case of Solar PV Projects, Part commissioning of the Project shall be accepted by Procurer subject to the condition that the minimum capacity for acceptance of part commissioning shall be 50 MW or Project capacities, whichever is lower. In case of Projects namely "Makrechha & Banghauli" of 45 MW and "Tikar I & Tikar II" of 30 MW, Plot wise/Block wise part commissioning shall be allowed under these projects without prejudice to the imposition of penalty, in terms of PPA on the part which is not commissioned..However, the SCD will not get altered due to part commissioning, Irrespective of dates of part commissioning or full commissioning, the PPA will remain in force for a period of 25 years from the SCD.

**5.1.7 EARLY COMMISSIONING** - The SPD shall be permitted for full commissioning as well as part commissioning of the Project even prior to the SCD. In cases of early part-commissioning, till the SCD, the procurer may purchase the generation @ 75% (seventy-five per cent) of the PPA tariff. However, in case the entire capacity is commissioned prior to the scheduled commissioning date, the procurer may purchase the generation at PPA Tariff.

**5.1.8** However, early part/ full commissioning of the Project and subsequent energy procurement from the same shall be subject to the approval of UPNEDA/UPPCL.

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

### **6.1      *Dispatch and Scheduling***

6.1.1 The Power Project shall be required to maintain compliance to the applicable IEGC/UP EGC (UP Electricity Grid Code provisions requirements and directions and its amendments thereof, and, as specified by concerned SLDC/UPLDC 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 Power Project shall comply the provisions of UPERC (Forecasting, Scheduling, Deviation Settlement and related matters Of Solar and generator Sources) regulations 2018 and its amendments thereof.

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. UI charges on this account shall be directly paid by the SPD.

6.1.4 Auxiliary power consumption will be treated as per the concern state regulations.

## **ARTICLE 7: METERING**

### **7.1 Meters**

- 7.1.1 As per state metering code, for measurement of solar energy supplied by Solar generating stations within the State, meter shall be provided on each outgoing feeder at the power station designated as main meter for billing purpose. Check meter shall be provided along with main meter on each outgoing feeder. Meters shall also be provided on the other end of the 33kV /132 KV feeder to serve as secondary back-up meter. Meters on each generator and each auxiliary transformer shall work as backup meters. The consumption recorded by main meter shall be compared with the consumption recorded by secondary backup meter on 33kV/132 KV feeder to work out transmission losses as well as to monitor the correct functioning of both meters
- 7.1.2 As per state metering code, the metering system shall comprise of main, check, backup and secondary backup meters. In the event of main meter or more than one meter becoming defective the order of precedence for billing shall be (a) main (b) check (c) backup (d) secondary backup.
- 7.1.3 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Seller and the Procurer(s) shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the State Grid Code and ABT as amended and revised from time to time.
- 7.1.4 All meters (a) main (b) check (c) backup meters at Transco / Discom Substation shall be provided by seller at the cost of seller. The secondary backup meters at Solar PV Power Plant Generating Substation shall be provided and installed by seller at the cost of seller.
- 7.1.5 The SPD shall bear all cost pertaining to installation, testing, calibration maintenance, renewal, and repair of all the meters referred at 7.1.4 above.
- 7.1.6 Energy Accounts shall be binding on both the Parties for billing and payment purposes.



## ***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, 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.

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

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

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

8.2.2 If a Force Majeure Event renders the Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, Procurer shall have no claim on such proceeds of such Insurance.

### **8.3 Effect on liability of Procurers**

8.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the SPD can claim compensation, under any Insurance shall not be charged to or payable by Procurers .

## **ARTICLE 9: APPLICABLE TARIFF**

9.1.1 The SPD shall be entitled to receive a Tariff of Rs. ----- /kWh for the energy supplied at the Metering Point during a Contract Year pertaining to the Contracted Capacity.

9.1.2 Procurer will be liable to pay the project developer the tariff as signed in the PPA.

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

### ***10.1 10.1 General***

10.1.1 From the commencement of supply of power by the Seller (SPD) , the Procurers shall pay to the Seller the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in this Article 9 and Schedule 10. All Tariff Payments by the Procurers shall be in Indian Rupees.

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

10.2.1 The Seller shall issue to each Procurer a signed Monthly Bill for the immediately preceding Month not later than four (4) days of the next Month. In case the Monthly Bill for the immediately preceding Month issued after four (4) days of the next Month, the Due Date for payment of such Monthly Bill shall be thirty (30) days from such date

Provided that:

- a. if the date of commencement of supply of power falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or
- b. if, the date of commencement of supply of power falls after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the Delivery Date until the last day of the immediately following Month

Provided further that if a Monthly Bill is received on or before the second (2nd) day of a Month, it shall be deemed to have been received on the second (2nd) Business Day of such Month.

10.2.2 The Monthly Bill prepared as detailed in Schedule 5 of the PPA, shall include the following;

- a. Provisional Bill for Solar PV power supplied in the immediately preceding Month;
  - (a) Adjustments against the Provisional Bill(s) based on Energy Accounts for the Solar PV power supplied in the Month(s) preceding to the previous month(s);

(b) Any other adjustments to cover changes in open access related charges and any other prior-period adjustments;

2 Late Payment Surcharge, if any; and

3 Taxes, Duties, Levies etc. as applicable.

### ***10.3 Payment of Monthly Bills***

10.3.1 The Procurers shall pay the amount payable under the Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified to the Procurers in accordance with Article 10.3.2 below.

10.3.2 The Seller shall open a bank account at Lucknow, Uttar Pradesh ("Seller's Designated Account") for all Tariff Payments be made by the Procurers to the Seller, and notify the Procurers of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Procurers shall also designate a bank account at Lucknow (the "Procurer's Designated Account") for payments to be made by the Seller to the Procurers, if any, and notify the Seller of the details of such account ninety (90) days before the dispatch of the first Monthly Bill. The Seller and the Procurers shall instruct their respective bankers to make all payments under this Agreement to the Procurers' Designated Account or the Seller'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 the Procurers sixty (60) days beyond its due date, a Late Payment Surcharge shall be payable by the Procurers to the Seller at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by the Seller through the next Monthly Bill.

#### **10.3.4 Rebate**

For payment of any Bill within due date, the following Rebate shall be paid by the Seller to the Procurers in the following manner.

- a) A Rebate of 2% shall be payable to the UPPCL for the payments made within a period of 10 (ten) days of the presentation of hard copy of bill along with required supporting documents at UPPCL Office.

- b) Any payments made after ten (10) days of the date of presentation of hard copy of the bill along with the required supporting documents at UPPCL office up to the Due date shall be allowed a rebate of 1%.
- c) For the above purpose the date of presentation of Bill shall be the next business day of delivery of the physical copy of the Bill
- d) No Rebate shall be payable on the bills raised on account of change in law relating to taxes, duties, cess etc. and on supplementary bill. For the above purpose date of presentation of bill shall be the same day of delivery in hard copy. However, for consideration of rebate, next business day shall be considered.

#### ***10.4 Payment Security Mechanism***

##### **Letter of Credit (LC):**

- 10.4.1 The Procurers shall provide to the Seller, in respect of payment of its Monthly Bills, an unconditional, revolving and irrevocable letter of credit (“Letter of Credit”), opened and maintained by the Procurers, which may be drawn upon by the Seller in accordance with this Article. The Procurers shall provide to the Seller draft of the Letter of Credit proposed to be provided to the Seller two (2) months before the Scheduled Commissioning Date.
- 10.4.2 Not later than one (1) month before the start of supply, the Procurers shall through a scheduled bank at Lucknow open a Letter of Credit in favour of the Seller, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) months and shall be reviewed every year, in the month of January and revised w.e.f. April for an amount equal to:
  - i) for the first Contract Year, equal to the estimated average monthly billing;
  - ii) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the monthly Tariff Payments of the previous Contract Year.
- 10.4.3 Provided that the Seller shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawal in a Month.
- 10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, the Procurers shall

restore such shortfall within seven (7) days.

10.4.5 The Procurers shall cause the scheduled bank issuing the Letter of Credit to intimate the Seller, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 The Procurers shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to its expiry.

10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by the Procurers.

10.4.8 If, the Procurers fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 10.4.6, the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurers, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

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

**10.4.9 Payment Security Fund**

A payment Security Fund will be set up suitable to support payment for at least 3(three months) billing of project tied up with this fund

***10.5 Third Party Sales by the Seller***

10.5.1 Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of any of the following event(s), the Seller shall be entitled to regulate power supply of Solar PV power;

- i) Default in making payment by the 30<sup>th</sup> day from the Due Date,
- ii) Non-recoupment of LC by the 30<sup>th</sup> day of its operation.
- iii) Non-availability of LC for operation and for its required value by the 30<sup>th</sup> day of the Due Date.

10.5.2 The Seller shall issue the Notice for Regulation of Power Supply on the date above and

shall give a notice of 7 days to start the regulation on the 8<sup>th</sup> day.

10.5.3 Regulation of Power Supply would be on pro-rata basis i.e., in the ratio of amount due and unpaid to total amount due against the relevant Monthly Bill. In case of shortfall in amount of LC available, the right to regulate shall be in the ratio of shortfall in LC maintained /available to the total amount of LC required.

10.5.4 In order to avoid any doubts, it is illustrated that:

- i) In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, The Seller would have a right to regulate and sell Procurer's allocation of the power to third parties to the extent of 40% (i.e.  $10/25 \times 100$ ).
- ii) If LC required to be opened/ maintained by Procurers is to the extent of Rs. 25 Crore and LC opened/maintained/available is to the extent of Rs. 15 Crore only i.e. LC available is short by Rs. 10 Crore, The Seller would have a right to regulate and sell Procurers' allocation of power to third parties to the extent of 40% (i.e..  $10/25 \times 100$ ).

10.5.5 The Seller shall have the right to divert the Solar PV power or part thereof and sell it to any third party namely;

- i) Any consumer, subject to applicable Law; or
- ii) Any licensee under the Act;

The Seller shall request the concerned SLDC/UPLDC to divert such power to third party, as it may consider appropriate.

10.5.6 Provided that in case of sale to third party, the procurer shall pay for the energy so sold to third party but the seller shall pay the full amount received from the third party sale to the procurer.

10.5.7 Sales to any third party shall cease and regular supply of electricity to the Procurers shall commence and be restored within two (02) days from the date of clearing all the outstanding dues payable to the Seller for the Solar PV power under this Agreement.

10.5.8 Further, that the liability of the Procurers to make the Tariff Payments to the Seller as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available to the

Procurers.

### ***10.6 Disputed Bill***

10.6.1 If the Procurers does not dispute a Monthly Bill raised by the other Party within fifteen (15) days of receiving such Bill shall be taken as conclusive.

10.6.2 If the Procurers disputes the amount payable under a Monthly Bill it shall pay 95% of the disputed 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.

10.6.3 If the Seller agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.6.2, the Seller shall make appropriate adjustment in 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 Procurers and up to and including the date on which such payment has been received as refund.

10.6.4 If the Seller does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party 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.

10.6.5 Upon receipt of the Bill Disagreement Notice by the Procurers under Article 10.6.2, authorized representative(s) of the Procurers and the Seller shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

10.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of



Bill Disagreement Notice pursuant to Article 10.6.4, the matter shall be referred to Dispute resolution in accordance with Article 17.

10.6.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurers shall, without prejudice to its right to Dispute, be under an obligation to make payment, of 95% of the Disputed Amount in the Monthly Bill.

### ***10.7 Quarterly and Annual Reconciliation***

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

10.7.2 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 Procurers and the Seller shall jointly sign such reconciliation statement. After signing of a reconciliation statement within 15 days, the Seller shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. 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 17.

### ***10.8 Payment of Supplementary Bill***

10.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Regional Energy Account (if applicable); or
- ii) Change in Law as provided in Article 12,

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

10.8.2 Procurers shall remit all amounts due under a Supplementary Bill raised by the SPD to the SPD's Designated Account by the Due Date. Similarly, the SPD shall pay all

amounts due under a Supplementary Bill raised by Procurers, if any, by the Due Date to concerned Procurers designated bank account. For such payments by Procurers, Rebate as applicable to Monthly Bills pursuant to Article 10.3.4 shall equally apply.

10.8.3 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 10.3.4.

## **ARTICLE 11: FORCE MAJEURE**

### **11.1 Definitions**

:

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

### **11.2 Affected Party**

11.2.1 An affected Party means the Seller or the Procurers whose performance has been adversely affected by an event of Force Majeure

### **11.3 'Force Majeure' (FM)**

11.3.1 A Force Majeure 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.

### **11.4. Categorisation of Force Majeure Events:**

#### **11.4.1. Natural Force Majeure Event**

- a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of Procurer;
- b) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power 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 foregoing

#### **11.4.2.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) nationalization 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 Generator, as a result of which the Generator 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 Generator or the Generator 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 Clause 12 ( change in Law ) of this PPA; 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 the Generator or any of the clearance, license, authorization to be obtained by the Contractors to perform their respective obligations under the relevant PPA and/or the Project Documents; provided that such delay, modification, denial, refusal or revocation did not result from the Generator's or any Contractors inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, license, authorization, as the case may be.

#### **11.4.3. Force Majeure Exclusions**

##### **11.4.3.1. 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.

#### **11.4.4 . Notification of Force Majeure Event**

**11.4.4.1.** 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.

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