

POWER PURCHASE AGREEMENT

FOR

PROCUREMENT OF SOLAR POWER

FROM

UNIT [] LOCATED IN THE REWA SOLAR PROJECT

AT GURH TEHSIL,

DISTRICT: REWA STATE: MADHYA PRADESH

ON LONG TERM BASIS

BETWEEN

[FIRST PROCURER'S NAME]

AND

REWA ULTRA MEGA SOLAR LIMITED

AND

SOLAR PROJECT DEVELOPER

2017

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POWER PURCHASE AGREEMENT

This Power Purchase Agreement (**Agreement**) is executed on this 17th day of April 2017 at Bhopal:

BETWEEN

- (1) **[Procurer's Name]**, a company incorporated under the laws of India (Company Identification Number: []), having its registered office at _____ (the **Procurer**);
- (2) **Rewa Ultra Mega Solar Limited**, a company incorporated under the laws of India (Company Identification Number: U40102MP2015PLC034450), having its registered office at Urja Bhawan, Link Road No. 2, Shivaji Nagar, Bhopal – 462003, Madhya Pradesh, India (**RUMSL**);

AND

- (3) **[Solar Power Developer]**, a company incorporated under the laws of India (Company Identification Number: []), having its registered office _____(the **SPD**).

The Procurer, RUMSL and the SPD shall collectively be referred to as the **Parties** and individually as a **Party**.

RECITALS

WHEREAS:

- (A) With a view to provide a further boost to renewable energy development in the state of Madhya Pradesh, the Government of Madhya Pradesh (**GoMP**) and the Government of India (**GoI**) have decided to set up a 750MW solar project in Rewa District in the state of Madhya Pradesh (**Rewa Solar Project**).
- (B) In this regard, Madhya Pradesh Urja Vikas Nigam Limited and Solar Energy Corporation of India incorporated RUMSL, as a joint venture company with both the entities holding equal shareholding in RUMSL. MNRE has designated RUMSL as the solar power park developer for the Rewa Solar Project.
- (C) The GoMP has decided to develop the Rewa Solar Project as three units (i.e., Unit 1, Unit 2 and Unit 3) of ground mounted grid-connected solar photovoltaic power plants of 250 MW capacity each. The Unit Land for Unit [] will be of an area equal to at least [] hectares corresponding to the site layout provided in the Implementation Support Agreement. [] hectares total land for Unit [] has already been procured by RUMSL, as on the Execution Date.
- (D) The Rewa Solar Project plans to supply energy generated from the units to [First Procurer's Name] and [Second Procurer's Name].
- (E) The GoMP appointed the [Lead Transaction Advisor] as the lead transaction advisor to enable RUMSL and the GoMP to mobilize the entire private investment for the Rewa Solar Project. IFC's role includes advising on a robust project structure, identifying, recommending and upon request helping implement solutions for key commercial, legal, regulatory, technical and system operations related issues and designing a transparent auction process to help select

private entity(ies) to develop the units in the Rewa Solar Project. Accordingly, RUMSL, in its capacity as the bidding authority for the Rewa Solar Project, invited proposals from all interested entities by launching a single stage two-envelope competitive bidding process followed by a reverse auction process pursuant to a request for proposals issued on 16 March 2016 (**RFP**).

- (F) Pursuant to the terms of the RFP, [Selected Bidder's Name] (**Selected Bidder**) submitted its bid for the Unit (**Bid**). Following the process of selection of bidders, as set out in the RFP, RUMSL accepted the Bid to develop 1 number of Unit comprising 250 MW capacity of the Rewa Solar Project on 10 February 2017. Subsequently, RUMSL issued the letter of award on 21 February 2017 to the Selected Bidder appointing it as the SPD to implement the Unit.
- (G) The Selected Bidder, i.e., [Selected Bidder's Name] has incorporated an SPV, i.e., [SPV Name] and informed the Procurer and RUMSL by its letter dated 16 March 2017 that the SPV is the entity, which shall undertake and perform its obligations, including the obligation to enter into this Agreement.
- (H) The SPD has also executed or shall execute the following agreements: (a) a power purchase agreement with [SECOND PROCURER'S NAME] and RUMSL for sale by the SPD and purchase by [SECOND PROCURER'S NAME] of a part of solar energy generated from the Unit; (b) an implementation support agreement with RUMSL for use of the infrastructure and associated facilities (**Implementation Support Agreement**); (c) land use permission agreement(s) with the New and Renewable Energy Department, GoMP (**NRED**) and RUMSL for the right to use the Unit Land (*as defined below*) for the Unit (**Unit LUPA(s)**); (d) guarantee agreement with the GoMP, [FIRST PROCURER'S NAME] and RUMSL; and (e) a coordination agreement with the project developers of the other two units in the Rewa Solar Project, RUMSL, the Procurer and [SECOND PROCURER'S NAME] in relation to, amongst others, optimal scheduling arrangement, constituting a consultative forum for effective construction and operation of the Rewa Solar Project and setting up a coordination committee for coordination of certain specified aspects between contracting parties across the Project Agreements (*as defined below*) and the [SECOND PROCURER'S NAME] PPA (**Coordination Agreement**).
- (I) Subject to the terms and conditions of this Agreement and the Coordination Agreement, the SPD has undertaken to supply and deliver to the Procurer and the Procurer has agreed to purchase the solar energy generated by the Unit at the Delivery Point (*as defined below*).
- (J) The Parties now wish to enter into this Agreement to implement the Unit and to sell and purchase solar energy from the Unit.

IT IS AGREED as follows:

1. DEFINITIONS

1.1 Definitions

In this Agreement, unless the context requires otherwise, capitalised terms shall have the following meanings:

Abandonment means the complete cessation of any of the obligations of the SPD under this Agreement for a continuous period of 15 (fifteen) Days, other than as a result of a Force Majeure Event.

Additional PBG has the meaning ascribed to it in Article 4.5(b)(ii).

Adjusted Equity means 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 WPI, and for any Reference Date occurring:

- (a) on or before Unit COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Unit, revised to the extent of one half of the variation in WPI occurring between the first day of the month in which the Financial Close is achieved and the Reference Date;
- (b) from Unit COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on Unit COD shall be deemed to be the base (the Base Adjusted Equity) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following Unit COD to the extent of variation in WPI occurring between the Unit COD and the Reference Date; and
- (c) after the 4th (fourth) anniversary of Unit COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.34% (zero point three four percent) thereof at the commencement of each month following the 4th (fourth) anniversary of Unit COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the Unit COD and the Reference Date;

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 Term is extended, but the revision on account of WPI shall continue to be made.

It is further clarified that in computing Adjusted Equity any interest payable on any shareholder loan shall be expressly excluded.

Affected Party has the meaning ascribed to it in Article 15.1(a).

Agreement means this power purchase agreement executed between the SPD, the Procurer and RUMSL as of the date hereof together with the Schedules and Annexes, as may be amended, supplemented or modified in accordance with its provisions.

Annex means any of the annexes, supplements or documents, appended to this Agreement.

Applicable Laws means the Constitution of India and all laws, promulgated or brought into force and effect by the GoI, the GoMP, any Government Authority or any local government having jurisdiction over the Parties, Rewa Solar Project or the Unit, including rules, regulations, guidelines and notifications made/issued thereunder, and/or judgments, decrees, injunctions,

writs and orders of any court of record, statutory or regulatory authority, tribunal, board or stock exchange in any jurisdiction as may be applicable to the execution of this Agreement and the performance of the respective rights and obligations of the Parties, as may be in force and effect during the subsistence of this Agreement.

Applicable Permits mean any permissions, clearances, concessions, authorisations, consents, licenses, permits, rulings, exemptions, no-objections, resolutions, filings, orders, notarisations, lodgements or registrations or approvals of whatsoever nature that are required to be obtained by the SPD from time to time in connection with the Unit and for undertaking, performing or discharging its obligations under this Agreement in accordance with Applicable Laws.

Applicable Tariff has the meaning ascribed to it in Article 10.11.

Application Fee means the non-refundable application fee payable to the CTU for grant of Connectivity and the non-refundable application fee payable to the CTU for grant of Long Term Access as per the CERC approved "Procedure for making application for grant of connectivity in ISTS".

Appropriate Commission means the Central Electricity Regulatory Commission referred to in section 76 of the Electricity Act or the State Electricity Regulatory Commission referred to in section 82 of the Electricity Act or the Joint Electricity Regulatory Commission referred to in section 83 of the of the Electricity Act, as the case may be.

Arbitration Act means the Arbitration and Conciliation Act, 1996.

Assessment BG has the meaning ascribed to it in Article 4.6(c).

Bid has the meaning ascribed to it in Recital F.

Bill Disagreement Notice has the meaning ascribed to it in Article 10.7(d).

Bill Dispute Notice has the meaning ascribed to it in Article 10.7(b).

Business Day means a calendar day, which is not a public holiday in Madhya Pradesh and on which banks are open for domestic business in Madhya Pradesh.

Capital means the total capital of a company that comprises of equity shares, compulsorily convertible instruments and subordinated shareholder loans.

CERC means the Central Electricity Regulatory Commission referred to in section 76 of the Electricity Act.

Change in Law means the occurrence of any of the following events in India, subsequent to the Proposal Due Date (*as defined in the RFP*), and such event(s) has/have an impact on the Unit or on any of the rights and obligations of the Parties under any of the Project Agreements:

- (a) the modification, amendment, variation, alteration or repeal of any existing Applicable Laws;
- (b) the enactment of any new Applicable Law or the imposition, adoption or issuance of

any new Applicable Laws by any Government Authority;

- (c) changes in the interpretation, application or enforcement of any Applicable Laws or judgement by any Government Authority;
- (d) the introduction of a requirement for the SPD to obtain any new Applicable Permit; or
- (e) the modification, amendment, variation, introduction, enactment or repeal of any Tax, resulting in a change in the incidence of Tax liability, including pursuant to any Applicable Laws promulgated or to be promulgated in furtherance of the Constitution (122nd Amendment) Bill, 2014.

It is clarified that for the purposes of Change in Law, Taxes shall not include taxes on corporate income, any withholding tax on dividends distributed to the shareholders of the SPD or income tax.

Commissioning Certificate means the certificate issued by RUMSL to the SPD, in accordance with the procedure set out in the Coordination Agreement.

Confirmation Certificate has the meaning ascribed to it in Article 4.4(c).

Coordination Agreement has the meaning ascribed to it in Recital H.

Coordination Committee has the meaning ascribed to it in the Coordination Agreement.

Connectivity has the meaning as ascribed to it in the relevant CERC regulations.

Construction Period has the meaning ascribed to it in Article 4.1(a).

Contract Year means the First Contract Year and thereafter each period of 12 (twelve) Months, provided that the last Contract Year shall end on the last day of the Term.

CS Completion Date means the date on which all conditions subsequent, set out in Article 2.1, are either satisfied or waived, as the case may be.

CS Waiver Notice has the meaning ascribed to it in Article 2.3(c).

CTU means the utility notified by the Central Government under section 38 of the Electricity Act.

Day means a 24 (twenty-four) hour period beginning at 00:00 hours Indian Standard Time and ending at 23:59:59 hours Indian Standard Time.

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

- (a) the principal amount of the debt provided by the Lenders under the Financing Documents as evidenced in accordance with Article 2.1(a)(ii), together with any increase approved by the Procurer in accordance with Article 19.1(a), for financing the

Total Unit Cost (the principal) but excluding any part of the principal that had fallen due for repayment 2 (two) or more years prior to the Transfer Date;

- (b) all accrued interest, financing fees and charges payable under the Financing Documents on, or in respect of, the debt referred to in sub-Article (a) above until the Transfer Date, including (i) any penal interest or charges payable under the Financing Documents to any Lender, and (ii) any pre-payment charges in relation to accelerated repayment of debt.

Provided that if the Debt Due is payable on account of the SPD Event of Default, then: (i) any penal interest or charges payable under the Financing Documents to any Lender, and (ii) any pre-payment charges in relation to accelerated repayment of debt, shall be excluded from Debt Due.

If the Debt Due is payable as part of the Termination Compensation payable by the Procurer on account of a Force Majeure Event, then the Debt Due shall include 50% (fifty percent) of: (i) any penal interest or charges payable under the Financing Documents to any Lender, and (ii) any pre-payment charges in relation to accelerated repayment of debt; and

- (c) any subordinated debt which is included in the Financial Assistance and disbursed by Lenders for financing the Total Unit Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Lenders and/or the SPD, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken, except if such conversion was completed on or before 6 (six) Months prior to the Termination Date.

Deemed COD has the meaning ascribed to it in Article 4.4(g).

Deemed COD PBG has the meaning ascribed to it in Article 4.4(g).

Delivery Point/Metering Point means the point at 220 kV side of the PGCIL Substation.

Dispute has the meaning ascribed to it in Article 21.2(a).

[SECOND PROCURER'S NAME] means [Name of Corporation].

[SECOND PROCURER'S NAME] PPA means the power purchase agreement executed between [SECOND PROCURER'S NAME], the SPD and RUMSL.

[SECOND PROCURER'S NAME] Shortfall has the meaning ascribed to it in Article 8.2(d).

Due Date means 30th (thirtieth) Day from the date of receipt of the Monthly Bill and 60th (sixtieth) Day from the date of receipt of the Supplementary Bill by the Procurer, with the day after the day of receipt of the Monthly Bill or the Supplementary Bill being counted as the 1st (first) Day.

Electricity Act means the Electricity Act, 2003.

Encumbrances mean mortgage, charge, pledge, lien (statutory or otherwise), assignment, assignment by way of security, hypothecation, trust, preference, priority, designation as loss payee under insurance contracts or other security interest securing any obligation of any Person or any other agreement or arrangement having a similar effect.

Equity means the sum expressed in Indian Rupees representing the paid up equity share capital of the SPD for meeting the equity component of the Total Unit Cost, and for the purposes of this Agreement shall include convertible instruments or other similar form of capital, which shall compulsorily convert into equity share capital of the SPD and any subordinated shareholder loan.

Event of Default has the meaning ascribed to it in Article 12.1.

Excess Over Drawl Payment is the amount arrived at by deducting the Generation Shortfall Liquidated Damages payable to the Procurer by the SPD from the Over Drawl Payment received by the SPD from [SECOND PROCURER'S NAME], subject to the condition that it shall not be less than 0 (zero).

Execution Date means the date of signing of this Agreement by the Parties.

Expiry Date means the date of expiry of this Agreement, which shall not be earlier than the 25 (twenty-five) years from the Unit SCOD, unless terminated earlier in accordance with the terms of this Agreement.

Extended Long Stop Date has the meaning ascribed to it in Article 4.5(e).

Financial Assistance means all funded and non-funded financial assistance, including loans, advances and guarantees (but excluding subordinated shareholder loans) or any re-financing that the SPD may avail of for the Unit from the Lenders in accordance with the Financing Documents.

Financial Close means the date on which the Financing Documents become effective and the conditions precedent under the Financing Documents for the initial availability of funds are fulfilled.

Financial Year means a year commencing on 1st April of any calendar year and ending on 31st March of the following calendar year or another period of 12 Months that the Procurer may adopt for this purpose, in line with Applicable Laws.

Financing Documents means collectively, the documents executed or to be executed with Lenders, in respect of the Financial Assistance and includes any document providing Security for the Financial Assistance.

First Contract Year means the period commencing from the date on which the SPD achieves the Deemed COD or the Unit COD, whichever is the earlier, and expiring at the end of the calendar month in which the Unit completes 12 (twelve) months after the SPD achieves Deemed COD or the Unit COD, whichever is the earlier.

First Handover has the meaning ascribed to it in the Implementation Support Agreement.

First Handover Date has the meaning ascribed to it in the Implementation Support Agreement.

First Performance Assessment has the meaning ascribed to it in Article 4.6(b).

FM Notice has the meaning ascribed to it in Article 15.2.

Force Majeure Event has the meaning ascribed to it in Article 15.

Generation Hour means a period of 1 hour between 6 AM to 6 PM in a Day.

Generation Shortfall Liquidated Damages has the meaning ascribed to it in Article 8.3(b).

GoI means the Government of India.

GoMP means the Government of Madhya Pradesh.

Good Industry Practices means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which are reasonably and ordinarily expected to be used by a skilled and experienced owner, contractor or operator engaged in installation, management, ownership, operation and/ or maintenance of facilities, equipment or systems of the type and size similar to the Unit.

Government Authority(ies) means one or more of the GoI, the GoMP, any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the GoI or the GoMP exercises control, court or other judicial or administrative body or official or Person, having jurisdiction over the SPD, the Unit or any portion thereof and the performance of obligations and exercise of rights of the Parties in accordance with the terms of this Agreement.

Grid Code means the Grid Code specified by the CERC under section 79(1)(h) of the Electricity Act.

Guarantee Agreement has the meaning ascribed to it in Article 10.6(c)(i).

Guaranteed Energy Offtake has the meaning ascribed to it in Article 8.2(a).

Implementation Support Agreement has the meaning ascribed to it in Recital H.

INR means Indian Rupees, the lawful currency of the Republic of India.

Initial Part Capacity has the meaning ascribed to it in Article 4.4(d).

Initial Tariff has the meaning ascribed to it in Article 10.11.

Interconnection Point/Injection Point means the 220kV point at the PGCIL Substation where the energy generated from the Unit is injected into the PGCIL Substation.

Internal Evacuation Infrastructure means the following evacuation facilities, to be constructed and commissioned, or cause to be constructed and commissioned, by RUMSL, for the interconnection of the Unit and evacuation of power from the Unit up to the Delivery Point:

- (i) 1 (one) 33/220 kV outdoor substation, associated with and dedicated for the Unit, comprising of 3x100 MVA (oil forced air forced) transformer, 18 (eighteen) 33kV circuit terminals to enable connections to the Unit; and
- (ii) 1 (one) double circuit (DC) 220 kV transmission line connecting the Internal Substation to the PGCIL Substation.

Internal Substation means a 33/220kV internal substation (with the 220kV side of the substation connected or to be connected to PGCIL Substation), developed or to be developed by RUMSL inside the Rewa Solar Project, where the Unit shall connect for further connectivity through a 220kV transmission line to the PGCIL Substation.

Inter-State Transmission Charges means all charges, fees (except the Application Fee) and any other sums payable to the CTU in relation to, Connectivity and Long Term Access including transmission of power from the Delivery Point or pertaining to the same under CERC Regulations, namely CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations 2009, CERC (Sharing of Inter State Transmission Charges and Losses) Regulations 2010, CERC (Terms and Conditions of Tariff) Regulations 2014, CERC (Fees and Charges of Regional Load Despatch Centre and other related matters) Regulations, 2015, and as amended from time to time, and any other CERC Regulations in this regard in the future, and shall also include charges, expenses and fees approved by the CERC and billed separately by CTU, for the purpose as mentioned above.

Inter-State Transmission Losses has the meaning as defined under the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 and as amended from time to time.

ISTS means an inter-state transmission system.

kWh means kilowatt-hour, a unit of energy equal to one kilowatt of power supplied or taken from an electric circuit for one hour.

Late Payment Surcharge has the meaning ascribed to it in Article 10.10(a).

Lenders mean any Person(s) including its/their successors and assigns, who has/have agreed to guarantee or provide the Financial Assistance to the SPD for implementing the Unit.

Letter of Credit has the meaning ascribed to it in Article 10.6(a)(i).

Long Stop Date has the meaning ascribed to it in Article 4.5(a).

Long Term Access has the meaning ascribed to it in the relevant CERC regulations.

Loss means all damages, losses, liabilities, costs, expenses, including legal and other professional charges and expenses and charges arising under statute, contract or otherwise in connection with judgements, proceedings, claims, internal costs or demands.

Material Adverse Effect means the effect of any act or event which causes a material and adverse impairment in the ability of any of the Parties to exercise its rights or perform any of its obligations or consummate transactions under and in accordance with the provisions of this Agreement.

Minimum Supply Obligation has the meaning ascribed to it in Article 8.3(a).

MNRE means the Ministry of New and Renewable Energy, GoI.

Month(s) means a calendar month as per the Gregorian calendar.

Monthly Bill means the bill raised by the SPD for seeking payment of Tariff Payments for the energy supplied at the Delivery Point and metered at the Metering Point, in accordance with Article 10.2.

MPERC means Madhya Pradesh Electricity Regulatory Commission constituted under the Electricity Regulatory Commissions Act, 1998 and the Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000.

MU means a unit of energy, equal to one million kWh.

Notice of Arbitration has the meaning ascribed to it in Article 21.4(a).

NLDC means the National Load Despatch Centre.

NRLDC means the Northern Region Load Despatch Centre.

Over Drawl Payment has the meaning as ascribed to it in the [SECOND PROCURER'S NAME] PPA.

Part Capacity has the meaning ascribed to it in Article 4.4(d).

Payment Security Fund has the meaning ascribed to it in Article 10.6(b)(i).

Performance Bank Guarantee means the unconditional, irrevocable and on-demand performance bank guarantee, issued by a Scheduled Bank, to be submitted, on or before the Execution Date, by the SPD or by the Selected Bidder on behalf of the SPD to the Procurer for the amount set out in Article 3.

Person means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization or any other legal entity.

PGCIL means the Power Grid Corporation of India Limited.

PGCIL Substation means the 400/220kV, 3x500 MVA pooling station at Rewa to be

constructed, owned and operated by PGCIL for evacuation of energy generated from the Units located in the Rewa Solar Project through the ISTS.

Phase I Delay Liquidated Damages has the meaning ascribed to it in Article 4.5(a).

Phase II Delay Liquidated Damages has the meaning ascribed to it in Article 4.5(b)(i).

Preliminary Notice means the notice to be provided by the non-defaulting party to the defaulting party providing 60 (sixty) Days to cure the underlying breach of this Agreement.

Procurer Event of Default has the meaning ascribed to it in Article 12.3.

Procurer's Designated Account has the meaning ascribed to it in Article 10.4(e).

Project Agreements means, collectively, this Agreement, the Implementation Support Agreements, the Unit LUPA(s), the Coordination Agreement and the Guarantee Agreement.

Rebate has the meaning ascribed to in Article 10.10(b).

Rewa Solar Project has the meaning ascribed to it in Recital A.

RFP has the meaning ascribed to it in Recital E.

Scheduled Bank means a bank listed under the second schedule of the Reserve Bank of India Act, 1934.

Second Performance Assessment has the meaning ascribed to it in Article 4.6(d).

Security means and includes any mortgage, pledge, lien, Encumbrance, security interest, right of set-off, hypothecation, assignment, by way of retention of title or ownership or any other charge or encumbrance and any other agreement or arrangement having substantially the same economic effect.

Selected Bidder has the meaning ascribed to it in Recital F.

Selectee means a new project company proposed by the Lenders pursuant to the Substitution Agreement for the remaining Term.

SLDC/RLDC means State/Regional Load Despatch Centre, constituted under section 31 and section 27 of the Electricity Act, respectively.

SPD Event of Default has the meaning ascribed to it in Article 12.2.

SPD Related Parties means any of the following:

- (a) an officer, servant, employee or agent of the SPD acting in that capacity;
- (b) any contractor or sub-contractor of the SPD of any tier and their directors, officers, servants, employees or agents acting in that capacity; or

(c) any Person acting on behalf of the SPD.

SPD's Designated Account has the meaning ascribed to it in Article 10.4(e).

SPV means a Special Purpose Vehicle.

Substitution Agreement means the agreement to be executed by the Lenders, the SPD, the Procurer, [SECOND PROCURER'S NAME] and RUMSL, in accordance with the terms of this Agreement, and substantially in the format set out in Annex 4.

Supplementary Bill means the bill raised by the SPD in accordance with Article 10.2 and Article 10.9.

Tariff Payment means the payments to be made under Monthly Bills and Supplementary Bills, as referred to in Article 10.

Taxes means any Indian taxes, whether direct or indirect, including levies, imposts, cesses, duties and other forms of taxation, including income tax, sales tax, value added tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty (whether central, state or local) on the goods, materials, equipment and services incorporated in and forming part of the Unit charged, levied or imposed by any Government Authority, but excludes any interest, penalties and other sums in relation thereto imposed on any account whatsoever.

Technical Specification means the technical specifications set out in Schedule 3.

Term has the meaning ascribed to it in Article 16.2.

Termination Compensation means any compensation payable by the Procurer to the SPD; or the SPD to the Procurer, in accordance with Article 14.

Termination Date means the date on which this Agreement is terminated by a Party pursuant to serving a Termination Notice in accordance with its terms.

Termination Notice means the notice issued in accordance with Article 13.3.

Threshold Limit has the meaning ascribed to it in Article 17.1(c).

Total Unit Cost means:

- (a) the capital cost incurred on construction and financing of the Unit and shall be limited to the lower of:
 - (i) the capital cost of the Unit as set out in the Financing Documents;
 - (ii) the actual capital cost of the Unit upon completion of the construction; and
 - (iii) a sum of INR XX (in words).

Transfer means the divestment of the Unit in favour of the Procurer, in accordance with Article 24.

Transfer Date means the Termination Date.

Unit means the solar power generation facility of nameplate AC capacity of 250 MW, located inside the Rewa Solar Project on the Unit Land and referred to as Unit [] in the Bid Documents (*as defined in the RFP*). The Unit includes buildings, equipment, plant and machinery, facilities and related assets required for efficient and economic operation of the power generation facility. It is clarified that the Internal Evacuation Infrastructure shall not form a part of the Unit. Provided that if the SPD takes over the construction of the Internal Evacuation Infrastructure in accordance with the Implementation Support Agreement, then solely for the purposes of computing Total Unit Cost, the Internal Evacuation Infrastructure shall be construed to form a part of the Unit.

Unit COD has the meaning ascribed to it in Article 4.4(e).

Unit Land means the land allotted to the SPD, under the Unit LUPA(s), for developing, operating and maintaining the Unit pursuant to the Implementation Support Agreement.

Unit SCOD has the meaning ascribed to it in Article 4.1(b).

Vesting Certificate has the meaning ascribed to it in Article 24.4.

Wilful Default means a deliberate or conscious breach of this Agreement by any of the Parties which has a Material Adverse Effect on the other Party.

WPI means the Wholesale Price Index for all commodities as published by the Ministry of Commerce and Industry, GoI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context requires, be construed as reference to the WPI published for the period ending with the preceding month.

WRLDC means the Western Region Load Despatch Centre.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words importing the masculine shall include the feminine and vice-versa;
- (b) the singular includes the plural and vice-versa;
- (c) any reference to a statute or statutory provision shall include such statute or provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (d) a reference to any article, annex, schedule or recital shall refer, except where expressly stated to the contrary, to Article, Annex, Schedule or Recital of this Agreement;

- (e) save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to this Agreement and/or such document;
- (f) headings in this Agreement shall not be deemed part of or be taken into consideration in the interpretation or construction of this Agreement and are included for ease of reference only;
- (g) unless otherwise stated, any reference to any period commencing "from" a specific day or date and "till" or "until" a specific day or date shall include both such days or dates;
- (h) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a monthly basis and from the respective due dates as provided for in this Agreement;
- (i) any word or expression used in this Agreement, unless defined or construed in this Agreement, shall bear the ordinary English meaning;
- (j) references to a Party to this Agreement include successors or permitted assigns of that Party;
- (k) the words "include" and "including" are to be construed without limitation;
- (l) the Annexes and Schedules to this Agreement shall form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;
- (m) reference to proceedings includes litigation, arbitration and investigation;
- (n) where provision is made for the giving of any notice, certificate, determination, consent or approval by any person that notice, certificate, determination, consent or approval shall be in writing, and the words "notifies", "certifies", "determined", "consent" or "approved" shall be construed accordingly;
- (o) **Technical Meanings**

Words not otherwise defined herein shall have meanings as commonly used in the English language. Words that have well-known and generally accepted technical or trade meanings in Good Industry Practices are used in this Agreement in accordance with such recognised meanings.
- (p) The Parties acknowledge that damages for specific defaults prescribed under this Agreement (including the Phase I Delay Liquidated Damages, Phase II Delay Liquidated Damages and the Generation Shortfall Liquidated Damages) are a genuine pre-estimation of and reasonable compensation for the Loss and damage that shall be suffered by either Party, due to failure by the defaulting Party to perform its obligations in accordance with this Agreement, and are not in the nature of a penalty.

(q) Priority of agreement, articles and schedules

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

(A) This Agreement; and

(B) All other agreements and documents forming part hereof.

Provided that in case of ambiguities or discrepancies between this Agreement and the Coordination Agreement, this Agreement shall prevail over the Coordination Agreement.

(ii) In case of ambiguities or discrepancies within this Agreement, the following shall apply:

(A) between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;

(B) between the Articles of this Agreement and the Schedules, the Article shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(C) between any two Schedules, the Schedule relevant to the issue shall prevail;

(D) between the written description on the drawings and the specifications and standards, the latter shall prevail; and

(E) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail.

2. PRE-COMMISSIONING ACTIVITIES

2.1. Conditions Subsequent

The SPD and RUMSL shall satisfy the conditions subsequent set out in Article 2.1 (a) and Article 2.1 (b) respectively, at their own cost and risk (if not already fulfilled on the Execution Date). Unless a specific time period is provided for the satisfaction of a particular condition subsequent, the SPD and/or RUMSL shall satisfy or procure the satisfaction of the conditions subsequent for which they are responsible, within 90 (ninety) Days from the Execution Date.

The SPD and RUMSL shall notify each other, with a copy to the Procurer, together with supporting documentation, where relevant, of the satisfaction of the conditions subsequent for

which they are responsible, promptly and, in any event, no later than 5 (five) Days after the date of satisfaction of each such condition subsequent. Within 5 (five) Days from receiving such condition subsequent satisfaction notification, the Procurer shall have the right to issue a notice to the Party which is claiming fulfillment of the condition subsequent, disagreeing on the completion of the relevant condition subsequent, failing which, the condition subsequent shall be deemed to have been satisfied. If the Procurer issues such a notice, RUMSL shall, within 10 (ten) Days of the date of issue of the notice, convene a meeting of the Coordination Committee, in accordance with the Coordination Agreement, for a final determination of whether the relevant condition subsequent has been duly satisfied.

(a) ***SPD's Condition Subsequent***

The SPD shall satisfy the following conditions subsequent (if not already fulfilled on the Execution Date):

- (i) within 90 (ninety) Days or such extended period as may be reasonably agreed in accordance with Article 2.3, obtain all the Applicable Permits that are required to commence and undertake construction of the Unit;
- (ii) within 300 (three hundred) Days from the Execution Date, submit:
 - A. a certificate from all the Lenders, certifying that the SPD has achieved Financial Close and it can draw down the initial funds as available on the Financial Close; and
 - B. a true copy of the executed Financing Documents.

The documents submitted by the SPD in sub-Article (ii) above shall clearly set out: (1) the debt to equity ratio, based on which the Financial Assistance has been provided; and (2) the total quantum of Financial Assistance as on the date of the Financial Close; and

- (iii) If the SPD decides not to avail Financial Assistance to finance the cost of construction of the Unit, then within 210 (two hundred and ten) Days from the Execution Date it shall submit relevant documents evidencing availability of requisite funds to undertake the construction of the Unit in accordance with this Agreement, including a certificate from a chartered accountant, adopted by the SPD's board of directors, which should, at the minimum set out the estimated Unit cost and main source of such funds.

If the SPD decides not to avail Financial Assistance to finance the cost of construction of the Unit, then submission of documents in accordance with this sub-Article (iii) shall be deemed to be Financial Close.

(b) ***RUMSL's Condition Subsequent***

RUMSL shall satisfy the following conditions subsequent (if not already fulfilled on the Execution Date):

- (i) not later than 30 (thirty) Days from the Execution Date, cause the execution of the Unit LUPA and handover of vacant and peaceful possession of at least 90% (ninety percent) of the Unit Land to the SPD;

- (ii) not later than 15 (fifteen) Days from the Execution Date, appoint the relevant contractor(s) for construction of the Internal Evacuation Infrastructure; and
- (iii) execute and (along with the Procurer) procure execution of the Guarantee Agreement.

Upon the fulfilment of all of the RUMSL's conditions subsequent, RUMSL shall issue a notice to the SPD with a copy to the Procurer notifying the SPD of the fulfilment of the RUMSL's conditions subsequent.

2.2 Consequences of Non-Fulfilment of Conditions Subsequent

- (a) If the SPD fails to satisfy any of its conditions subsequent under Article 2.1(a) within the prescribed time period, unless waived in accordance with Article 2.3 or unless such failure is on account of a Force Majeure Event or for reasons solely attributable to the Procurer or RUMSL, the Procurer shall be entitled to encash the Performance Bank Guarantee in the following manner:
 - (i) Delay from 0-84 Days – INR 100,000 (one hundred thousand) per Day.
 - (ii) Delay from 85-150 Days – INR 200,000 (two hundred thousand) per Day.

The amount received by the Procurer upon invocation of the Performance Bank Guarantee, in accordance with this Article 2.2(a), shall be treated as a cash-retention, and to the extent that there are no outstanding claims thereto, shall be released to the SPD, without any interest on such amount, upon the SPD achieving the Unit COD on or before the Unit SCOD, in accordance with Article 4.

- (b) Notwithstanding anything contained in this Agreement, if RUMSL fails to satisfy its conditions subsequent under Article 2.1(b) within the prescribed time period, unless waived in accordance with Article 2.3, the SPD shall be entitled to a day for day extension to the Unit SCOD for such delay up to a period of 5 (five) Months and the Procurer hereby consents to any such extension to the Unit SCOD.

2.3 Waiver or Extension of Conditions Subsequent

- (a) The SPD can request RUMSL for waiver or extension of the time for fulfilment of any or all the SPD's conditions subsequent, with a copy to the Procurer and [SECOND PROCURER'S NAME]. Upon the receipt by RUMSL of a request from the SPD for waiver or extension, RUMSL shall forthwith convene a meeting of the Coordination Committee. The Coordination Committee shall in its discretion and subject to the Applicable Laws, decide to either waive or extend the time period for the fulfilment of any or all of the conditions subsequent to be fulfilled by the SPD or refuse to waive or extend the time period, as the case may be. RUMSL shall notify the decision of the Coordination Committee to the SPD, on or prior to expiry of the prescribed time for fulfilment of the relevant conditions subsequent.

If RUMSL does not notify the decision of the Coordination Committee to the SPD and neither the Procurer nor [SECOND PROCURER'S NAME] conveys any objections in writing to the SPD prior to the expiry of the prescribed time for fulfilment of the relevant conditions subsequent, then the extension of time or waiver, as the case may be, shall be deemed to be granted as requested.

- (b) RUMSL can request the SPD for waiver or extension of the time for fulfilment of any or all the RUMSL's conditions subsequent, with a copy to the Procurer and [SECOND PROCURER'S NAME]. Upon the receipt by the SPD of a request from RUMSL for waiver or extension, SPD, may either waive or extend the time period for the fulfilment of any or all of the conditions subsequent to be fulfilled by RUMSL. SPD shall notify its decision to RUMSL, with a copy to the Procurer and [SECOND PROCURER'S NAME], on or prior to expiry of the prescribed time for fulfilment of the relevant conditions subsequent.
- (c) The notices issued by the SPD or RUMSL, as the case may be, notifying waiver or extension of the relevant condition subsequent (**CS Waiver Notice**) shall state that:
 - (i) the condition subsequent is being waived; or
 - (ii) the number of Days by which the time period for fulfilment of the condition subsequent in question is being extended, as the case may be;
 - (iii) the number of Days by which Unit SCOD is being extended.

Pursuant to the issuance of the CS Waiver Notice, any increase in the time period for completion of conditions subsequent mentioned under Article 2.1 or any other time period so specified in the Agreement, may also lead to an extension of the Unit SCOD and the Procurer hereby consents to any such extension of the Unit SCOD.

- (d) If the SPD fails to perform a condition subsequent within the extended period stated in a CS Waiver Notice or any other extended period provided in accordance with this Agreement, the Procurer shall be entitled to terminate this Agreement forthwith by issuing a notice to the SPD and RUMSL.
- (e) Without prejudice to the foregoing provisions, the Parties expressly agree that in the event that the CS Completion Date does not occur, except in the case of the SPD's condition subsequent to achieve the Financial Close under Article 2.1(a)(ii) or Article 2.1(a)(iii), as the case may be, for any reason whatsoever, on or before 5 (five) Months from the Execution Date, or the extended period provided in accordance with this Agreement, this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

Provided, however, in the event that the delay in occurrence of the CS Completion Date is for reasons solely attributable to the SPD, including SPD's failure to achieve the Financial Close within the time period set out in Article 2.1(a)(ii) or Article 2.1(a)(iii), as the case may be, for reasons solely attributable to the SPD, then without prejudice to any other right or remedy which the Procurer may have in respect thereof under this Agreement or the Applicable Laws, the Procurer shall be entitled to, without further notice, encash the Performance Bank Guarantee in full. It is further clarified that upon termination of this Agreement in accordance with Article 2.3, the SPD shall not be entitled to any Termination Compensation as set out in Article 14.

2.4 Additional RUMSL Obligation

- (a) RUMSL shall, within 90 (ninety) Days of the Execution Date, handover vacant and peaceful possession of the remaining 10% (ten percent) of the Unit Land to the SPD.

The SPD, RUMSL and NRED shall, within 90 (ninety) Days of the Execution Date, execute additional land use permission agreement(s) in respect of the remaining 10%

(ten percent) of the Unit Land. Such additional land use permission agreement(s) shall be on the same terms and conditions as the Unit LUPA. RUMSL shall cause NRED to execute such additional land use permission agreement(s).

- (b) Notwithstanding anything contained in this Agreement, if RUMSL fails to fulfil its obligation set out in Article 2.4(a), then the SPD shall be entitled to a day for day extension for commissioning the capacity proportional to the percentage of the Unit Land not provided by RUMSL. Such extension shall be granted for a period up to 10 (ten) Months from the Execution Date.

For the avoidance of doubt, it is clarified that with respect to the 90% (ninety percent) capacity of the Unit (i.e., 225MW) for which RUMSL has caused NRED to handover corresponding 90% (ninety percent) of the Unit Land, the provisions of this Agreement shall apply *mutatis mutandis* to such 90% (ninety percent) capacity.

- (c) Notwithstanding anything contained in this Agreement, if RUMSL fails to fulfil its obligation set out in Article 2.4(a) within 10 (ten) Months from the Execution Date, then the SPD may, within 30 (thirty) Days from the expiry of the 10 (ten) Months period referred to in this Article, request RUMSL and the Procurers to reduce the capacity of the Unit proportional to the percentage of the Unit Land not provided by RUMSL.

Illustration: If upon expiry of 10 (ten) Months from the Execution Date, RUMSL has handed over 97% of the total Unit Land, then the SPD shall have the right to request RUMSL and the Procurers to reduce the capacity by 3% (i.e.7.5MW).

Upon receiving the request from the SPD for reduction in capacity of the Unit, RUMSL and Procurers shall accept such request and promptly communicate their acceptance to the SPD. All provisions of the Agreement, including the definition of the Unit set out in Article 1.1, shall be construed accordingly as if the capacity of the Unit originally was the capacity pursuant to such reduction.

3. PERFORMANCE BANK GUARANTEE

- 3.1 Until the first anniversary of the Unit COD, the unconditional, irrevocable and on-demand Performance Bank Guarantee, in the format set out in Annex 1, shall be for a sum equal to INR 585,000,000 (five hundred and eighty-five million) The SPD may choose to submit the Performance Bank Guarantee in 2 (two) equal parts of INR 292,500,000 (two hundred ninety-two million and five hundred thousand).
- 3.2 After the Unit COD, the SPD shall have the right to reduce the value of the Performance Bank Guarantee to INR 292,500,000 (two hundred ninety-two million and five hundred thousand). If the SPD submits the Performance Bank Guarantee in two parts, then anytime after the Unit COD, upon the SPD's request, the Procurer shall return one of the Performance Bank Guarantee of equivalent amount.

The SPD shall maintain the reduced Performance Bank Guarantee in full force and effect until the first anniversary of the Unit COD plus an additional claim period of 1 (one) Month.

In the event that the capacity of the Unit is reduced in accordance with Article 2.4(c), the SPD shall have the right to reduce the value of the Performance Bank Guarantee proportional to the reduction in the capacity of the Unit.

If the Performance Bank Guarantee is scheduled to expire prior to the first anniversary of the Unit COD, then at least 30 (thirty) Days prior to the scheduled expiry of the Performance Bank

Guarantee, the SPD shall arrange for an extension or replacement of the Performance Bank Guarantee. If the SPD fails to extend or replace the Performance Bank Guarantee in the manner set out in the preceding sentence, the Procurer shall have the absolute and unequivocal right to invoke the Performance Bank Guarantee in full. The amount so received shall be treated as a cash-retention, and to the extent that there are no outstanding claims thereto, shall be released to the SPD, without any interest on such amount, upon the SPD submitting a new Performance Bank Guarantee acceptable to Procurer or upon the first anniversary of the Unit COD.

- 3.3 Without prejudice to its other rights and remedies, the Procurer shall have the right to draw on the Performance Bank Guarantee and claim the amount guaranteed on demand upon the SPD's failure to perform any of its obligations, responsibilities or commitments until the first anniversary of the Unit COD, including for SPD's failure to pay any Phase I Delay Liquidated Damages or Phase II Delay Liquidated Damages, as the case may be, under this Agreement.
- 3.4 If the Procurer draws on the Performance Bank Guarantee, in part or in full, the SPD shall immediately, within 15 (fifteen) Days of such drawing, restore the value of the Performance Bank Guarantee to the amount stated in Article 3.1 or Article 3.2, as the case may be.
- 3.5 If this Agreement is terminated, prior to the expiry of the first anniversary of the Unit COD, for any reason other than those solely attributable to the SPD, the Performance Bank Guarantee shall be released and returned to the SPD within 30 (thirty) Days, subject to the Procurer's right to claim under the Performance Bank Guarantee for any unpaid amounts from the SPD that may have accrued on or prior to such termination.

4. CONSTRUCTION PERIOD

4.1. Commencement and Duration

- (a) Notwithstanding RUMSL's fulfilment of its obligation set out in Article 2.4, the SPD shall commence the construction of the Unit on or after the date on which RUMSL fulfils its conditions subsequent set out in Article 2.1(b) (i) and Article 2.1(b)(ii). The construction period for the Unit shall continue until the Unit COD is achieved (**Construction Period**).
- (b) Except upon occurrence of any event set out in Article 11.1 and subject to Article 2.2(b), Article 2.4(b) and Article 4.4(g), the SPD shall achieve the Unit COD, within 18 (eighteen) Months from the date of completion by RUMSL of its conditions subsequent set out in Article 2.1(b)(i) and Article 2.1(b)(ii) (**Unit SCOD**).
- (c) The SPD may also commission the Unit in parts in accordance with Article 4.4(d).

4.2 Applicable Permits

- (a) Unless already obtained on or before the CS Completion Date, the SPD shall be responsible for obtaining and maintaining all Applicable Permits from the relevant Government Authorities, as and when required, for the SPD and the SPD Related Parties to perform their obligations under this Agreement during the Construction Period.
- (b) The Procurer and RUMSL, shall make reasonable endeavours to assist the SPD in obtaining any Applicable Permits from the relevant Government Authority.
- (c) The SPD shall comply at all times with the requirements of all Applicable Permits and the Applicable Laws in the performance of its obligations under this Agreement and

shall ensure compliance by the SPD Related Parties in performance of their respective obligations.

- (d) The SPD shall be responsible for constructing and commissioning the Unit in accordance with the Applicable Laws, the terms and conditions of this Agreement, conditions specified in any Applicable Permits, Good Industry Practices and the Technical Specifications.

4.3 Monitoring of Construction

- (a) ***Quarterly progress reports***

During the Construction Period, the SPD shall, no later than 15 (fifteen) Days after the close of each quarter, submit to RUMSL, with a copy to the Procurer, a quarterly progress report on progress of the construction works and shall promptly give such other relevant information as may be reasonably required by RUMSL. The quarterly progress report shall set out the following:

- (i) status of the Applicable Permits obtained or to be obtained by the SPD, including the status of compliance with the Applicable Permits obtained and the status of the application filed by the SPD for obtaining an Applicable Permit;
- (ii) status of procurement and delivery of capital equipment required for constructing the Unit;
- (iii) compliance with the health and safety standards required to be complied by the SPD, in accordance with the Applicable Laws, the terms and conditions of this Agreement, conditions specified in any Applicable Permits, Good Industry Practices and the Technical Specifications; and
- (iv) status of the construction activity of the Unit and details on construction timelines to achieve Unit COD on or before the Unit SCOD.

The quarterly progress report shall be in a form to be prepared by RUMSL, in consultation with the SPD and the Procurer, within a reasonable time after the Execution Date.

- (b) If in the reasonable determination of RUMSL and/or the Procurer the rate of progress of the construction of the Unit is such that the Unit is not likely to be commissioned by the Unit SCOD, RUMSL or the Procurer, as the case may be, may notify the SPD to this effect. Within 15 (fifteen) Days of receiving such notice, the SPD shall submit a written response to RUMSL and the Procurer setting out, in reasonable detail, the steps it proposes to take to expedite the construction of the Unit and time period within which it shall achieve the Unit COD.
- (c) RUMSL and the Procurer's monitoring of the construction and commissioning of the Unit shall neither be construed as endorsing the design, construction or commissioning of the Unit by RUMSL or the Procurer nor as any warranty of safety, durability or reliability of the Unit and shall not in any manner relieve the SPD from the obligation to achieve Unit COD by the Unit SCOD.

4.4 Commissioning

- (a) At least 60 (sixty) Days prior to the likely synchronisation of the Unit to the PGCIL Substation, the SPD shall notify WRLDC and the Procurer of its intent to undertake such synchronisation.
- (b) The SPD shall commission the Unit in accordance with the commissioning procedure set out in the Coordination Agreement.
- (c) Upon issuance of a Commissioning Certificate by RUMSL to the SPD, the SPD shall promptly submit a copy of the Commissioning Certificate to the Procurer. The Commissioning Certificate issued by RUMSL shall be final and binding on the Parties. In case RUMSL neither objects to, nor issues a Commissioning Certificate within the time specified in the Coordination Agreement, the Commissioning Certificate shall be deemed to have been issued by RUMSL and the obligations of the Procurer to procure power from the Unit shall start forthwith. However, for the purpose of completion of records, RUMSL shall be required to issue a certificate within 15 (fifteen) Days of such deemed issuance of the Commissioning Certificate (**Confirmation Certificate**). The Confirmation Certificate shall record the date of the deemed issuance of the Commissioning Certificate. It is clarified that the Procurer's obligations to procure power from the Unit shall not be affected by any delay or adverse observation by RUMSL in the Confirmation Certificate if such adverse objections were not raised by RUMSL prior to the deemed issuance of the Commissioning Certificate. The SPD shall however be required to address, within a period of 2 (two) Months of issuance of the Confirmation Certificate, any material deviations from the commissioning requirements that RUMSL may point out in the Confirmation Certificate.

(d) ***Part Commissioning***

The SPD shall commission the Unit in parts for the purposes of receiving the Commissioning Certificate or the Confirmation Certificate, as the case may be, in the following manner:

The SPD shall commission the first part with a minimum installed capacity of 5 MW (**Initial Part Capacity**) within a period of 240 (two hundred and forty) Days from the date of completion by RUMSL of its conditions subsequent set out in Article 2.1(b) (i) and Article 2.1(b)(ii) or within 30 (thirty) Days of the First Handover of the Internal Evacuation Infrastructure, whichever is later. The Procurer shall deduct, from the reimbursement to the SPD under Article 10.5(b) if any charges mentioned in Article 10.5(a) that may become payable solely in respect of the period of delay in commissioning of the Initial Part Capacity beyond the above-mentioned timeline.

Upon commissioning the Initial Part Capacity, the SPD shall commission the next part capacity with a minimum installed capacity of 20 MW and the remaining capacity in parts of 25 MW or multiples thereof (**Part Capacities**). Provided that if the capacity of the Unit is reduced in accordance with Article 2.4(c), then the last part of the capacity, which is not 25 MW, shall also be considered as the Part Capacity.

It is clarified that the SPD shall be permitted to commission any Part Capacity in combination with a subsequent Part Capacity consistent with the handover timelines committed by RUMSL in relation to the Internal Evacuation Infrastructure under the Implementation Support Agreement.

Upon issuance of the Commissioning Certificate or the Confirmation Certificate, as the case may be, for the Initial Part Capacity or any subsequent Part Capacity, the Tariff

Payment shall become payable and the provisions of this Agreement shall apply to each such Initial Part Capacity and/or Part Capacity(ies), as may be relevant.

It is further clarified that the Parties agree that upon issuance of the Commissioning Certificate or the Confirmation Certificate, as the case may be, for the Initial Part Capacity and/or any Part Capacity(ies), the rights and obligations of the Parties for and in respect of that Initial Part Capacity and/or Part Capacity shall be construed accordingly.

- (e) The **Unit COD** shall be achieved on the date of commissioning of the Initial Part Capacity and all subsequent Part Capacities, aggregating to a capacity of 250 MW or as reduced in accordance with Article 2.4. The Deemed COD shall be achieved in accordance with Article 4.4(g). For the purposes of determining the date of commissioning of the Initial Part Capacity and the Part Capacities, the date of the Commissioning Certificate or the date of the deemed issuance of Commissioning Certificate as mentioned in the Confirmation Certificate shall be referred to.
- (f) If the SPD, for reasons solely attributable to the SPD, fails to commission 100 MW capacity by the Unit SCOD, then without prejudice to any other right or remedy which the Procurer may have in respect thereof under this Agreement or the Applicable Laws, the Procurer shall be entitled to, without further notice, encash the Performance Bank Guarantee in full and terminate this Agreement. It is further clarified that upon termination of this Agreement in accordance with this Article, the SPD shall not be entitled to any Termination Compensation.
- (g) If at any time prior to the Long Stop Date, the SPD has commissioned 200 MW capacity, then, subject to the provisions of Article 4.5, the SPD may choose to furnish to the Procurer, within 5 (five) Days of the issue of the Commissioning Certificate or the Confirmation Certificate, as the case may be, an unconditional, irrevocable and on-demand bank guarantee, issued by a Scheduled Bank, for a sum equal to INR 160,000,000 (one hundred and sixty million) (**Deemed COD PBG**). Upon submission of the Deemed COD PBG, the date on which the SPD has commissioned 200 MW capacity shall be the **Deemed COD**.

The SPD shall maintain the Deemed COD PBG in full force and effect until the Unit COD is achieved, plus an additional claim period of 1 (one) Month. If the Deemed COD PBG is scheduled to expire prior to the specified period, then at least 30 (thirty) Days prior to the scheduled expiry of the Deemed COD PBG, the SPD shall arrange for an extension or replacement of the Deemed COD PBG. If the SPD fails to extend or replace the Deemed COD PBG in the manner set out in the preceding sentence, the Procurer shall have the absolute and unequivocal right to invoke the Deemed COD PBG in full. The amount so received shall be treated as a cash-retention, and to the extent that there are no outstanding claims thereto, shall be released to the SPD, without any interest on such amount, upon the SPD submitting a new Deemed COD PBG acceptable to Procurer or within 30 (thirty) Days from the Unit COD.

The Deemed COD PBG shall be substantially in the format set out in Annex 1, to be modified, *mutatis mutandis*, for this purpose.

4.5 Delay Liquidated Damages

- (a) If the SPD fails to achieve the Unit COD by the Unit SCOD for reasons other than those set out in Article 11.1, but has achieved Deemed COD, then the SPD shall pay liquidated damages to the Procurer at the rate of INR 700,000 (seven hundred thousand) for each day of delay from the Unit SCOD, until the expiry of 6 (six) Months from the Unit SCOD (**Long Stop Date**) subject to the overall liability set out in accordance with Article 11.3 (**Phase I Delay Liquidated Damages**).
- (b) If the SPD fails to achieve the Unit COD or the Deemed COD by the Unit SCOD, for reasons other than those set out in Article 11.1, but has commissioned capacity more than 100 MW, then:
- (i) the SPD shall pay liquidated damages to the Procurer at the rate of INR 2,100,000 (two million and one hundred thousand) for each day of delay from the Unit SCOD, until the Long Stop Date, subject to the overall liability set out in accordance with Article 11.3 (**Phase II Delay Liquidated Damages**); and
- (ii) within 5 (five) Days of the Unit SCOD, the SPD shall be required to furnish to the Procurer an unconditional, irrevocable and on-demand bank guarantee, issued by a Scheduled Bank, for a sum equal to INR 480,000,000 (four hundred and eighty million) (**Additional PBG**). The SPD shall maintain the Additional PBG in full force and effect until the Deemed COD is achieved plus an additional claim period of 1 (one) Month. If the Additional PBG is scheduled to expire prior to the specified period, then at least 30 (thirty) Days prior to the scheduled expiry of the Additional PBG, the SPD shall arrange for an extension or replacement of the Additional PBG. If the SPD fails to extend or replace the Additional PBG in the manner set out in the preceding sentence, the Procurer shall have the absolute and unequivocal right to invoke the Additional PBG in full. The amount so received shall be treated as a cash-retention, and to the extent that there are no outstanding claims thereto, shall be released to the SPD, without any interest on such amount, upon the SPD submitting a new Additional PBG acceptable to Procurer or within 30 (thirty) Days from the Unit COD.

The Additional PBG shall be substantially in the format set out in Annex 1, to be modified, *mutatis mutandis*, for this purpose.

- (c) Notwithstanding payment of Phase I Delay Liquidated Damages or Phase II Delay Liquidated Damages and/or Additional PBG, as the case may be, the SPD shall, except upon occurrence of any event set out in Article 11.1, achieve the Deemed COD on or before the Long Stop Date.
- (d) If the SPD, for reasons solely attributable to the SPD, fails to achieve the Deemed COD by the Long Stop Date, then without prejudice to any other right or remedy which the Procurer may have in respect thereof under this Agreement or the Applicable Laws, the Procurer shall be entitled to, without further notice, encash the Performance Bank Guarantee and the Additional PBG in full and terminate this Agreement. It is further clarified that upon termination of this Agreement in accordance with this Article, the SPD shall not be entitled to any Termination Compensation.
- (e) If, on the Long Stop Date, the SPD has failed to achieve the Unit COD, but has achieved the Deemed COD, then the SPD shall, within 5 (five) Days of the Long Stop Date, extend the validity of the Deemed COD PBG until the expiry of 6 (six) Months from the Long Stop Date (**Extended Long Stop Date**) plus an additional claim period of 1 (one) Month. If the Deemed COD PBG is scheduled to expire prior to Extended Long

Stop Date, then at least 30 (thirty) Days prior to the scheduled expiry of the Deemed COD PBG, the SPD shall arrange for an extension or replacement of the Deemed COD PBG. If the SPD fails to extend or replace the Deemed COD PBG in the manner set out in the preceding sentence, the Procurer shall have the absolute and unequivocal right to invoke the Deemed COD PBG in full. The amount so received shall be treated as a cash-retention, and to the extent that there are no outstanding claims thereto, shall be released to the SPD, without any interest on such amount, upon the SPD submitting a new Deemed COD PBG acceptable to Procurer or within 30 (thirty) Days from the Unit COD.

Upon submission of the Deemed COD PBG, the SPD shall, except upon occurrence of any event set out in Article 11.1, achieve the Unit COD, on or before the Extended Long Stop Date.

- (f) If the SPD, for reasons solely attributable to the SPD, fails to achieve the Unit COD on the Extended Long Stop Date, then without prejudice to any other right or remedy which the Procurer may have in respect thereof under this Agreement or the Applicable Laws, the Procurer shall be entitled, without further notice, encash the Performance Bank Guarantee, the Additional PBG and the Deemed COD PBG (if provided) in full, and terminate this Agreement. It is further clarified that upon termination of this Agreement in accordance with this Article, the SPD shall not be entitled to any Termination Compensation.

If the SPD achieves the Unit COD on or before the Extended Long Stop Date, then the Procurer shall release and return the Additional PBG and the Deemed COD PBG (if provided) to the SPD, within 30 (thirty) Days from the Unit COD.

If this Agreement is terminated, prior to the Extended Long Stop Date, for any reason other than those solely attributable to the SPD, the Additional PBG and the Deemed COD PBG (if provided) shall be released and returned to the SPD within 30 (thirty) Days of such termination, subject to Procurer's right to claim under the Additional PBG and the Deemed COD PBG (if provided) for any unpaid amounts from the SPD that may have accrued prior to such termination.

- (g) In the event that the SPD fails to achieve any of the obligations set out in Article 4.4 and Article 4.5, for reasons directly attributable to one or more of the events set out in Article 11.1, then the SPD shall not be liable to pay any Phase I Delay Liquidated Damages or Phase II Delay Liquidated Damages, as the case may be, and the time period to achieve the Unit COD shall be extended on a day for day basis for the period of time that the SPD was unable to achieve the Unit COD on account of one or more of the events set out in Article 11.1 or any additional time period that may be granted to the SPD, in accordance with the provisions of the Implementation Support Agreement. The SPD shall promptly notify the Procurer, with a copy to RUMSL, of any additional time period granted to it under the Implementation Support Agreement.
- (h) If the SPD fails to achieve the Unit COD on or before the Long Stop Date, on account of one or more of the events set out in Article 11.1, without prejudice to any other right or remedy which the SPD may have in respect thereof under this Agreement or the Applicable Laws, the SPD shall have the right to terminate this Agreement, in accordance with the procedure set out in Article 13. Unless provided otherwise in this Agreement, in the event the SPD terminates this Agreement for reasons set out in Article 11.1, the Procurer shall not be liable to pay any Termination Compensation to the SPD.

4.6 Performance Assessment

- (a) The Procurer shall assess the performance of the Unit at the expiry of the 3 (three) Contract Years from the Unit COD or the Deemed COD, whichever is earlier.
- (b) The performance assessment shall be undertaken by verifying whether the Unit has supplied at the Delivery Point, energy equal to or more than the average of the aggregate Minimum Supply Obligation quantum (as applicable both to the Procurer and [SECOND PROCURER'S NAME], under their respective power purchase agreements) over a period of 3 (three) Contract Years (**First Performance Assessment**). The verification shall be based on regional energy accounts and Monthly Bills.

Illustration: *If the Unit supplies 75 MUs, 85 MUs and 95 MUs to [SECOND PROCURER'S NAME] and 280 MUs, 285 MUs and 330 MUs to [FIRST PROCURER'S NAME], over first three Contract Years, then the aggregate energy supplied from the Unit is 355 MUs, 370 MUs and 425 MUs, which is equivalent to an average aggregate energy supplied of 383 MUs. This being more than 339 MUs (i.e. 257 MU + 82 MU), the Unit would be considered to have cleared the First Performance Assessment.*

- (c) If the SPD fails to meet the First Performance Assessment, then the SPD shall be required to provide to the Procurer an unconditional, irrevocable and on-demand bank guarantee for a sum equal to INR 585,000,000 (five hundred and eighty-five million) (**Assessment BG**). The Assessment BG shall be valid for a period of at least 36 (thirty-six) Months from the date of submission of the Assessment BG or completion of the Second Performance Assessment, whichever is later, plus an additional claim period of 1 (one) Month.

If the Assessment BG is scheduled to expire prior to the 36 (thirty-six) Months period or completion of the Second Performance Assessment, whichever is later, then at least 30 (thirty) Days prior to the scheduled expiry of the Assessment BG, the SPD shall arrange for an extension or replacement of the Assessment BG. If the SPD fails to extend or replace the Assessment BG in the manner set out in the preceding sentence, the Procurer shall have the absolute and unequivocal right to invoke the Assessment BG in full. The amount so received shall be treated as a cash-retention, and to the extent that there are no outstanding claims thereto, shall be released to the SPD, without any interest on such amount, upon the SPD submitting a new Assessment BG acceptable to Procurer or within 30 (thirty) Days.

The Assessment BG shall be substantially in the format set out in Annex 1, to be modified, *mutatis mutandis*, for this purpose.

If this Agreement is terminated, prior to the completion of the Second Performance Assessment, for any reason other than those solely attributable to the SPD, the Assessment BG shall be released and returned to the SPD within 30 (thirty) Days of such termination, subject to Procurer's right to claim under the Assessment BG for any unpaid amounts from the SPD that may have accrued prior to such termination.

- (d) If the SPD fails to meet the First Performance Assessment, the Procurer shall conduct a re-assessment at the expiry of the 3 (three) Contract Years immediately subsequent to the First Performance Assessment by verifying whether the Unit has supplied, at the

Delivery Point, energy equal to or more than the average of the aggregate Minimum Supply Obligation quantum (as applicable both to the Procurer and [SECOND PROCURER'S NAME], under their respective power purchase agreements) over a period of the 3 (three) Contract Years immediately subsequent to the First Performance Assessment (**Second Performance Assessment**).

- (e) If the SPD fails the Second Performance Assessment, then without prejudice to any other right or remedy which the Procurer may have in respect thereof under this Agreement or the Applicable Laws, the Procurer shall be entitled to, without further notice, encash the Assessment PBG in full and terminate this Agreement. Such termination shall be treated as termination on account of an SPD Event of Default.
- (f) The Assessment BG shall be released and returned to the SPD, within 30 (thirty) Days from the successful completion of the Second Performance Assessment.

5. MINIMUM EQUITY HOLDING/ EQUITY LOCK

5.1 Ownership Structure

The Selected Bidder has caused the SPD to be incorporated as a special purpose company to implement, operate and maintain the Unit in accordance with this Agreement. The shareholding pattern of the SPD is as follows:

S. No.	Name of the shareholder	Number of shares held	Nature of the shares [equity/preference]	Value of the shares held [in INR]	Shareholding [in %]

The SPD represents and warrants to the Procurer that at the Execution Date, the legal and beneficial ownership of the SPD is as represented above and that no arrangements are in place that have or may have or shall result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares of the SPD.

The provisions of this Article 5.1 shall not be applicable if the SPD is a listed entity.

5.2 Shareholding

- (a) The Selected Bidder shall ensure that the Selected Bidder, legally and beneficially holds not less than 51% (fifty-one percent) of the total Capital and voting rights of the SPD until the expiry of a period of 1 (one) year from the Unit COD.
- (b) Upon the expiry of a period of 1 (one) year from Unit COD, the Selected Bidder shall be entitled to dilute their/its Capital and voting rights in the SPD, without seeking any prior consent from the Procurer or RUMSL.
- (c) Nothing contained in this Article shall preclude or prevent a pledge of the SPD's shares in favour of Lenders as Security for the Financial Assistance.

It is clarified that any enforcement and consequent transfer of such pledged shares by the Lenders shall be in accordance with the Financing Documents and the Substitution Agreement.

- (d) The provisions of this Article 5.2 shall not be applicable if the SPD is a listed entity.

5.3 Constituent Documents

- (a) The SPD shall ensure that its articles of association adequately reflect the provisions of Article 5.2 and the relevant commitments, obligations and responsibilities of the Selected Bidder.
- (b) Until the Unit COD, any subsequent change in the memorandum of association or the articles of association of the SPD which intend to amend the provisions required to in Article 5.2 shall require prior written approval of the Procurer and the memorandum of association and the articles of association of the SPD shall include a specific provision to this effect.
- (c) The provisions of this Article 5.3 shall not be applicable if the SPD is a listed entity.

6. SUPPLY ARRANGEMENTS

- 6.1 The energy generated from the Unit shall be injected at the Injection Point for sale to the Procurer, through the Internal Evacuation Infrastructure, in accordance with the Coordination Agreement.
- 6.2 Prior to testing and synchronisation of the Unit, the SPD shall comply with all requirements of the Central Electricity Regulatory Commission (Grant of Connectivity, Long- term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 and also ensure that energy is injected in full compliance with the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007.
- 6.3 The SPD shall be responsible for designing, constructing, testing, operating and maintaining the Unit in accordance with the Applicable Laws, the terms and conditions of this Agreement, conditions specified in any Applicable Permits, Good Industry Practices and the Technical Specifications.

7. SYSTEM OPERATIONS

7.1. Operation and Maintenance of Supply System

- (a) The SPD shall abide by grid discipline as may be mandated by the Grid Code and any other requirements and directions, as may be specified by SLDC/RLDC and/or the Appropriate Commission from time to time.
- (b) The SPD shall, at its own cost, make adequate arrangements, as may be approved by PGCIL, for automatic isolation of its system in the event of any fault in either the SPD or PGCIL's system.
- (c) The Procurer shall not be responsible for any damage to any equipment installed by the SPD, which is caused on account of any fault in the SPD system, Internal Evacuation Infrastructure or PGCIL's system and shall not be responsible to pay any compensation for any such damage. RUMSL shall, at SPD's cost, provide circuit breaker rated voltage 33 kV or above, as the case may be, and adequate protection at its end to ensure that no damage is done to its system on account of any fault in the SPD's system. Alternatively, RUMSL may require the SPD to directly procure and install this equipment at the SPD's own cost. In either case, the repair/replacement/maintenance

of such protection equipment shall be at the cost of the SPD. Relays at the SPD's area's grid should be tested at intervals of 12 (twelve) Months.

7.2. System Operation and Scheduling

- (a) The WRLDC shall be the nodal agency for system operation, power accounting, scheduling, etc. The fees and charges of WRLDC as approved by the Appropriate Commission shall be payable by the SPD to WRLDC.
- (b) The power accounting shall be done as per the Grid Code and in accordance with the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014.
- (c) RUMSL shall be responsible for facilitating the drawal schedule of [SECOND PROCURER'S NAME] and shall liaise with the SPD, the Procurer and WRLDC, in accordance with the terms of the Coordination Agreement.
- (d) The Procurer and the SPD shall undertake forecasting, scheduling, dispatching and energy accounting of the power generated from the Unit and the Procurer shall procure such power in accordance with the Coordination Agreement, including the final drawl schedule (prepared in accordance with the Coordination Agreement) and the Applicable Laws, including the Grid Code.

7.3. Open Access

RUMSL shall, for the Term, obtain and maintain the Connectivity and Long Term Access for evacuation of power from the PGCIL Substation in accordance with the applicable CERC regulations, by initially meeting the Application Fee for the entire Rewa Solar Project and then seeking re-imburement of one-third of the total charges from the SPD.

The Application Fee payable by RUMSL towards Connectivity and Long Term Access shall be reimbursed by the SPD at actuals, within 30 (thirty) Days of an invoice being raised by RUMSL in this regard. The SPD shall not be entitled to claim a reimbursement from the Procurer of such Application Fee paid to RUMSL.

8. SALE AND PURCHASE OF SOLAR ENERGY

8.1 Expected Energy Offtake

Without in any manner limiting the Procurer's obligation in respect of Guaranteed Energy Offtake, as set out in Article 8.2(a), the Procurer expects to procure 357 MUs of solar energy generated from the Unit and delivered by the SPD at the Delivery Point in each Contract Year.

8.2 Guaranteed Energy Offtake

- (a) For each Contract Year, including the First Contract Year, the Procurer agrees and undertakes to procure at least 411 MUs of solar energy generated from the Unit and delivered by the SPD at the Delivery Point in each Contract Year (**Guaranteed Energy Offtake**).
- (b) It is clarified that the Procurer is committed to purchase and pay for all power scheduled for the Procurer in accordance with the Coordination Agreement. It is clarified that, if in any Contract Year the Unit was available to supply to the Procurer, energy equivalent to the Guaranteed Energy Offtake, as evidenced by the SPD Generation Schedule and

the [SECOND PROCURER'S NAME] Drawl Schedule (*as defined in the Coordination Agreement*), but the Procurer fails to comply with its Guaranteed Energy Offtake obligation, as set out in Article 8.2(a), the Procurer shall pay to the SPD, for the shortfall in the Guaranteed Energy Offtake quantum, the Applicable Tariff for such shortfall, within 30 (thirty) Days of the SPD raising an invoice for such shortfall along with supporting documentary evidence. The Procurer and the SPD agree and acknowledge that the determination and computation of the shortfall in the amount of power offtake by the Procurer below the Guaranteed Energy Offtake shall be done as a part of the annual reconciliation to be conducted in accordance with Article 10.8. For the avoidance of any doubt, it is clarified that the determination and computation of the Guaranteed Energy Offtake quantum shall be undertaken on a Contract Year basis and not on a monthly or quarterly basis.

- (c) For the period commencing from the commissioning of the Initial Part Capacity until the date on which the SPD achieves the Deemed COD, the Procurer's Guaranteed Energy Offtake obligation proportional to the Part Capacity shall commence from the date on which Commissioning Certificate or the Confirmation Certificate, as the case may be, or the date of deemed issuance mentioned in the Confirmation Certificate, for such Part Capacity is issued, in accordance with Article 4.4(b). For the avoidance of doubt, it is clarified that in case of part commissioning of the Unit, the quantum of energy towards the Guaranteed Energy Offtake obligation of the Procurer until the Deemed COD shall be proportionate to the commissioned capacity of such Part Capacity.

Illustration: If the SPD commissions an Initial Part Capacity of 5 MW and subsequently after 3 months, commissions another 45 MW and after a further 6 months achieves Deemed COD, the Guaranteed Energy Offtake for the 9-month period prior to the Deemed COD shall be $(5/250) \times (3/12) \times 411 + (50/250) \times (6/12) \times 411 = (1/50) \times (1/4) \times 411 + (1/5) \times (1/2) \times 411 = 2.055 + 41.1 = 43.155 \text{ MU}$.

- (d) If, in any Contract Year, [SECOND PROCURER'S NAME] pays to the SPD tariff payment for the shortfall in energy offtake by [SECOND PROCURER'S NAME] below the guaranteed energy offtake under the [SECOND PROCURER'S NAME] PPA (**[SECOND PROCURER'S NAME] Shortfall**), and further to the extent such [SECOND PROCURER'S NAME] Shortfall is scheduled to the Procurer, then as a part of the annual reconciliation to be conducted in accordance with Article 10.8, the following sums shall be deducted by the Procurer from the Tariff Payments payable by the Procurer to the SPD under this Agreement:
- (i) 75% of Applicable Tariff for the lesser of (a) the energy scheduled to [FIRST PROCURER'S NAME] in excess of the Guaranteed Energy Offtake; and (b) the [SECOND PROCURER'S NAME] Shortfall scheduled to [FIRST PROCURER'S NAME]; plus
 - (ii) Applicable Tariff for the balance of [SECOND PROCURER'S NAME] Shortfall scheduled to [FIRST PROCURER'S NAME], if any left after adjustment as in (i) above

It is clarified that, to the extent possible, such deduction from the Monthly Invoices shall be made in the first billing cycle or if needed in the subsequent billing cycles of the succeeding Contract Year.

- (e) It is clarified that the Procurer shall have the right but not an obligation to procure energy in excess of the Guarantee Energy Offtake quantum. If the Procurer does not

communicate its decision to offtake the excess power within 3 (three) Business Days of the SPD offering the same in writing, then the SPD shall be free to offer the excess power to any third party in accordance with the Project Agreements.

- (f) The Procurer also undertakes, on a best endeavours basis, to procure at least 80 MUs of solar energy generated from the Unit in each quarter of a Contract Year.
- (g) If in any quarter in a Contract Year, RUMSL assesses, based on a review of the regional energy accounts and Monthly Bills, that the energy offtake of the Procurer varies substantially and as a consequence of which the Procurer may either off-take its entire Guaranteed Energy Offtake quantum prior to the expiry of the Contract Year or fail to off-take its Guaranteed Energy Offtake quantum prior to the expiry of the Contract Year, then RUMSL shall notify the same to the Procurer. Upon the Procurer receiving such intimation from RUMSL, the Procurer shall take appropriate action to ensure that its subsequent drawal schedules are prepared in a manner that it meets the Guaranteed Energy Offtake spread across each Month in a Contract Year on a proportionate basis.

8.3 Minimum Supply Obligation

- (a) In each Contract Year, including the First Contract Year, the SPD shall supply to the Procurer at the Delivery Point a minimum of 257 MUs in each Contract Year (**Minimum Supply Obligation**).
- (b) **Generation Shortfall Liquidated Damages:** If the SPD fails to fulfil its Minimum Supply Obligation set out in Article 8.3(a), for reasons other than those set out in Article 11.1, it shall pay liquidated damages to the Procurer (**Generation Shortfall Liquidated Damages**), to the extent of their liability set out in Article 11.3.

The Generation Shortfall Liquidated Damages shall be:

the higher of:

- (i) [average tariff (as set out in the then applicable tariff order issued by MPERC) of power procured by the Procurer in last 3 (three) Financial Years from ground mounted and grid-connected solar PV power projects located within Madhya Pradesh] (minus) [the Applicable Tariff] x [kWh of generation shortfall];
- (ii) [Average Power Purchase Cost or APPC for [FIRST PROCURER'S NAME] (as set out in the then applicable tariff order, issued by MPERC) (minus) [the Applicable Tariff] x [kWh of generation shortfall]; or
- (iii) the average prevailing price of solar renewable energy certificates, as determined in accordance with the Applicable Law x [kWh of generation shortfall].

For the avoidance of doubt, it is clarified that for the purposes of computing generation shortfall, the energy supplied at the Delivery Point and metered at the Metering Point shall be taken into account.

- (c) The Procurer and the SPD agree and acknowledge that the determination and computation of the SPD's failure to meet the Minimum Supply Obligation and Generation Shortfall Liquidated Damages shall be done as a part of the annual reconciliation to be conducted in accordance with Article 10.8.

(d) After the Unit COD, if the SPD's performance of its obligation under Article 8.3 is directly and adversely affected by any one of the following events for reasons not attributable to the SPD:

- (i) non-availability or partial availability of power evacuation system beyond the Delivery Point; or
- (ii) receipt of backing down instructions from the RLDC, and

such event subsists for more than 50 (fifty) Generation Hours in a Contract Year, then the SPD shall immediately notify the Procurer and RUMSL of the occurrence of such event(s) with the relevant documentary evidence. Upon receipt of the notice from the SPD and unless the Procurer, acting reasonably, disputes in writing of such occurrence, the Procurer shall, for the Generation Hours in excess of 50 (fifty) Generation Hours in any Contract Year, be liable to pay to the SPD the Applicable Tariff for the average quantum of energy generated during three time periods of equal duration immediately preceding the above events considering only those time periods that were not affected by backed down or grid issues. If three corresponding preceding periods unaffected by generation loss are not available on the same day of the generation loss, then corresponding immediately succeeding periods may be considered for the calculation of average generation.

Illustration: If there is a loss of 0.5 Generation Hour each in time periods 1030 - 1100 hours and in 1200 - 1230 hours, then in respect of the second loss i.e. for 1200 - 1230 hours, the Procurer shall be liable to pay to the SPD the Applicable Tariff for the average quantum of energy generated in the three 0.5 hours periods 1000 - 1030 hours, 1100 - 1130 hours and 1130 - 1200 hours. The period 1030 - 1100 hours is not included in calculating the average because it also was affected by backed down or grid issues.

The generation loss payable by the Procurer to the SPD in accordance with this Article 8.3(d) shall be deducted from the Guaranteed Energy Offtake and Minimum Supply Obligation quantum for the relevant Contract Year.

It is clarified that any amounts payable under this Article by the Procurer to the SPD shall be payable if the events set out in this Article occur for reasons not attributable to unavailability of grid on account of security or safety of equipment or personnel in accordance with the Grid Code.

(e) The Excess Over Drawl Payment, if any, shall be payable by the SPD to the Procurer. This payment shall constitute one of the adjustments to be done at the time of the annual reconciliation in accordance with Article 10.8.

8.4 Re-powering

- (a) Without in any manner affecting the obligation and liability of the Procurer under this Agreement, including but not limited to the Guaranteed Energy Offtake and Termination Compensation, the SPD, at any time after the Unit COD, shall have the right to carry out any modifications to the Unit to enhance the efficiency the Unit.
- (b) Notwithstanding SPD's exercise of the right in accordance with Article 8.4(a), the SPD at all times shall ensure that the Unit is in compliance with the Applicable Laws, the terms and conditions of this Agreement, conditions specified in any Applicable Permits, Good Industry Practices and the Technical Specifications.

9. MEASURING AND METERING

- 9.1 Installation of meters, meter testing, meter calibration, meter reading and all matters incidental thereto, shall be undertaken in accordance with the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and the specifications set out in Schedule 2.
- 9.2 The SPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at the SPD's side of Delivery Point.

10. BILLING AND POWER ACCOUNTING

10.1 General

The Procurer's obligation to pay to the SPD the Tariff Payments, in accordance with this Article, shall commence from the date on which RUMSL issues the Commissioning Certificate or the date of deemed issuance of the Commissioning Certificate as mentioned in the Confirmation Certificate for the Initial Part Capacity or the SPD achieving the Unit COD or Deemed COD, whichever is the earliest, in accordance with this Agreement. All amounts payable by the Parties under this Agreement, including the Tariff Payments, shall be in Indian Rupees.

10.2 Delivery and Content of Monthly Bills/Supplementary Bills

- (a) The SPD shall issue to the Procurer a signed Monthly Bill/Supplementary Bill, along with the energy details obtained from regional energy accounts validating the total energy for which the Monthly Bill/Supplementary Bill has been generated. Monthly Bill/Supplementary Bill shall be raised by the SPD for the immediately preceding Month between the 5th (fifth) Day and the 15th (fifteenth) Day of the next Month.

The Monthly Bill shall be in accordance with the format to be agreed between the Procurer and the SPD, at least 30 (thirty) Days prior to the commissioning of the Initial Part Capacity.

- (b) Each Monthly Bill shall include all charges for the energy supplied by the SPD at the Delivery Point for the relevant Month, which shall be based on the regional energy accounts, issued by RLDC or any other competent authority and shall be binding on both the SPD and the Procurer. The Monthly Bill amount shall be the product of the energy supplied at the Delivery Point (as evidenced through the regional energy accounts) and the Applicable Tariff.

10.3. Billing and Power Accounting

For the purposes of preparing Monthly Bills and/or Supplementary Bills, information of power (kWh) delivered at the Delivery Point, as communicated by WRLDC in writing on a Monthly basis, shall be taken into account.

10.4 Payment of Monthly Bills and Supplementary Bills

- (a) Procurer shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date.

- (b) In the event that there are any undisputed amounts due and payable to the Procurer by the SPD under this Agreement which are not paid within 30 (thirty) Days of receipt of an invoice by the SPD the Procurer shall have the right to set-off such amounts against the Tariff Payments.
- (c) In the event that the SPD fails to pay, in full, any and all charges payable to RUMSL under the Implementation Support Agreement and such charges remain unpaid for more than 30 (thirty) Days from the relevant due date under the Implementation Support Agreement, then the Parties agree and acknowledge that RUMSL shall have the right to recover such undisputed charges from the Tariff Payments due to the SPD under this Agreement. RUMSL shall issue a notice to the Procurer, with a copy to the SPD, requiring the Procurer to set off such undisputed charges from the Tariff Payments payable by the Procurer to the SPD. Upon receipt of such notice, the Procurer shall, within 60 (sixty) Days of the date of the notice, set off such amount equivalent to the undisputed charges from the Tariff Payments and pay the unpaid amounts to RUMSL. Any Tariff Payment remaining after the set-off shall be paid to the SPD.
- (d) In the event that the SPD fails to pay RUMSL or the relevant authority charges mentioned in Article 10.5 (a) that may become payable by the SPD solely in respect of the period of delay in commissioning of the Initial Part Capacity beyond the timeline as mentioned in Article 4.4 (d), then the Parties agree and acknowledge that RUMSL shall have the right to recover such charges from the Tariff Payments due to the SPD under this Agreement. RUMSL shall issue a notice to the Procurer, with a copy to the SPD, requiring the Procurer to set off such undisputed charges from the Tariff Payments payable by the Procurer to the SPD. Upon receipt of such notice, the Procurer shall, within 60 (sixty) Days of the date of the notice, set off such amount equivalent to the undisputed charges from the Tariff Payments and pay the unpaid amounts to RUMSL. Any Tariff Payment remaining after the set-off shall be paid to the SPD.
- (e) The SPD shall open a bank account at [*Insert name of the bank and the relevant branch*]* (**SPD's Designated Account**) for all payments to be made by the Procurer to the SPD under this Agreement, including Tariff Payments including payment to be made under the Supplementary Bills, and notify the Procurer of the details of such account at least 90 (ninety) Days before the dispatch of the first Monthly Bill. The Procurer shall also designate a bank account at (Account No.: []) (**Procurer's Designated Account**) for payments to be made by the SPD to Procurer under this Agreement, and notify the SPD of the details of such account within 90 (ninety) Days from the Execution Date. The Procurer and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD's Designated Account or Procurer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same Day.
- (f) Without prejudice to the Procurer's obligation to pay the Monthly Bill/Supplementary Bill by the Due Date and without prejudice to the SPD's right to recover the unpaid amounts under any Monthly Bills/Supplementary Bills in accordance with Article 10.6, the Procurer may request RUMSL to make payment of any Monthly Bill/Supplementary Bill on its behalf. If RUMSL agrees to make any such payment to the SPD it shall make such payment into the SPD's Designated Account within such time as may mutually be agreed between RUMSL and the Procurer. The amount of payment to be made by RUMSL to the SPD on behalf of the Procurer shall be equal to

* To be communicated later by the SPD to the Procurer.

the amount indicated in the Monthly Bill/ Supplementary Bill duly adjusted for any Rebate or Late Payment Surcharge in accordance with Article 10.10.

Upon making payments to the SPD, RUMSL shall issue a notice to the Procurer, with a copy to GoMP, requiring the Procurer to pay to RUMSL, within 30 (thirty) Days from the date of such notice, the amount paid by RUMSL to the SPD on behalf of the Procurer together with a surcharge calculated on the above-mentioned amount at the prevalent State Bank of India's 6-month Marginal Cost of Lending Rate or MCLR (or its equivalent) plus 2.25% (two point two five percent) per annum for each Day between the date of payment by RUMSL to the SPD and the date of payment by the Procurer to RUMSL.

In the event that the Procurer fails to pay any amounts due, such amount shall be debt due from the Procurer to RUMSL or an entity designated by RUMSL as the case may be.

The Parties agree and acknowledge that notwithstanding anything mentioned in this Article, the Procurer shall always remain solely liable for payment of the Monthly Bill/Supplementary Bill by the Due Date to the SPD.

10.5 Transmission Charges and Losses

- (a) All applicable Inter-State Transmission Charges and Inter-State Transmission Losses, which are applicable beyond the Delivery Point shall be payable by the Procurer, in compliance with the Applicable Laws, including relevant regulations issued by the Appropriate Commission.
- (b) If demands for the above payments are made by the relevant authorities, in accordance with the Applicable Laws, to RUMSL in its role as the signatory to the Connectivity and Long term access related agreements, the SPD shall be required to pay to the authorities directly or reimburse RUMSL all such payments fully or proportionately attributable to the Unit. In turn, the SPD shall be entitled to seek re-imbursement from the Procurer and [SECOND PROCURER'S NAME] proportional to the guaranteed energy offtake under this Agreement and the [SECOND PROCURER'S NAME] PPA respectively. The re-imbursement amounts shall be payable by the Procurer as part of the Monthly Bill or the Supplementary Bill as the case may be.
- (c) In the event of early termination of this Agreement, any amounts under Article 10.5(b) that remain unpaid to RUMSL or the relevant authorities shall be paid directly by the Procurer from its own sources within a period of 30 Days of the termination of this Agreement. The Procurer shall prior to any other use, apply the proceeds that it may receive from encashed Performance Bank Guarantee, Assessment BG or Deemed COD PBG or the proceeds of Termination Compensation if any paid by the SPD in accordance with Article 14 for paying the unpaid amounts under Article 10.5(b) to RUMSL or the relevant authorities as the case may be.
- (d) Scheduling charges for any RLDC enroute the path up to Delivery Point (if applicable) shall be borne by the SPD without claiming any reimbursement from the Procurer. The SPD shall also be liable to pay any scheduling charges, applicable beyond the Delivery Point, which shall be reimbursed by the Procurer within 30 (thirty) Days of the SPD raising the demand for such reimbursement. For the avoidance of doubt, any system operation charge or market operation charge charged by RLDC shall be eligible for reimbursement by the Procurer and [SECOND PROCURER'S NAME] proportional to

the guaranteed energy offtake under this Agreement and the [SECOND PROCURER'S NAME] PPA, respectively.

10.6 Payment Security Mechanism

(a) *Letter of Credit*

- (i) Procurer 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 letter of credit (**Letter of Credit**), substantially in the format set out in Annex 2, which may be drawn upon by the SPD in accordance with this Article.
- (ii) Not later than 15 (fifteen) Days prior to the date of issue of the Commissioning Certificate or Confirmation Certificate, as the case may be, for the Initial Part Capacity, the Procurer through a Scheduled Bank at [] shall open a Letter of Credit 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 Credit shall have a term of 12 (twelve) Months and shall be renewed as explained below, for an amount equal to:
 - (A) for the first 12 (twelve) Month period commencing from the date of issuance of the Commissioning Certificate or the date of deemed issuance mentioned in the Confirmation Certificate for the Initial Part Capacity equal to the energy quantum equivalent to the Guaranteed Energy Offtake/12) x the Applicable Tariff; and
 - (B) for each subsequent 12 (twelve) Month period, equal to the average 1 (one) Month's Tariff Payments billing of the preceding 12 (twelve) Month period.

Provided that the SPD shall not draw upon the Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

Provided that if at any time, the Letter of Credit amount falls short of the amount specified in Article 10.6(a)(ii) the Procurer shall restore such shortfall within 15 (fifteen) Days of the shortfall.

- (iii) Procurer shall cause the Scheduled Bank issuing the Letter of Credit to communicate to the SPD, in writing regarding establishing of such irrevocable Letter of Credit. The Procurer shall ensure that the Letter of Credit shall be renewed not later than 30 (thirty) Days prior to its expiry.
- (iv) All costs relating to opening and maintaining the Letter of Credit shall be borne by the Procurer.
- (v) 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 Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurer, 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:

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

[(b) ***Payment Security Fund***

- (i) Not later than 15 (fifteen) Days prior to the date of issue of the Commissioning Certificate or the date of deemed issuance mentioned in the Confirmation Certificate for the Initial Part Capacity, RUMSL, on behalf of the Procurer shall set up or cause to be set up in favour of the SPD, in respect of payment of the Monthly Bills and/or Supplementary Bills, a payment security fund with a corpus of INR 480,000,000 (four hundred and eighty million) or an overdraft or guarantee facility of the same size (**Payment Security Fund**), which may be drawn upon by the SPD in accordance with this Article. The Procurer and SPD shall cooperate with RUMSL to set up the Payment Security Fund by co-signing the documentation required, if any, for setting up the Payment Security Fund.
- (ii) If at any time, such Payment Security Fund falls short of the amount specified in Article 10.6(b)(i) on account of any reasons solely attributable to the Procurer, the Procurer shall restore such shortfall within 15 (fifteen) Days.
- (iii) All costs relating to the opening and maintaining of the Payment Security Fund, i.e., relating to opening of any account, instruments, administrative charges, fees and/or charges payable to a financial institution up to a maximum of 0.5% (zero point five percentage) of the Payment Security Fund for each year shall be borne by RUMSL. The 0.5% (zero point five percentage) maximum limit on RUMSL's liability does not include the interest payable by RUMSL, if any in respect of draws from the Payment Security Fund by the SPD. RUMSL shall make such interest payments irrespective of the above-mentioned limit. RUMSL shall get payments for delay from the Procurer in accordance with this Agreement.
- (iv) If any Monthly Bill and/or Supplementary Bill or part thereof is not paid to the SPD on or prior to the Due Date and the SPD fails to recover such payments due under the Monthly Bill and/or Supplementary Bill from the Letter of Credit, in accordance with Article 10.6(a), for any reason not attributable to the SPD, then the SPD may upon issuing a written notice of 15 (fifteen) Days to RUMSL draw upon the Payment Security Fund to recover all such amounts in full.

The following documents shall be submitted by the SPD along with the notice:

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

- (C) a copy of written communication provided by the bank confirming the inability to pay the amounts due under the Monthly Bill and/or Supplementary Bill from the Letter of Credit.
- (v) Upon receiving a notice from the SPD under Article 10.6(b)(iv) along with the documents mentioned below, RUMSL shall, within 15 (fifteen) Days from the date of receipt of such notice, pay or cause to be paid, without any reference to or instructions from the Procurer, the amounts mentioned in the certificate issued by the SPD under Article 10.6(b)(iv)(B), and the applicable Late Payment Surcharge calculated on such amount on and from the Due Date, if applicable.
- (vi) Upon payments to the SPD of the amounts in accordance with Article 10.6(b)(v), RUMSL shall issue a notice to the Procurer, with a copy to GoMP, requiring the Procurer to pay, within 30 (thirty) Days from the date of such notice, the amounts paid to the SPD in accordance with Article 10.6(b)(v) above. Such notice from RUMSL shall, *inter alia*, provide:
 - (A) a copy of the notice sent by the SPD, under Article 10.6(b)(iv), and all other documents provided by SPD along with such notice; and
 - (B) set out the amount payable by the Procurer, to RUMSL or to an entity designated by RUMSL, including the amount paid by RUMSL to the SPD and an amount of interest to be added thereon for each Day from the date of payment by RUMSL to the SPD until the date of payment by the Procurer to RUMSL (or its designated entity) or by GoMP on behalf of the Procurer to RUMSL (or its designated entity). The above mentioned interest for each Day shall be calculated on the amount paid by RUMSL to the SPD at an annual interest rate equal to the State Bank of India's 6 month Marginal Cost of Funds based Lending Rate plus 3.25% (three point two five percent). The State Bank of India's 6 month Marginal Cost of Funds based Lending Rate on the date of payment by RUMSL to SPD shall be adopted for the above calculation.
- (vii) In the event that the Procurer fails to pay any amounts due in accordance with Article 10.6(b)(vi), such amount shall be debt due from the Procurer to RUMSL or an entity designated by RUMSL as the case may be.]*
- (c) ***Government of Madhya Pradesh's Guarantee Obligations***
 - (i) GoMP guarantees the due and punctual payment of any undisputed amount, which are directly payable by the Procurer and due to the SPD and/or RUMSL under this Agreement, including the Tariff Payments, in accordance with the guarantee agreement to be executed between GoMP, the SPD, RUMSL, and the Procurer (**Guarantee Agreement**).
 - (ii) In the event that any amount due and payable by the Procurer under this Agreement is not paid within the period provided in the Agreement and the SPD has failed to recover such amounts from: (a) the Letter of Credit, in accordance with Article 10.6(a); and (b) the Payment Security Fund, in

* The details of the exact final arrangement will be fixed broadly within the contours of this Article based on approval of concurrent proposals to MNRE.

accordance with Article 10.6(b), for any reason not attributable to the SPD, the SPD shall issue a notice to the GoMP, in accordance with the Guarantee Agreement. GoMP shall pay such amount within 15 (fifteen) Days of receipt of the notice from the SPD, in accordance with the Guarantee Agreement.

- (iii) In the event that the Procurer fails to make the payment to RUMSL or to an entity designated by RUMSL with respect to the demand raised by RUMSL through its notice under Article 10.6(b)(vi) and such amount remains unpaid for 30 (thirty) Days from the date of such notice, then RUMSL shall invoke the GoMP guarantee by issuing a notice to GoMP, *inter alia*, setting out the amount payable by the Procurer to RUMSL, along with the interest computed in accordance with Article 10.6(b)(vi)(B).
- (iv) Notwithstanding anything contained in this Agreement, the SPD shall not be entitled to terminate this Agreement due to non-payment of any amount due under this Agreement, unless 30 (thirty) Days as referred in Article 10.6(c)(ii) have expired.

10.7 Payments in Case of Dispute

- (a) If the Procurer, on or before the Due Date, does not dispute a Monthly Bill and/or a Supplementary Bill raised by the SPD, such bill shall be deemed to be conclusive and binding on the Procurer.
- (b) If the Procurer disputes the amount payable under a Monthly Bill and/or a Supplementary Bill, as the case may be, it shall pay 85% (eighty-five percent) of the disputed amount and it shall within 15 (fifteen) Days of receiving such Monthly Bill and/or Supplementary Bill, issue a notice (the **Bill Dispute Notice**) to the SPD setting out:
 - (i) the details of the disputed amount;
 - (ii) its estimate of what the correct amount should be; and
 - (iii) all written material in support of its claim.
- (c) If the SPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.7(b), the SPD shall revise such Monthly Bill and/or Supplementary 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 applicable from the date on which such excess payment was made by the Procurer to the SPD and up to and including the date on which such payment has been received as refund. In the event that the dispute raised by the Procurer in the Bill Dispute Notice is determined in favour of the SPD, then the Procurer shall be liable to pay interest on the 15% (fifteen percent) the disputed amount at the same rate as Late Payment Surcharge, which shall be applied from the Due Date of such Monthly Bill and/or the Supplementary Bill, as the case may be, and up to and including the date on which such payment has been received by the SPD.
- (d) If the SPD does not agree to the claim raised in the Bill Dispute Notice issued in accordance with Article 10.7(b), it shall, within 15 (fifteen) Days of receiving the Bill Dispute Notice, furnish a notice (**Bill Disagreement Notice**) to the Procurer 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.

Upon receipt of the Bill Disagreement Notice by the Procurer under this Article 10.7(d), authorized representative(s) or a director of the board of directors/member of the board of the Procurer and the SPD shall meet and make best endeavours to amicably resolve such dispute within 15 (fifteen) Days of receipt of the Bill Disagreement Notice.

- (e) If the Procurer and the SPD do not amicably resolve the dispute within 15 (fifteen) Days of receipt of the Bill Disagreement Notice the matter shall be resolved in accordance with the dispute resolution procedure set out in Article 21.

For the avoidance of doubt, it is clarified that despite a dispute regarding a Monthly Bill and/or a Supplementary Bill, the Procurer shall, without prejudice to its rights under this Agreement, be under an obligation to make payment of 85% (eighty-five percent) of the disputed amount in the Monthly Bill and/or the Supplementary Bill, as the case may be.

10.8 Annual Reconciliation

- (a) The SPD and the Procurer acknowledge to undertake an annual reconciliation to be undertaken within 60 (sixty) Days from the end of each Contract Year to take into account the regional energy accounts, rebate, Late Payment Surcharge, Excess Over Drawl Payment or any other reasonable circumstance provided under this Agreement. The SPD undertakes to provide, a certified true copy of the complete final regional energy accounts for the relevant Contract Year, as prepared and provided by WRLDC, in relation to the [SECOND PROCURER'S NAME] PPA to the Procurer. The SPD shall provide these final regional energy accounts to the Procurer within 30 (thirty) Days from the end of each Contract Year. The SPD and RUMSL undertakes to promptly provide all other information, as may be reasonably required and as is available with or can be procured by the SPD and/or RUMSL, for undertaking the annual reconciliation, including details relating to guaranteed energy offtake, minimum supply obligation and generation shortfall liquidated damages paid or payable under the [SECOND PROCURER'S NAME] PPA in the relevant Contract Year.

The Parties, agree that as soon as all such data in respect of a Contract Year has been finally verified and adjusted, the SPD and the Procurer shall jointly sign such reconciliation statement. Within 15 (fifteen) Days of signing of a reconciliation statement, the SPD shall make appropriate adjustments in the next Monthly Bill, including to take into account any excess Tariff Payment made by the Procurer, as set out in the signed reconciliation statement and passing by the SPD of the Excess Over Drawl Payment to the Procurer. 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 dispute resolution procedure set out in Article 21.

- (b) Upon termination of this Agreement prior to the Expiry Date, the annual reconciliation mechanism set out in this Article shall be followed. The Parties shall undertake such reconciliation within 7 (seven) Days from the date of the Termination Notice and such reconciliation shall take into account transactions undertaken between the Parties until the date of issuance of the Termination Notice. For the purposes of the reconciliation, proportionate quantum of Guaranteed Energy Offtake and Minimum Supply

Obligation until the date of issuance of the Termination Notice shall be applicable. Upon such reconciliation, if any additional amounts have to be paid on account of off-take of excess energy or supply of less energy, then such amount shall be paid over and above the Termination Compensation, if any to be paid by the relevant Party.

10.9 Payment of Supplementary Bill

The SPD may raise a Supplementary Bill for payment on account of:

- (i) Adjustments required by the regional energy accounts (if applicable); or
- (ii) Change in Law as provided in Article 17, and such Supplementary Bill shall be paid by the other Party.

10.10 Late Payment Surcharge and Rebate

- (a) In case of delay beyond the 30 (thirty) Day payment period, the Procurer shall pay surcharge on outstanding amount at the prevalent State Bank of India's 6-month Marginal Cost of Lending Rate or MCLR (or its equivalent) plus 3% (three percent) per annum for each Day of delay (**Late Payment Surcharge**).
- (b) In case the Procurer makes payment prior to the Due Date, the Procurer shall be entitled to deduct an amount equivalent to the prevalent State Bank of India's 6-month Marginal Cost of Lending Rate or MCLR (or its equivalent) plus 3% (three percent) per annum, for each Day that the payment is made prior to the Due Date (**Rebate**).

10.11 Tariff for Purchase of Energy

The Applicable Tariff for the purchase of energy generated from the commissioning of the Initial Part Capacity until the expiry of the First Contract Year shall be INR [] /kWh (**Initial Tariff**). The Initial Tariff shall be escalated in the manner set out at Schedule 1. The Initial Tariff has been discovered through a competitive bidding process. The Initial Tariff, subject to escalation in the manner set out at Schedule 1 and adjustments, if any, in accordance with this Agreement, shall be applicable for the period from the date of issuance of the Commissioning Certificate or the Confirmation Certificate, as the case may be, for the Initial Part Capacity until the Expiry Date (**Applicable Tariff**).

10.12 Taxes and duties

The Parties agree that the Applicable Tariff shall be inclusive of all Taxes and any applicable Taxes shall be solely borne by the SPD. It is further agreed that the SPD shall pay all Taxes, dues and levies as may be applicable under this Agreement and the Applicable Laws for owning, operating and maintaining the Unit.

10.13 Clean Development Mechanism Benefit

The proceeds of carbon credit from approved CDM project shall be shared between the SPD and Procurer as per regulations issued by the Appropriate Commission. All costs and expenses relating to registering the project as a CDM project with the relevant Government Authority shall be solely borne by the SPD.

11. LIQUIDATED DAMAGES AND LIMITATION OF LIABILITY

11.1 Exclusions to Payment of Liquidated Damages

The SPD shall not be liable to pay any liquidated damages under this Agreement to the extent and for the period that the SPD's performance of its obligations is directly and adversely affected by one or more of the following events:

- (i) a Change in Law;
- (ii) a Force Majeure Event;
- (iii) a Procurer Event of Default; or
- (iv) breach of any of the material obligations of RUMSL under the Implementation Support Agreement, including the obligation to construct, commission and hand-over the Internal Evacuation Infrastructure to the SPD within the time period and terms and conditions specified in the Implementation Support Agreement (any notice issued by the SPD to RUMSL, under the Implementation Support Agreement, notifying RUMSL of the occurrence of such breach shall also be provided by the SPD to the Procurer under this Agreement).

Provided that none of the above events have occurred or resulted directly or indirectly on account of reasons solely attributable to the SPD.

11.2 Payment of Liquidated Damages

- (a) Any Phase I Delay Liquidated Damages, Phase II Delay Liquidated Damages or Generation Shortfall Liquidated Damages, as the case may be, shall be payable by the SPD within 30 (thirty) Days of receipt of a demand notice from the Procurer. In the event that the SPD fails to pay such damages within the specified period, the Procurer shall have the right to recover the amount of such damages by exercising its right to set-off under Article 10.4(b).
- (b) In the event that the SPD fails to pay Phase I Delay Liquidated Damages, Phase II Delay Liquidated Damages or Generation Shortfall Liquidated Damages within the specified period, the Procurer, in addition to the rights available under Article 11.2(a), shall have the right to recover the amount of such damages by encashing the Performance Bank Guarantee at any time during its validity.
- (c) The rights available to the Procurer under Article 11.2(a) and Article 11.2(b), shall be without prejudice to the Procurer's right to terminate this Agreement in accordance with Article 13 or any other right that the Procurer may have under the Agreement or the Applicable Laws.

11.3 Limitation of Liability

- (a) Without prejudice to the Procurer's rights and remedies available under the Applicable Laws, the aggregate liability of the SPD to the Procurer under this Agreement shall in no event and for any reason whatsoever, shall not exceed INR 2,000,000,000 (two billion) for the entire Term. This limitation of the SPD's aggregate liability shall not apply to nor be reduced by:

- (i) the SPD's liability to make payments of any amounts in discharge of its obligations under Article 22.1;
 - (ii) the SPD's liability to pay Termination Compensation to the Procurer in accordance with this Agreement and any amounts payable to the Procurer in accordance with Article 10.8(b);
 - (iii) payments made by the SPD pursuant to its insurance policies;
 - (iv) the SPD's liability in case of fraud, fraudulent misrepresentation, wilful misconduct, negligence or corrupt practices;
 - (v) SPD's liability in respect of any failure to pay any SPD Related Parties with respect to any dues under applicable labour welfare legislation; or
 - (vi) the SPD's liability in respect of any failure to pay any Taxes or breach of any Applicable Laws;
 - (vii) the SPD's liability in respect of adjustments to be made to Monthly Bills to pass on the benefit of Excess Over Drawl Payment to the Procurer.
- (b) The aggregate liability of the Procurer to the SPD under this Agreement shall in no event and for any reason whatsoever exceed INR 2,000,000,000 (two billion) for the entire Term. This limitation of the Procurer's aggregate liability shall not apply to nor be reduced by:
- (i) the Procurer's liability to make Tariff Payments in accordance with this Agreement;
 - (ii) the Procurer's liability to pay Termination Compensation to the SPD in accordance with this Agreement; or
 - (iii) the Procurer's liability in case of fraud, fraudulent misrepresentation, wilful misconduct, negligence or corrupt practices.
- (c) Unless otherwise specified in the Agreement, in no event shall any Party be liable to the other Party(ies) for loss of profit, loss of use, loss of production, loss of revenue, loss of opportunity or for any consequential, incidental, indirect, special or punitive damages, in each case arising out of, in connection with or resulting from this Agreement, whether any claim for such losses or damages is based on contract, warranty, tort (including negligence), strict liability or otherwise.

12. EVENTS OF DEFAULT AND REMEDIES

12.1 Event of Default

An **Event of Default** means an SPD Event of Default or a Procurer Event of Default or both, as the context may admit or require.

12.2 SPD Event of Default

The occurrence of any of the following events arising out of any acts or omissions of the SPD and which have not occurred as a consequence of any event set out in Article 11.1 (except

Change in Law), and where the SPD has failed to remedy the breach specified in the Preliminary Notice, issued in accordance with Article 13.1(b), shall constitute a **SPD Event of Default**:

- (i) failure of the SPD to successfully complete the Second Performance Assessment in accordance with Article 4.6;
- (ii) any representation made or warranty given by the SPD under this Agreement or prior to execution of this Agreement being false or misleading;
- (iii) any Abandonment by the SPD;
- (iv) if:
 - (A) the SPD assigns, mortgages, charges or purports to assign, mortgage or charge any of its assets or rights related to the Unit 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 including in contravention of Article 5; except where such transfer is in pursuance of the Applicable Laws;
- (v) the SPD entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the SPD or if the SPD becomes unable to pay its debts or the appointment of a receiver or administrator in respect of the SPD, its business and assets or any re-structuring, re-organisation, amalgamation, arrangement or compromise affecting the SPD's ability to fulfil its obligations under this Agreement and/or that otherwise has or may have a Material Adverse Effect;
- (vi) a breach by the SPD of its obligations under this Agreement which has a Material Adverse Effect;
- (vii) failure of the SPD to obtain and maintain a valid Performance Bank Guarantee, Additional PBG, Assessment BG and the Deemed COD PBG, in accordance with the terms of this Agreement;
- (viii) termination of the Unit LUPA(s) for an SPD event of default (a copy of the termination notice issued to the SPD under the Unit LUPA(s) shall be provided by the SPD to the Procurer and RUMSL under this Agreement);
- (ix) failure of the SPD in complying with the E&S Standards, as set out in the Implementation Support Agreement; or
- (x) if the SPD has failed to fulfil any of its obligations and for which failure the Procurer has a right to terminate this Agreement.

12.3 Procurer's Event of Default

The occurrence of any of the following events arising out of any acts or omissions of the Procurer and which have not occurred as a consequence of any SPD Event of Default, a material breach by RUMSL of its obligations under the Implementation Support Agreement, a Change in Law or a Force Majeure Event and where the Procurer has failed to remedy the breach specified in the Preliminary Notice, issued in accordance with Article 13.2(b), shall constitute a **Procurer Event of Default**:

- (i) Procurer fails to make the Tariff Payment in accordance with Article 10.4 or any other payments due from the Procurer to the SPD under this Agreement and such amounts are not recovered through the Letter of Credit, in accordance with Article 10.6(a); the Payment Security Fund, in accordance with Article 10.6(b); and the GoMP Guarantee, in accordance with Article 10.6(c);
- (ii) a breach by the Procurer of its obligations under this Agreement which has a Material Adverse Effect;
- (iii) the Procurer entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Procurer or if the Procurer becomes unable to pay its debts or the appointment of a receiver or administrator in respect of the Procurer, its business and assets or any re-structuring, re-organisation, amalgamation, arrangement or compromise affecting the Procurer's ability to fulfil its obligations under this Agreement or that otherwise has or may have a Material Adverse Effect;
- (iv) any representation made or warranty given by the Procurer under this Agreement being false or misleading;
- (v) the Procurer has failed to fulfil any obligation and for which failure the SPD has a right to terminate this Agreement; or
- (vi) termination of the Unit LUPA(s) for reasons not attributable to SPD (a copy of the termination notice issued to the SPD under the Unit LUPA(s) shall be provided by the SPD to the Procurer and RUMSL under this Agreement);

12.4 In the event that SPD terminates the Implementation Support Agreement for reasons attributable to RUMSL in accordance with the Implementation Support Agreement, it shall issue a notice to the Procurer and RUMSL under this Agreement terminating this Agreement as of the date of such notice. Upon such termination, the Procurer shall return the Performance Bank Guarantee, Additional PBG, the Assessment BG and the Deemed COD PBG (if provided) and the SPD shall not be entitled for any Termination Compensation under this Agreement.

13. TERMINATION

13.1 Termination for SPD's Event of Default

- (a) Without prejudice to any other right or remedy which the Procurer may have in respect thereof under this Agreement or the Applicable Laws, upon occurrence of an SPD Event of Default, the Procurer shall be entitled to terminate this Agreement in the manner provided in this Article.
- (b) The Procurer shall issue a Preliminary Notice to the SPD, with a copy to RUMSL, providing 60 (sixty) Days from the date on which the Preliminary Notice is delivered to the SPD to cure the underlying breach set out in Article 12.2. Provided however, if the cure of any breach by the SPD requires any reasonable action by the SPD that must be approved by the Procurer or RUMSL under this Agreement, the applicable cure period shall be extended by the period taken by the Procurer or RUMSL, as the case may be, to grant their approval. If the SPD fails to cure the breach within such period allowed, the Procurer shall, subject to the provisions of Article 13.1(d), be entitled to terminate this Agreement by issuing a Termination Notice to the SPD, with a copy to RUMSL, and to invoke the Performance Bank Guarantee, during its validity.

- (c) Without prejudice to any other rights or remedies which the Procurer may have under this Agreement, upon occurrence of an SPD Event of Default, the Procurer shall be entitled to terminate this Agreement by issuing a Termination Notice to the SPD.
- (d) The Procurer shall, before issuing the Termination Notice, inform the Lenders of its intention to issue such Termination Notice and grant 30 (thirty) Days to the Lenders for making a representation stating the Lenders' intention to exercise its right to substitute or step-in right in accordance with the Substitution Agreement. If the Procurer receives such representation from the Lenders within the stipulated time period, it shall withhold Termination for a period not exceeding 180 (one hundred and eighty) Days from the date of such representation, for enabling the Lenders to exercise their right(s) in accordance with the Substitution Agreement.

13.2 Termination for Procurer Event of Default

- (a) Without prejudice to any other right or remedy which the SPD may have in respect thereof under this Agreement, upon occurrence of a Procurer Event of Default, the SPD shall be entitled to terminate this Agreement by issuing a Termination Notice to the Procurer, with a copy to RUMSL, in accordance with this Article.
- (b) The SPD shall issue a Preliminary Notice to the Procurer, with a copy to RUMSL, providing 60 (sixty) Days from the date on which the Preliminary Notice is delivered to the Procurer to cure the breach set out in Article 12.3. If the Procurer fails to cure the underlying breach within such period allowed, the SPD shall, subject to the provisions of Article 13.2(c), be entitled to terminate this Agreement by issuing a Termination Notice to the Procurer, with a copy to RUMSL.
- (c) Without prejudice to any other right or remedy which the SPD may have under this Agreement, upon occurrence of a Procurer Event of Default, the SPD shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice.

13.3 Termination Notice

The Termination Notice shall set out the following:

- (i) the underlying Event of Default, in sufficient detail;
- (ii) the Termination Date;
- (iii) the Termination Compensation as calculated in accordance with Article 14 (if applicable); and
- (iv) any other relevant information.

13.4 Obligation of the Parties

Following issue of the Termination Notice by the Procurer or the SPD, as the case may be, the defaulting party shall promptly take all such steps as may be necessary required to ensure that:

- (i) until termination, the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operations and maintenance of the Unit, if commenced, including payment of unpaid charges by the SPD to RUMSL under the Implementation Support Agreement, deduction by the Procurer of the above mentioned

unpaid charges from Tariff Payments that the Procurer makes to the SPD and payment of charges payable to RUMSL or the relevant authorities under Article 10.5; and

- (ii) any Termination Compensation is paid in accordance with Article 14.

13.5 Withdrawal of Termination Notice

Notwithstanding anything contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before termination occurs, the Termination Notice shall be withdrawn by the Party which had issued it, provided however that the Party in breach shall compensate the other Party for any direct costs occasioned by the Event of Default.

13.6 Consequences of Termination

- (a) Upon termination of this Agreement:
 - (i) in the event of a Procurer Event of Default;
 - (A) Procurer shall return the Performance Bank Guarantee, Additional PBG, Assessment BG and Deemed COD PBG to the SPD, if available, and pay Termination Compensation in accordance with Article 14.1; and
 - (B) upon payment of the Termination Compensation, the Unit shall Transfer to the Procurer or its nominee, in accordance with Article 24 and the Coordination Agreement.
 - (C) the SPD may choose to forego its right to receive Termination Compensation and the consequent Transfer of the Unit to the Procurer or its nominee, in accordance with Article 13.6(a)(i)(A) and Article 13.6(a)(i)(B) and sell power with respect to the capacity under this Agreement to a third party for the remaining Term of the Agreement.

Provided that, any sale to a third party shall be conditional upon such third party agreeing: (i) to appropriate amendments to the Project Agreements, as may be required in the context of sale to the third party, at no additional cost to [SECOND PROCURER'S NAME] or RUMSL; and (ii) shall be without prejudice to rights, obligations and liabilities of [SECOND PROCURER'S NAME] and/or RUMSL under the Project Agreements.

For the avoidance of doubt, it is clarified that the GoMP shall in no manner be liable to the SPD or to the third party under the Guarantee Agreement or otherwise with respect to sale and purchase of power from the Unit between the SPD and the third party.

In the event the SPD decides to exercise its right to sell power to a third party under this Article 13.6(a)(i)(C), then it shall notify the same to the Procurer in the Termination Notice, issued in accordance with Article 13.3, with a copy to [SECOND PROCURER'S NAME] and RUMSL.

- (ii) in the event of an SPD Event of Default, the Procurer shall, subject to rights of the Lender under this Agreement, the Substitution Agreement and the Financing Documents:
 - (A) forfeit the Performance Bank Guarantee, Additional PBG, Assessment BG and Deemed COD PBG, during their validity;
 - (B) upon payment of Termination Compensation to the SPD in accordance with Article 14.2(a) have a right to seek Transfer of the Unit in favour of the Procurer or its nominee, in accordance with Article 24;
 - (C) provide a written notice to the SPD and RUMSL within 15 (fifteen) Days of the occurrence of the SPD Event of Default, of its decision on whether it intends to seek a Transfer of the Unit;
 - (D) if the Procurer decides against seeking a Transfer of the Unit, or, fails to notify the SPD or RUMSL of its decision within the time period mentioned in Article 13.6(a)(ii)(C) above, RUMSL (or its nominee) shall have the right, but not an obligation, to pay the same Termination Compensation that would have been payable by the Procurer, to the SPD and seek the Transfer of the Unit by providing a written notice to the SPD within 15 (fifteen) Days of the expiry of the time period mentioned in Article 13.6(a)(ii)(C) above;
 - (E) if RUMSL chooses to seek a Transfer of the Unit, all Project Agreements shall be amended in such a manner so as to allow RUMSL (or its nominee) to continue to supply energy to the Procurer in accordance with the terms and conditions of this Agreement;
 - (F) if the Procurer and RUMSL decide not to exercise their rights under Article 13.6(a)(ii)(B) or Article 13.6(a)(ii)(D), respectively, above (i.e., the right to seek Transfer of the Unit in favour of the Procurer or its nominee or RUMSL or its nominee), then the SPD shall be liable to pay Termination Compensation to the Procurer in accordance with Article 14.2(b).

13.7 Accrued Rights and Liabilities

Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement pursuant to its term shall be without prejudice to accrued rights of any Party, including its right to claim and recover damages and other rights and remedies which it may have under the Applicable Laws or under this Agreement. All accrued rights and obligations of any of the Parties under this Agreement, including all rights and obligations with respect to Termination Compensation, shall survive the termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.

13.8 Survival

The expiry or termination of the Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under the Agreement, including the right to receive liquidated damages 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 implications, which are to survive after the Expiry Date or termination including those under Article 12 (Event of Defaults and Remedies), Article 15 (Force Majeure), Article 21 (Jurisdiction and Dispute Resolution),

Article 22.1 (Indemnity), Article 24 (Miscellaneous) and other Articles, which expressly or by their nature survive the Term or termination of this Agreement and which shall continue and survive any expiry or termination of this Agreement.

14. TERMINATION COMPENSATION

14.1 For Procurer Event of Default

Upon termination of this Agreement due to a Procurer Event of Default any time after the commissioning of the Initial Part Capacity and until the Expiry Date, subject to Article 13.6(a)(i)(C), the Procurer shall be liable to pay to the SPD:

- (a) Debt Due; and
- (b) 150% (one hundred and fifty percent) of the Adjusted Equity less insurance cover.

The Termination Compensation pursuant to this Article 14.1 shall become due and payable within 30 (thirty) Days of issuance of the Termination Notice by the SPD.

14.2 For SPD Event of Default

- (a) Upon termination of this Agreement due to a SPD Event of Default any time after the commissioning of the Initial Part Capacity and until the Expiry Date, and if the Procurer or RUMSL decides to exercise its right under Article 13.6(a)(ii)(B) and Article 13.6(a)(ii)(D), respectively (i.e., the right to seek Transfer of the Unit in favour of the Procurer or RUMSL or their respective nominee), then the Procurer or RUMSL, as the case may be, shall be liable to pay to the SPD an amount equal to 90% (ninety percent) of the Debt Due.
- (b) Upon termination of this Agreement due to a SPD Event of Default any time after the commissioning of the Initial Part Capacity and until the Expiry Date, and if the Procurer or RUMSL decides not to exercise its right under Article 13.6(a)(ii)(B) and Article 13.6(a)(ii)(D), respectively (i.e., the right to seek Transfer of the Unit in favour of the Procurer or RUMSL or their respective nominee), then the SPD shall be liable to pay to the Procurer an amount equal to, the higher of:
 - (i) {[average tariff (as set out in the then applicable tariff order issued by MPERC) of power procured by the Procurer in last 3 (three) Financial Years from ground mounted and grid-connected solar PV power projects located within Madhya Pradesh] (minus) [the Applicable Tariff]} x [energy quantum equivalent to Minimum Supply Obligation] x [3 (three) Contract Years]; or
 - (ii) {[Average Power Purchase Cost or APPC for [FIRST PROCURER'S NAME] (as set out in the then applicable tariff order, issued by MPERC) (minus) [the Applicable Tariff]} x [energy quantum equivalent to Minimum Supply Obligation] x [3 (three) Contract Years].

14.3 Full and Final Settlement

Any Termination Compensation determined pursuant to this Article 14 shall, once paid, be in full and final settlement of any claim, demand and/or proceedings of the Parties against each other, in relation to any termination of this Agreement and the SPD and the Procurer shall not have any other rights and remedies in respect of such termination. The SPD and the Procurer agree and acknowledge that this shall be the sole remedy available to the them on account of

termination of this Agreement for a Procurer Event of Default or an SPD Event of default, as the case may be, and the Termination Compensation shall fully compensate the SPD and the Procurer for any and all damages, losses or claims (whether direct or indirect) that it may have suffered on account of such termination of this Agreement.

15. FORCE MAJEURE

15.1 Force Majeure Event

(a) A **Force Majeure Event** means one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof affects, the performance by the Party claiming the benefit of force majeure (the **Affected Party**) of its obligations under this Agreement and which is/are: (i) beyond the reasonable control of any Party; (ii) such that the Affected Party has been unable to overcome or prevent despite exercise of due care, diligence and following Good Industry Practice; and (iii) such that it/they has/have a Material Adverse Effect on the performance of the Affected Party's obligations in whole or in part under this Agreement or makes performance materially more onerous or uneconomic by reason of occurrence of such event.

(i) ***Non-Political Force Majeure Events***

A Non-Political Force Majeure Event shall mean one or more of the following acts or events:

- (A) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion; or
- (B) the discovery of geological conditions, toxic contamination or archaeological remains on the Unit Land that could not reasonably have been expected to be discovered through an inspection of the Unit Land.

It is clarified that a Non-Political Force Majeure Event shall not include the following events:

- (A) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials or spare parts required for constructing, operating or maintaining the Unit;
- (B) a delay in the performance of any SPD Related Parties;
- (C) non-performance resulting from normal wear and tear; or
- (D) non-performance caused by: (I) negligent or intentional acts, errors or omissions, (II) failure to comply with the Applicable Laws or Applicable Permits, or (III) breach of, or default under, this Agreement, as the case may be.

(ii) ***Political Force Majeure Events***

- (A) hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism;

- (B) invasion, act of foreign enemy, revolution, nuclear explosion or politically motivated sabotage;
 - (C) nation-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; or
 - (D) any action of the Procurer whether by positive act, omission or otherwise or other exercise of a sovereign or executive prerogative by the procurer any Government Authority that results in expropriation, creeping expropriation, nationalisation or compulsory acquisition of any property, revenues, assets or rights (present or future, actual or contingent) of the SPD or of the Capital held by the shareholders of the SPD, and acts claimed to be justified by executive necessity, pursuant to which or as a result of which the SPD or its shareholders are deprived (wholly or in part) of their direct or indirect rights or entitlements under this 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.
- (iii) A force majeure event arising under the Implementation Support Agreement and/or the Unit LUPA(s) shall also be deemed a Force Majeure Event under this Agreement.
- (b) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the dispute resolution procedure set forth in Article 21, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

15.2 Notice of Force Majeure Event

The Affected Party shall give notice to the other Parties of the occurrence of any of the Force Majeure Events (the **FM Notice**), as soon as it arises or as soon reasonably practicable and in any event within 30 (thirty) Days after the Affected Party knew of its occurrence, the adverse effect it has or is likely to have on the performance of its obligations under this Agreement, the actions being taken in accordance with Article 15.5 and an estimate of the period of time required to overcome the Force Majeure Event and/or its nature and effects (if it is possible to estimate the same).

If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.

Any Party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Article 15.2.

15.3 Performance Excused

The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement 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 for a Non-Political Force Majeure Event and 90 (ninety) Days for a Political Force Majeure Event 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. The time period, as mutually agreed by the Parties, during which the performance shall be excused, the SPD shall be entitled for a day to day extension of the Term.

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

Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

15.4 No Liability for Other Losses

Save and except as expressly 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 or the exercise by it of any right pursuant to this Article 15.

15.5 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 this Agreement. 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.

Occurrence of a Force Majeure Event shall not relieve the SPD from the obligation to pay applicable charges to PGCIL.

15.6 Termination Due to Force Majeure Event

(a) If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Non-Political Force Majeure Event commencing from the date of issuance of the FM Notice, the Parties are of the reasonable view that:

- (i) a Non-Political 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 15.3; or
- (ii) that it is uneconomic or impractical to restore the affected Unit,

then the Parties may mutually decide to terminate this Agreement, which termination shall take effect from the date on which such decision is taken.

(b) Without prejudice to the provisions of Article 15.6(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 this Agreement in its sole discretion by issuing a notice to that effect.

On termination of this Agreement pursuant to this Article 15.6(b)

- (i) no Termination Compensation shall be payable to the SPD;
 - (ii) any bank guarantees, if available, provided by the SPD to the Procurer under this Agreement shall be returned to the SPD;
 - (iii) the SPD shall be entitled to retain all proceeds received under any insurance policies maintained by it in relation to the Unit (subject to the Lenders' rights in respect of such insurance proceeds); and
 - (iv) the SPD shall be paid the undisputed payments under outstanding Monthly Bill(s).
- (c) Upon occurrence of a Political Force Majeure Event, the SPD shall, at its discretion, have the right to terminate this Agreement forthwith after the completion of the period of 90 (ninety) Days from the date of the FM Notice.

On termination of this Agreement pursuant to this Article 15.6(c):

- (i) the Procurer shall pay Termination Compensation equivalent to the amount payable in a case of a Procurer Event of Default, after deducting termination compensation paid or payable by [SECOND PROCURER'S NAME] under the [SECOND PROCURER'S NAME] PPA for the same event.
- (ii) any bank guarantees, if available, provided by the SPD to the Procurer under this Agreement shall be returned to the SPD;
- (iii) the SPD shall be entitled to retain all proceeds received under any insurance policies maintained by it in relation to the Unit (subject to the Lenders' rights in respect of such insurance proceeds); and
- (iv) the SPD shall be paid the undisputed payments under outstanding Monthly Bill(s).

16. EFFECTIVE DATE AND DURATION OF AGREEMENT

16.1 The Agreement shall come into force and effect on the Execution Date.

16.2 Subject to early termination of this Agreement in accordance with its terms, the Agreement shall remain in full force and effect from the Execution Date for a period of 25 (twenty-five) years from the Unit SCOD (**Term**).

17. CHANGE IN LAW

17.1 Consequences of Change in Law

- (a) If a Change in Law occurs or is shortly to occur, then a Party shall notify the other Parties expressing its opinion on its likely effects and giving details of its opinion of whether:
 - (i) any changes are required to the scope of work to be performed by the SPD under this Agreement;
 - (ii) any changes are required to the terms of this Agreement to deal with such Change in Law;

- (iii) relief from compliance with any obligations is required, including the obligation of the SPD to achieve the Unit SCOD;
 - (iv) any increase or decrease in costs (other than incurring additional capital expenditure), or any increase in Taxes or delay is likely to result from the Change in Law; and
 - (v) any capital expenditure is required or no longer required as a result of a Change in Law.
- (b) As soon as practicable but no later than 15 (fifteen) Days after receipt of any notice from a Party under Article 17.1(a), the Parties shall discuss the issues referred to therein and any ways in which the Parties can mitigate the effect of the Change in Law, including:
- (i) demonstrating that the SPD has used reasonable endeavours (including, where practicable, the use of competitive quotes) to minimise any increase in costs and maximise any reduction in costs;
 - (ii) demonstrating how any capital expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the SPD;
 - (iii) demonstrating as to how the Change in Law has affected prices charged by similar businesses to the Unit, including similar businesses in which the shareholders or their associates carry on business;
 - (iv) demonstrating to the Procurer that the Change in Law is the direct cause of the increase or decrease in costs and/or loss or gain of revenue or delay and the estimated increase or decrease in costs or loss or gain in net profits after Tax could not reasonably be expected to be mitigated or recovered by the SPD acting in accordance with Good Industry Practice; and
 - (v) demonstrating that any expenditure, which was anticipated to be incurred to replace or maintain assets that have been affected by the Change in Law, has been taken into account in the amount stated in its opinion presented under Article 17.1(a).
- (c) If the Parties have complied with Article 17.1(b) or upon elapse of the time specified in the Article 17.1 (b) and if the SPD is required to incur any additional costs, including additional capital expenditure due to a Change in Law the aggregate financial effect of which, over the remaining Term of the PPA, is up to INR 20,000,000 (twenty million) (**Threshold Limit**), then the SPD shall obtain funding for such additional costs, including capital expenditure, at its cost and expense. The SPD shall bear all additional capital expenditure and/or interest and additional costs incurred to obtain any funding to the extent of the Threshold Limit.

For the avoidance of doubt, it is clarified that the Threshold Limit shall apply to each event constituting a Change in Law and shall not be applied on a cumulative basis.

If the additional capital expenditure, interest and associated costs that the SPD may incur as a result of the Change in Law exceeds the Threshold Limit, then the Procurer

or the SPD shall approach the Appropriate Commission to seek approval of such Change in Law and the consequent impact on the Applicable Tariff.

- (d) If the Parties have complied with Article 17.1(b) or upon elapse of the time specified in the Article 17.1 (b) and if as a result of the Change in Law, there is a decrease in costs, or decrease in Taxes and/or gain in revenue or net profits after Tax, then any financial benefit accruing to the SPD on account of such decrease in costs, or decrease in Taxes and/or gain in revenue or net profits after Tax shall be passed through to the Procurer in its entirety.
- (e) The amount determined in accordance with Article 17.1(c) and Article 17.1(d) in the eventuality of any increase or decrease in cost (or decrease or increase in revenues or net profits after Tax) of the SPD on account of a Change in Law shall be adjusted either in the Tariff Payment or through a lump sum payment, and shall be paid through a Supplementary Bill to be raised by either the SPD or the Procurer in terms of Article 10. In case of any change in the Applicable Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Bill to be raised by the SPD after such change in Applicable Tariff shall appropriately reflect the changed Applicable Tariff and the Procurer agrees to pay the revised Applicable Tariff accordingly.

18. ASSIGNMENT

The Parties shall not without prior consent of other Parties in writing assign, transfer or part with the benefits of this Agreement, either wholly or partly in favour of any Person/entity.

Notwithstanding the above, the SPD shall have the right to assign its rights, interests and benefits under this Agreement to Lenders as Security for the Financial Assistance without the prior consent of the Procurer or RUMSL, provided that nothing contained in this Article shall absolve the SPD from its responsibility to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement.

19. FINANCING AND BANKABILITY

19.1 Financing and Bankability Support

- (a) The Parties acknowledge that the SPD may obtain Financial Assistance from Lenders to construct, operate and maintain the Unit. The Procurer and RUMSL shall cooperate with the SPD to achieve Financial Close. Provided however the quantum of Financial Assistance as disclosed by the SPD in accordance with Article 2.1(a)(ii), shall only be considered for the purposes of computation of Debt Due unless the SPD has obtained the prior consent of the Procurer for any increase in the Financial Assistance. If the Procurer does not respond or provide its consent within 10 (ten) Days of a request made by the SPD for such additional Financial Assistance, the SPD shall be entitled to obtain such additional Financial Assistance, provided however that such additional Financial Assistance shall not be considered in the computation of Debt Due.
- (b) Upon the SPD making a request in writing, the Procurer and RUMSL shall enter into the Substitution Agreement with the Lenders, SPD and [SECOND PROCURER'S NAME] in the format set out in Annex 4, whereby the Procurer and RUMSL:
 - (i) shall consent to the assignment of the rights and benefits of the SPD under this Agreement as Security for the grant of Financial Assistance by the Lenders;

- (ii) shall grant the Lenders certain rights to remedy any default by the SPD by consultation or step-in by the Lenders or substitution of the SPD;
- (iii) shall agree that upon the occurrence of any SPD Event of Default, it shall suspend its right to terminate this Agreement or take any actions for the winding-up of the SPD or the appointment of a receiver or administrator in respect of the SPD's business or assets, until the time period available to the Lenders to exercise their step-in or substitution rights has expired; and
- (iv) agree that upon the occurrence of any SPD Event of Default, if the Lenders exercise their substitution rights and identify a Selectee, the Procurer and RUMSL shall execute all necessary documents and provide all consents required to novate this Agreement in favour of the Selectee.

19.2 Security Creation

- (a) To the extent permitted by the Applicable Laws, the SPD shall be entitled to create Security over all of its rights, title and interest in and to the Unit and this Agreement in favour of Lenders to obtain Financial Assistance for the Unit, provided that the creation of such Security shall not result in any financial or other liability of any nature whatsoever of the Procurer or RUMSL beyond those already envisaged under the Project Agreements.
- (b) The SPD shall not be entitled to create any Security over any part of the Unit Land, whether in favour of the Lenders or any third Persons. Provided, however, for the avoidance of doubt, it is clarified that the SPD may assign its rights under the Unit LUPA in favour of the Lenders, if the assignment is permitted under the provisions of the Unit LUPA.
- (c) The Procurer and RUMSL agree that the shareholders shall have the right to create Security over the Capital of the SPD in favour of Lenders, subject to compliance with the requirements of Article 5.

20. GRID DISCIPLINE

20.1 Maintenance of System Parameters

The Parties shall make best efforts to maintain the system parameters within acceptable/reasonable limits as may be prescribed in the regulations issued by the Appropriate Commission from time to time.

20.2 Grid Code Discipline

The Procurer and the SPD shall design and operate their systems in strict compliance with the Grid Code.

21. JURISDICTION AND DISPUTE RESOLUTION

21.1 Governing Law and Jurisdiction

The Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in Bhopal shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

21.2 Amicable Settlement

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

21.3 Dispute Resolution by the Appropriate Commission

- (a) All Disputes shall be submitted for adjudication by the Appropriate Commission in accordance with Applicable Laws. The decision of Appropriate Commission shall be final and binding on the Parties, subject to statutory right of appeal. In the event that the Appropriate Commission refers the subject matter of any Dispute or part thereof to be adjudicated by way of arbitration, the Parties shall follow the process for arbitration as set out in Article 21.4.
- (b) The Procurer undertakes that obligations of the Procurer under this Agreement towards the SPD shall not be affected in any manner by reason of *inter se* dispute between the Procurer and [SECOND PROCURER'S NAME].

21.4 Dispute Resolution through Arbitration

(a) *Arbitration Procedure*

Subject to Article 21.3(a), any Party to the Dispute shall be entitled to refer the Dispute to arbitration (**Notice of Arbitration**) to be finally resolved in the manner set out in

this Article 21. This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.

(b) ***Appointment of Arbitrators***

If a Dispute is referred to arbitration by any Party such Dispute shall be resolved by a sole arbitrator to be appointed by mutual agreement of the Parties. If Parties fail to appoint an arbitrator within 30 (thirty) Days after service of the Notice of Arbitration, such arbitrator shall be appointed in accordance with the provisions of the Arbitration Act.

(c) ***Venue, Language and Rules of Arbitration***

The venue of the arbitration shall be New Delhi and the language of the arbitration shall be English. The arbitration shall be conducted in accordance with the Arbitration Act.

(d) ***Award and Apportionment of costs***

The arbitration award of the arbitrator shall be final and binding on the Parties and shall be enforceable in accordance with its terms. The arbitrator shall state reasons for its findings in writing. The costs of arbitration and the manner of bearing such costs shall be determined by the arbitrator.

22. INDEMNITY, INSPECTION AND INSURANCE

22.1 Indemnity

(a) Subject to Article 22.1(b) below, the SPD shall be responsible for, and release and indemnify the Procurer on demand from and against any and all proceedings, actions, third party claim for Loss, damage and expense of whatever kind and nature for:

- (i) sickness, injury, death or personal injury;
- (ii) loss of or damage to property;
- (iii) infringement of intellectual property rights in any equipment or materials forming part of the Unit;
- (iv) breach of any representations or warranties set out under Article 23;
- (v) negligence or Wilful Default;
- (vi) breach of statutory duty; and
- (vii) actions, claims, demands, costs, charges and expenses (including legal expenses),

which may arise out of, or in consequence of, construction, operation or maintenance of this Unit and any other performance or non-performance by the SPD or the SPD Related Party of its obligations under this Agreement.

(b) Procurer shall indemnify, defend and hold harmless the SPD against any and all proceedings, actions, third party claim for Loss, damage and expense of whatever kind and nature arising out of any act or omission caused by the negligence or Wilful Default

of the Procurer and any other performance or non-performance by the Procurer of its obligations under this Agreement.

- (c) Any indemnity right or obligation of a Party under any provision of this Agreement shall be without limitation to any other indemnity right or obligation by that Party mentioned elsewhere in this Agreement.

22.2 Inspection

RUMSL shall at all reasonable times during the Term, have the right to enter upon and access the Unit Land for inspecting the Unit. The SPD shall allow and accord all reasonable assistance to RUMSL to inspect the Unit. The SPD shall have the right to accompany RUMSL during its inspection of the Unit.

22.3 Insurance

The SPD shall effect and maintain or cause to be effected and maintained, at no cost to the Procurer or RUMSL, throughout the Term, insurance covers against such risks, with such deductibles and with such endorsements and co-insured(s), which the Good Industry Practices would ordinarily merit maintenance of and as required under the Financing Documents.

22.4 Evidence of Insurance Cover

All insurances obtained by the SPD in accordance with Article 22.3 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) Days of obtaining any insurance cover, the SPD shall furnish to the Procurer, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) Days after notice of such proposed cancellation, modification or non-renewal has been delivered by the SPD to the Procurer.

22.5 Remedy for failure to insure

If the SPD fails to effect and keep in force all insurances for which it is responsible under this Agreement, the Procurer shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the SPD, or in the event of computation of a Termination Compensation, treat an amount equal to the insurance cover(s) as deemed to have been received by the SPD.

22.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the SPD pursuant to Article 22.3 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Procurer, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

22.7 SPD's waiver

The SPD hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Procurer and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the SPD may otherwise have

or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the SPD pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

22.8 Application of insurance proceeds

Notwithstanding anything to the contrary contained in this Agreement, the proceeds from all insurance claims, except life and injury, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement or development of the Unit, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents.

22.9 Compliance with conditions of insurance policies

The SPD expressly acknowledges and undertakes to fully indemnify the Procurer from and against all losses and claims arising from the SPD's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

23. REPRESENTATIONS AND WARRANTIES

23.1 Representation and warranties of the SPD

The SPD represents and warrants to the Procurer and RUMSL that:

- (i) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (ii) it has taken all necessary corporate and other actions under the Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (iii) it has the financial standing and capacity to undertake the construction, operation and maintenance of the Unit in accordance with the terms of this Agreement;
- (iv) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (v) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (vi) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date hereof;
- (vii) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- (viii) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (ix) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Authority which may result in any Material Adverse Effect and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (x) it has complied with the Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect;
- (xi) no representation or warranty by it contained herein or in any other document furnished by it to the Procurer, or to any Government Authority in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make representation or warranty not misleading;
- (xii) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Unit or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Procurer in connection therewith; and
- (xiii) all information provided by the Selected Bidder in response to the RFP or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

23.2 Representation and warranties of the Procurer

The Procurer represents and warrants to the SPD that:

- (i) it has full power and authority execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (ii) it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (iii) it has the financial standing and capacity to perform its obligations under this Agreement;
- (iv) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with terms hereof;
- (v) it has no knowledge of any violation or default with respect to any order, writ, injunction, or any decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on the Procurer's ability to perform its obligations under this Agreement; and
- (vi) it has complied with Applicable Laws in all material respects.

23.3 Representation and warranties of RUMSL

RUMSL represents and warrants to the SPD and the Procurer that:

- (i) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (ii) it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (iii) it has the financial standing, capacity and ready availability of adequate funds to perform all its obligations under this Agreement, the Implementation Support Agreement and the Coordination Agreement;
- (iv) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with terms hereof;
- (v) it has no knowledge of any violation or default with respect to any order, writ, injunction, or any decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on RUMSL's ability to perform its obligations under this Agreement; and
- (vi) it has complied with Applicable Laws in all material respects.

24. TRANSFER

24.1 General Scope of Transfer/Payment

The transactions to be consummated and the formalities to be completed by the Procurer or RUMSL, as the case may be, and the SPD within 90 (ninety) Days from the Transfer Date are set out in Article 24.2 and 24.3.

24.2 SPD's Obligations

The SPD shall:

- (a) hand over peaceful possession of the Unit, along with the Unit Land and all equipment requisite for feasible continuous operation and maintenance of the Unit, in accordance with the Applicable Laws, the terms and conditions of this Agreement, conditions specified in any Applicable Permits and Good Industry Practices, free of Encumbrances and in a condition which is fit for the purpose;
- (b) transfer all its rights, titles and interests in the assets comprised in the Unit, which are required to be transferred to the Procurer or RUMSL, as the case may be, in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard, including novation of the Implementation Support Agreement and the Unit LUPA;
- (c) hand over to the Procurer or RUMSL, as the case may be, all documents including manuals and records relating to the operation and maintenance of the Unit;

- (d) transfer, either by way of license or any other means, any technology and up-to-date know-how relating to the operation and maintenance of the Unit;
- (e) transfer or cause to be transferred to the Procurer or RUMSL, as the case may be, any agreements relating to the Unit which are (i) valid and subsisting; (ii) capable of being transferred to the Procurer or RUMSL; and (iii) those the Procurer or RUMSL has chosen to take over, and cancel or cause to be cancelled such agreements relating to the Unit not transferred to the Procurer or RUMSL. For this purpose, the SPD shall ensure that all agreements relating to the Unit are assignable in favor of the Procurer or RUMSL, as the case may be, without any further action on part of the respective counterparties. The SPD shall entirely at its cost, terminate all such agreements relating to the Unit which are not transferred/assigned and/or are not required to be transferred/assigned to the Procurer or RUMSL;
- (f) transfer to the Procurer or RUMSL all such Applicable Permits which the Procurer or RUMSL may require and which can be legally transferred;
- (g) remove from the Unit Land, any moveable assets that are not taken over by or not to be transferred to the Procurer or RUMSL in terms of the provisions of this Agreement;
- (h) ensure that the Unit continues to meet the Technical Specifications and operational norms in accordance with the Applicable Laws, the terms and conditions of this Agreement, conditions specified in any Applicable Permits and Good Industry Practices on the date on which the Vesting Certificate is issued, in accordance with Article 24.4; and
- (i) comply with all other requirements as may be prescribed under Applicable Laws to complete the divestment and assignment of all its rights, title and interest in the Unit free from all Encumbrance and Taxes payable on or before the date on which the Vesting Certificate is issued, in accordance with Article 24.4.

24.3 Procurer/RUMSL's Obligations

- (a) The Procurer or RUMSL, as the case may be, shall pay compensation payable to the SPD in accordance with Article 14 to Lenders or to the SPD, as the case may be. The SPD confirms that upon such payment being made, the Procurer and RUMSL shall stand duly discharged of its obligations regarding payment of compensation under this Agreement and the charge created by the SPD in favour of Lenders on any of the assets shall stand satisfied and all such assets shall be free from such charge.
- (b) The SPD further confirms that payment of compensation by the Procurer or RUMSL in accordance with Article 14 shall be a valid discharge of the Procurer's obligation to compensate the SPD under this Agreement.
- (c) Prior to the issuance of the Vesting Certificate, in accordance with Article 24.4, the Procurer or RUMSL, as the case may be, shall have the right to carry out and complete an inspection of the Unit to ensure that the Unit conforms to the Technical Specifications and operational norms in accordance with the Applicable Laws, conditions specified in any Applicable Permits and Good Industry Practice. The SPD shall provide all reasonable assistance to the Procurer or RUMSL to carry out such an assessment.

24.4 Vesting Certificate

Upon the Procurer/RUMSL and the SPD fulfilling their respective obligations, as set out in this Article, the Procurer/RUMSL shall issue a certificate in the form set out in Annex 3 (**Vesting Certificate**) which shall have the effect of constituting evidence of divestment of all rights and title of the SPD in the Unit and their vesting in the Procurer/RUMSL. The divestment of all rights and title in the Unit shall be deemed to be complete on the date of issue of the Vesting Certificate.

24.5 Divestment Cost

The SPD shall bear and pay all costs incidental to divestment of all the rights, title and interest of the SPD in the Unit in favour of the Procurer/RUMSL on the date on which the Vesting Certificate is issued, in accordance with Article 24.4, save and except that all stamp duties payable on any deeds or documentations executed by the SPD in connection with the Transfer shall be borne by the Procurer.

24.6 Risk

Until transfer in accordance with this Article, the Unit shall remain at the sole risk of the SPD except for any loss or damage caused to or suffered by the SPD due to any act or omission or negligence on the part of the Procurer/RUMSL under this Agreement.

25. MISCELLANEOUS

25.1 Notice

- (a) Any consent, approval, authorization, certificate, report, information, notice, request from or by any Party, or any other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be effective and valid only when made in writing under the hand of a duly authorised representative of such Party.
- (b) Any contractual notice, instruction, decision, order, report, certificate or other communication that is to be exchanged between the Parties shall be served by sending it by electronic mail or facsimile transmission, with a confirmation copy by courier or registered post to the following addresses:

Procurer: Attention:
 Address:

Tel:
Fax:
Email:

RUMSL: Attention: Chairperson, Rewa Ultra Mega Solar Limited
 Address: Urja Bhawan, Link Road No. 2,
 Shivaji Nagar, Bhopal – 462003
 Madhya Pradesh, India
 Tel: 0755-2556526
 Fax: 0755-2551439
 Email: rumsinfo@mpnred.com

SPD: Attention:
 Address:

Tel:
Fax:
Email:

- (c) Any notice sent by electronic mail or facsimile shall be deemed to have been received on the date of transmission and any notice served by courier or registered post shall be deemed to be received when actually delivered to the address mentioned above.
- (d) Any change in the address for communication shall be duly notified by the relevant Party to the other Parties in accordance with the provisions of this Article 25.1.

25.2 Entire Agreement

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

25.3 Severability

- (a) Subject to Article 25.3(b), if any provision of this Agreement is held by a court or other authority of competent jurisdiction to be invalid, illegal, void, unenforceable or against the public interest, the rest of this Agreement shall remain in full force and effect and shall in no way be adversely affected.
- (b) Severance shall not be permitted under Article 25.3(a), where severance of such provision would render the performance of a Party's material obligations impracticable or impossible.
- (c) The Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, illegal, void, unenforceable or against the public interest, and produce as nearly as is practicable in all circumstances the appropriate balance of the commercial interests of the Parties.

25.4 Waiver

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

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

25.5 Successors and assigns

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

25.6 Language

The language for the purposes of administering and interpreting this Agreement shall be English.

25.7 Counterparts

This Agreement may be executed in 3 (three) counterparts, all executed counterparts shall be considered one and the same Agreement and each of them shall be deemed an original.

25.8 No Third Parties

Unless otherwise specified in this Agreement, this Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, or confer any right of suit or action on any person not a Party.

25.9 Relationship of the Parties

- (a) This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party.
- (b) No Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind, the other Party.
- (c) The SPD shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of persons to perform its obligations under this Agreement, including all local and national income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by the SPD shall be considered employees of the Procurer or RUMSL for any purpose nor shall the SPD represent to any person that he or she is or shall become a Procurer or RUMSL employee.

25.10 General

- (a) Notwithstanding anything contained in this Agreement, the SPD's obligation to furnish various bank guarantees under and in accordance with this Agreement may be fulfilled by the Selected Bidder on behalf of the SPD.
- (b) The SPD is not relieved of any of its obligations and liabilities under this Agreement as a result of the Selected Bidder submitting any bank guarantees on behalf of the SPD. Without prejudice to any other right or remedy available to the Procurer under this Agreement or the Applicable Law, failure of the Procurer to encash the bank guarantee submitted by the Selected Bidder, for reasons not attributable to the Procurer, the SPD shall be liable to furnish the requisite bank guarantee within 15 Days of the Procurer notifying the SPD of the same.

- (c) The SPD acknowledges and agrees that breach by the Selected Bidder, or failure by the Selected Bidder to comply with, the obligations of the SPD under this Agreement is a breach or failure of the SPD under this Agreement.

In witness whereof the Parties hereto have signed this Agreement on this 17th day of April 2017.

SIGNATURE PAGE

For and on behalf of

(Signature and seal)

Name and Designation

For and on behalf of

(Signature and seal)

Rewa Ultra Mega Solar Limited

Name and Designation

Avaneesh Shukla

Executive Engineer

For and on behalf of

(Signature and seal)

[SPV Name]

Name and Designation

SCHEDULE 1

TARIFF ESCALATION

From the expiry of the First Contract Year, the Initial Tariff shall be escalated by 5 (Five) Paisa at the start of each Contract Year, for a total of 15 (fifteen) Contract Years. The maximum escalation during the Term shall be 75 (seventy-five) Paisa.

Period/ Contract Year	Applicable Tariff (in INR)
From the commissioning of the Initial Part Capacity until the Deemed COD	
1.	
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SCHEDULE 2

METERING SPECIFICATIONS

Standard Reference Voltage	As per Indian Standard for ac Static watt-hour meters, Class 1 and 2, and Indian Standard for ac Static transformer operated watt-hour and VAR-hour meters, class 0.2S, 0.5S and 1.0S										
Voltage Range	As per Indian Standard for ac Static watt-hour meters, Class 1 and 2, and Indian Standard for ac Static transformer operated watt-hour and VAR-hour meters, class 0.2S, 0.5S and 1.0S										
Standard Frequency	As per Indian Standard for ac Static watt-hour meters, Class 1 and 2, and Indian Standard for ac Static transformer operated watt-hour and VAR-hour meters, class 0.2S, 0.5S and 1.0S										
Standard Basic Current	As per Indian Standard for ac Static watt-hour meters, Class 1 and 2, and Indian Standard for ac Static transformer operated watt-hour and VAR-hour meters, class 0.2S, 0.5S and 1.0S (Current range of consumer meters shall be so chosen as to record the load current corresponding to the sanctioned load)										
Accuracy Class	<p>Meters shall meet the following requirements of Accuracy Class:</p> <table border="1" data-bbox="810 1178 1391 1379"> <tr> <td>Interface meters</td> <td>0.2S</td> </tr> <tr> <td colspan="2">Consumer meters</td> </tr> <tr> <td>Up to 650 volts</td> <td>1.0 or better</td> </tr> <tr> <td>Above 650 volts and up to 33 kilo volts</td> <td>0.5S or better</td> </tr> <tr> <td>Above 33 kilo volts</td> <td>0.2S or better</td> </tr> </table> <p>Energy Accounting and audit meters</p> <ol style="list-style-type: none"> 1) In generating stations, the accuracy class of meters at a point after the generator stator terminals and before the tap off to the unit auxiliary transformer(s) shall not be inferior to that of 0.2S accuracy class. 2) However, the accuracy class of other meters shall not be inferior to that of 1.0S accuracy class. The accuracy class of meters in transmission system shall not be inferior to that of 0.2S accuracy class. 3) The accuracy class of meters in distribution system shall not be inferior to that of 0.5S accuracy class. 	Interface meters	0.2S	Consumer meters		Up to 650 volts	1.0 or better	Above 650 volts and up to 33 kilo volts	0.5S or better	Above 33 kilo volts	0.2S or better
Interface meters	0.2S										
Consumer meters											
Up to 650 volts	1.0 or better										
Above 650 volts and up to 33 kilo volts	0.5S or better										
Above 33 kilo volts	0.2S or better										
Starting Current and Maximum Current	As per Indian Standard for ac Static watt-hour meters, Class 1 and 2, and Indian Standard for										

	ac Static transformer operated watt-hour and VAR-hour meters, class 0.2S, 0.5S and 1.0S
Power Factor	As per Indian Standard for ac Static watt-hour meters, Class 1 and 2, and Indian Standard for ac Static transformer operated watt-hour and VAR-hour meters, class 0.2S, 0.5S and 1.0S
ac Voltage test	As per Indian Standard for ac Static watt-hour meters, Class 1 and 2, and Indian Standard for ac Static transformer operated watt-hour and VAR-hour meters, class 0.2S, 0.5S and 1.0S
Impulse Voltage Test	As per Indian Standard for ac Static watt-hour meters, Class 1 and 2, and Indian Standard for ac Static transformer operated watt-hour and VAR-hour meters, class 0.2S, 0.5S and 1.0S
Power Consumption	As per Indian Standard for ac Static watt-hour meters, Class 1 and 2, and Indian Standard for ac Static transformer operated watt-hour and VAR-hour meters, class 0.2S, 0.5S and 1.0S
Downloading Facility	Meters should have the facility to download the metered data through Meter Reading Instrument. (MRI).
Immunity to External Factors	The meters shall be immune to external influences like magnetic induction, vibration, electrostatic discharge, switching transients, surge voltages, oblique suspension and harmonics

SCHEDULE 3
TECHNICAL SPECIFICATION

Component	Detailed Technical Specification
Climatic Conditions	<p>Conditions for project component selection and system designs</p> <ul style="list-style-type: none"> – Ambient temperature: 50°C. – Altitude: 385m, above mean sea level. – Humidity: up to 98RH%. – Maximum wind speed: Zone IV, High wind speed of 47m/s. – Seismic Zone: Zone II as per IS 1893, low seismic risk prone area. – Corrosion Zone: Moderate zone.
SPV Modules - Quality Certification	<p>Solar PV modules must be certified for the latest edition of following IEC / UL for PV module qualification test or equivalent BIS standards</p> <p>IEC 61215: Crystalline silicon terrestrial photovoltaic (PV) modules - Design qualification and type approval.</p> <p>IEC 61646: Thin-film terrestrial photovoltaic (PV) modules - Design qualification and type approval.</p> <p>IEC 62108: Concentrated (PV) modules - Design qualification and type approval.</p> <p>IEC 61853 - Part 1: PV module performance testing and energy rating.</p> <p>IEC 61730: PV module safety qualification.</p> <p>IEC 60364-4-41: Protection against electric shock.</p> <p>IEC 61701: Resistance to salt mist and corrosion.</p> <p>IEC 60904: Photovoltaic devices.</p> <p>IEC 62804: Potential Induced Degradation (PID).</p> <p>IEC 61345: UV test for Photovoltaic (PV) modules.</p> <p>EN 50380: Datasheet and nameplate information for photovoltaic modules.</p> <p>Conformité Européenne (EC): The certified product conforms to the EU health, safety and environmental requirements.</p> <p>UL 1703: Comply with the National Electric Code (NEC), OSHA and the National Fire Prevention Association. The modules perform to at least 90% of the manufacturer's nominal power.</p>
SPV Modules - Technical Specification	<ul style="list-style-type: none"> – The nominal power tolerance of modules shall only be positive. – PV modules must be warranted for output wattage, this should not be less than 90% at the end of 10 years and 80% at the end of 25 years. – The PV modules shall undergo a minimum of 200 thermal cycles and 10 humidity - freeze cycle stresses to ensure their durability.

Component	Detailed Technical Specification
SPV Modules - Identification and Traceability of PV modules	<p>All Solar PV Modules shall be provided with RF identification tags (This can be inside or outside the laminate, but must be able to withstand harsh environmental conditions.) describing,</p> <ul style="list-style-type: none"> – Name of the manufacturer of PV Module. – Name of the Manufacturer of Solar cells. – Month and year of the manufacture (separate for solar cells and module). – Country of origin (separately for solar cells and module). – I-V curve for the module at Standard Test Condition (1000W/m², AM1.5, 25°C). – Wattage, Im, Vm and FF for the module. – Unique Serial No and Model No of the module. – Date and year of obtaining IEC PV module qualification certificate. – Name of the test lab issuing IEC certificate. – Other relevant information on traceability of solar cells. and module as per ISO 9000. <p>Note: Site owners shall be required to maintain accessibility to the list of Module IDs along with the above parametric data for each module.</p>
SPV Modules -Safe Disposal of Solar PV Modules	<p>The SPD shall ensure that all solar PV modules from the Unit after their ‘end of life’ (when they become defective/ non-operational/ non-repairable) are disposed of in accordance with the “e-waste (Management and Handling) Rules, 2011” notified by the Ministry of Environment and Forests, Government of India, as amended from time to time.</p>
Power Conditioners/ Inverters - Quality Certification	<p>The power conditioners/ inverters of the Unit must conform to latest edition of IEC / equivalent Standards as specified below:</p> <p>IEC 61683: Photovoltaic systems - Power conditioners - Procedure for measuring efficiency.</p> <p>IEC 60068-2: Environmental testing</p> <p>IEC 62093: Balance-of-system components for photovoltaic systems - Design qualification natural environments</p> <p>IEC 61727: Characteristics of the Utility Interface.</p> <p>EN 61000: Electromagnetic compatibility (EMC).</p> <p>IEC 62103/ IEC 62109-1 & 2: Electrical safety.</p> <p>IEC 62116: Testing procedure of Islanding Prevention Methods for Utility - Interactive Photovoltaic Inverters.</p> <p>UL 1741 or equivalent BIS Standard: Anti- Islanding Protection.</p>
Power Conditioners/ Inverters - Minimum	<ul style="list-style-type: none"> – Minimum peak efficiency to be 98%. – Inverters shall be equipped with all required hardware for data collection and communication with SCADA system.

Component	Detailed Technical Specification
Technical Specification	<ul style="list-style-type: none"> – DC injection shall be limited to 0.5% of the rated current of Plant. – Total harmonic distortion limits on AC side should be less than 3%. – Operational frequency: 50 Hz with a tolerance of +/-3Hz. – Operational voltage variation: +/- 10%. – Inverters shall be capable of operating at varying power factor between 0.9 lag to 0.9 lead and shall be able to inject or absorb reactive power. – Inverters shall be suitable for power curtailment as per the Indian Grid requirements. – Inverters shall be suitable for provision of LVRT as per CEA technical standards (CEA resolution on Petition No. 420/MP/2014 Dt. 05.01.2016).
Solar PV Module Mounting System	<p>Solar PV module mounting system can expected to be either fixed tilt structures or trackers; irrespective of the same, the following minimum standards are required to be complied</p> <p>IS 800: 2007: Code of Practice for General Construction in Steel.</p> <p>IS 801: Code of Practice for Cold formed light gauged Steel.</p> <p>IS 875: Parts I-V Code of Practice for design loads.</p> <p>IS 808: Hot rolled steel beams, channels and angle sections.</p> <p>IS 1730: Dimensions for steel plates, sheets and strips for structural and General Engineering Purpose.</p> <p>IS 816: Code of practice for use of metal arc welding for general construction in mild steel.</p> <p>IS 822: Code of procedure for inspection of welds.</p> <p>IS 2062: Specification of Steel for General Structural Purposes.</p> <p>IS 2629: Recommended Practice for Hot-Dip Galvanizing of Iron and Steel.</p> <p>IS 4777: Performance Tests for Protective Schemes used in the protection of light gauge steel against corrosion.</p> <p>IS 9172: Recommended Design Practice for Corrosion Protection of Steel Structures.</p> <p>ISO 9223: Corrosion of Metals and Alloys – Corrosivity of atmospheres – Classification.</p> <p>ISO 9224: Corrosion of Metals and Alloys – Corrosivity of atmospheres – Guiding values for the corrosivity categories.</p> <p>In addition to these following aspects shall be applicable for trackers</p> <ul style="list-style-type: none"> – The trackers proposed for the plants designed to withstand minimum life of 25 years. Trackers provided should have undergone aging tests on key components like bearings and actuators. – IEC 62817: Design qualification of Solar Trackers. – IEC 62727: PV Systems -Specification for Solar Trackers.

Component	Detailed Technical Specification
Other Sub-systems/ Components	Other subsystems/components used in the SPV power plants (Cables, Connectors, Junction Boxes, Surge Protection Devices, etc.) must also conform to the relevant international/ national Standards for Electrical Safety besides that for Quality required for ensuring Expected Service Life and Weather Resistance. (IEC Standard for DC cables for PV systems is under development. It is recommended that in the interim, the Cables of 600-1800 Volts DC for outdoor installations should comply with the draft EN50618/TUV 2pfg 1169/09/07 for service life expectancy of 25 years).
Accredited Certification bodies	The PV modules/Power Conditioners deployed in the power plants must have valid test certificates for their certification as per above specified IEC / UL/ BIS standards by ILAC accredited laboratories or one of the NABL Accredited Certification Centers in India.

ANNEX 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.)

THIS DEED OF GUARANTEE is executed on this [insert date] day of [insert month and year] at [insert place] by [insert name of bank] having its head/registered office at [insert address], (hereinafter referred to as the **Guarantor**, which expression shall unless repugnant to the subject or context thereof include its successors, assigns and permitted substitutes);

IN FAVOUR OF:

[**FIRST PROCURER'S NAME**], with its principal office at [insert address], (hereinafter referred to as [**FIRST PROCURER'S NAME**], which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns).

WHEREAS

- (A) [**FIRST PROCURER'S NAME**] and RUMSL have entered into a power purchase agreement dated [insert date] (the **Agreement**) with [insert name], with its [registered/principal] office at [•] (hereinafter referred to as **SPD**, which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns).
- (B) In terms of Article 3 of the Agreement, the SPD is required to furnish to [**FIRST PROCURER'S NAME**], an unconditional, irrevocable, on demand bank guarantee for an amount of INR [•] as security for due performance of the SPD's obligations under the Agreement until the first anniversary of the Unit COD, including payments of any amounts by the SPD under the Agreement.
- (C) At the request of the SPD and for good and sufficient consideration, the Guarantor has agreed to provide an unconditional, irrevocable and on-demand bank guarantee for the due and punctual performance/discharge by the SPD of its obligations under the Agreement, including payment of any amounts by the SPD under the Agreement (**Guarantee**).

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

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

The Guarantor hereby unequivocally, irrevocably and unconditionally guarantees, as primary obligor and not merely as guarantor, and undertake to pay to [**FIRST PROCURER'S NAME**] immediately forthwith upon demand any money or monies in part or in full, as demanded by [**FIRST PROCURER'S NAME**], not exceeding a total sum of [•] (**Guaranteed Amount**) upon receipt of a written demand from [**FIRST PROCURER'S NAME**] without demur and without reference to SPD and without any further proof or documents and notwithstanding any contest by SPD and without requiring [**FIRST PROCURER'S NAME**] to establish its claims in respect of any monies under the Agreement. [**FIRST PROCURER'S NAME**] may make more than one demand hereunder provided that the sum total of all demands shall not exceed [•].

The Guarantee is given on consideration received from the SPD (the receipt and sufficiency of

which is hereby acknowledged).

The Guarantor further agrees that this Guarantee does not limit the number of claims that may be made by [FIRST PROCURER'S NAME] against the Guarantor. Upon a payment being made under this Guarantee, the amount of the Guarantee shall automatically be replenished to the full Guaranteed Amount.

Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future Taxes, deductions or withholdings of any nature whatsoever and by whomsoever imposed, and where any withholding on a payment is required by any Applicable Law, the Guarantor shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that [FIRST PROCURER'S NAME] receives the Guaranteed Amount due hereunder as if no such withholding had occurred.

2. This Guarantee shall be valid, binding on the Guarantor and remain in full force and effect from the date hereof until [*insert a date which falls upon the first anniversary of the Unit COD plus an additional 1 Month claim period*] and shall not be terminable by notice or any change in the constitution of the Guarantor or the term of the Agreement or by any other reasons whatsoever.

Notwithstanding the foregoing, this Guarantee shall continue in effect until the sums payable under this Guarantee have been indefeasibly paid in full and the Guarantor receives written notice thereof from [FIRST PROCURER'S NAME].

The Guarantor hereby agrees and acknowledges that [FIRST PROCURER'S NAME] shall have a right to invoke this Guarantee in part or in full, as it may deem fit.

3. In order to give effect to this Guarantee, [FIRST PROCURER'S NAME] shall be entitled to treat the Guarantor as the principal debtor. The Guarantor's obligations and liabilities hereunder shall not be impaired or discharged by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the Guarantor from any of the Guaranteed Amount or prejudice or diminish the Guaranteed Amount in whole or in part, including, whether or not known to it, or [FIRST PROCURER'S NAME]:
 - (a) any extension of time or waiver granted to, or composition with, the SPD or any other Person;
 - (b) any incapacity or lack of powers, authority or legal personality of or dissolutions or change in the status of the SPD or any other Person;
 - (c) any variation of the Agreement so that references to the Agreement in this Guarantee shall include each variation;
 - (d) any unenforceability, illegality or invalidity of any obligation of any Person under the Agreement or any unenforceability, illegality or invalidity of the obligations of the Guarantor under this Guarantee or the unenforceability, illegality or invalidity of the obligations of any Person under any other document or Guarantee, to the extent that each obligation under this Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there were no unenforceability, illegality or invalidity;

- (e) the partial or entire release of any Guarantor or other Person primarily or secondarily liable or responsible for the performance, payment or observance of any of the Private Operator's obligations during the Term; or by any extension, waiver, or amendment whatsoever which may release a guarantor or Guarantor, other than performance or indefeasible payment of a Guaranteed Amount; or
 - (f) any part performance of the Agreement by the SPD or by any failure by [FIRST PROCURER'S NAME] to timely pay or perform any of its obligations under the Agreement.
4. If, and to the extent that for any reason the SPD enters or threatens to enter into any proceedings in bankruptcy or re-organisation or otherwise, or if, for any other reason whatsoever, the performance or payment by the SPD of the Guaranteed Amount becomes or may reasonably be expected to become impossible, then the Guaranteed Amount shall be promptly paid by the Guarantor to [FIRST PROCURER'S NAME] on demand.
 5. So long as any amount is due from the SPD to [FIRST PROCURER'S NAME], the Guarantor shall not exercise any right of subrogation or any other rights of a guarantor or enforce any guarantee or other right or claim against the SPD, whether in respect of its liability under this Guarantee or otherwise, or claim in the insolvency or liquidation of the SPD or any such other Person in competition with [FIRST PROCURER'S NAME]. If the Guarantor receives any payment or benefit in breach of this Clause 6, it shall hold the same upon trust for [FIRST PROCURER'S NAME].
 6. The Guarantor shall make payment hereunder on first demand without restriction or conditions and notwithstanding any direction to the contrary given or any dispute or objection raised by the SPD and/or any other Person. The Guarantor shall not require [FIRST PROCURER'S NAME] to justify the invocation of this Guarantee, nor shall the Guarantor have any recourse against [FIRST PROCURER'S NAME] in respect of any payment made hereunder. The Guarantor shall not go into the veracity of any breach or failure on the part of the SPD or validity of demand so made by [FIRST PROCURER'S NAME] and shall pay the amount specified in the demand. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provision hereof.
 7. The Guarantor represents that this 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 in the manner provided herein.
 8. This Guarantee shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Guarantor.
 9. This Guarantee shall be a primary obligation of the Guarantor and accordingly [FIRST PROCURER'S NAME] shall not be obliged before enforcing this Guarantee to take any action in any court or arbitral proceedings against the SPD, to make any claim against or any demand on the SPD or to give any notice to the SPD or to enforce any security held by [FIRST PROCURER'S NAME] or to exercise, levy or enforce any distress, diligence or other process against the SPD or resort to any other means of obtaining payment of the Guaranteed Amount. The obligations of the Guarantor herein are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement or the insolvency, bankruptcy, re-organisation, dissolution or liquidation of the SPD or any change in ownership of

the SPD or any purported assignment by the SPD or any other circumstance whatsoever which might otherwise constitute a discharge or defense of a guarantor or a surety.

10. The Guarantor represents and warrants to [FIRST PROCURER'S NAME] that:
 - (a) it has the power to execute, deliver and perform the terms and provisions of this Guarantee and has taken all necessary action to authorise the execution, delivery and performance by it of this Guarantee;
 - (b) the Guarantor has duly executed and delivered this Guarantee, and this Guarantee constitutes its legal, valid and binding obligation enforceable in accordance with its terms except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles;
 - (c) neither the execution, delivery or performance by the Guarantor of this Guarantee, nor compliance by it with the terms and provisions hereof will: (i) contravene any material provision of any Applicable Law; (ii) conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Guarantor is a party of by which it or any of its property or assets is bound; or (iii) violate any provision of the Guarantor's constituent documents;
 - (d) no order, consent, approval, license, authorisation or validation of, or filing, recording or registration with, except as have been obtained or made prior to the date hereof, or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorise, or is required in connection with: (i) the execution, delivery and performance of this Guarantee; or (ii) the legality, validity, binding effect or enforceability of this Guarantee; and
 - (e) this Guarantee will be enforceable when presented for payment to the Guarantor's branch in [Place] at *[insert the address of the Guarantor]*.
11. This Guarantee is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of [FIRST PROCURER'S NAME] in exercising any right, power or privilege hereunder and no course of dealing between [FIRST PROCURER'S NAME] and the Guarantor, or the SPD, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
12. The rights, powers and remedies expressly provided in this Guarantee are cumulative and not exclusive of any rights, powers or remedies which [FIRST PROCURER'S NAME] would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of [FIRST PROCURER'S NAME] to any other or further action in any circumstances without notice or demand.
13. If any one or more of the provisions contained in this Guarantee are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions

shall not in any way be affected or impaired thereby, and the Guarantor shall enter into good faith negotiations with [FIRST PROCURER'S NAME] to replace the invalid, illegal or unenforceable provision.

14. The Guarantor hereby agrees to execute and deliver all such instruments and take all such actions as may be necessary to make effective fully the purposes of this Guarantee.
15. This Guarantee may be executed in one or more duplicate counterparts, and when executed and delivered by the Guarantor and [FIRST PROCURER'S NAME] shall constitute a single binding agreement.
16. [FIRST PROCURER'S NAME] may assign or transfer all or any part of its interest herein to any other person with prior written notice to the Guarantor. The Guarantor shall not assign or transfer any of its rights or obligations under this Guarantee.
17. All documents arising out of or in connection with this Guarantee shall be served:
 - (a) upon [FIRST PROCURER'S NAME], at [*insert address*]; and
 - (b) upon the Guarantor, at [*insert address*].
18. Any demand, notice or communication would have been deemed to have been duly served:
 - (a) if delivered by hand, when left at the proper address of services; and
 - (b) if given or made by pre-paid registered post or facsimile, when received.
19. Either party may change the above address by prior written notice to the other party.
20. This Guarantee shall be interpreted in accordance with the laws of India. The governing language of this Guarantee shall be English and the courts at Delhi shall have exclusive jurisdiction.

IN WITNESS WHEREOF the Guarantor has set its hands hereunto on the Day, Month and year first hereinabove written.

Signature

Name:-

Power of Attorney No.:-

For

[Insert Name of the Bank]

Banker's Stamp and Full Address.

Dated this ____ day of ____, 2016

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

CHECK LIST FOR BANK GUARANTEES

Sl.No.	Details of checks	YES/NO.
a)	Is the BG on non-judicial Stamp paper of appropriate value, as per applicable Stamp Act of the place of execution?	
b)	Whether date, purpose of purchase of stamp paper and name of the purchaser are indicated on the back of Stamp paper under the Signature of Stamp vendor? <i>(The date of purchase of stamp paper should be not later than the date of execution of BG and the stamp paper should be purchased either in the name of the executing Bank or the party on whose behalf the BG has been issued. Also the Stamp Paper should not be older than six months from the date of execution of BG).</i>	
c)	Has the executing Officer of BG indicated his name, designation and Power of Attorney No./Signing Power no. on the BG?	
d)	Is each page of BG duly signed/initialed by executants and whether stamp of Bank is affixed thereon? Whether the last page is signed with full particulars including two witnesses under seal of Bank as required in the prescribed Performa?	
e)	Does the Bank Guarantees compare verbatim with the Performa prescribed in the Bid Documents?	
f)	Are the factual details such as Bid Document No. / Specification No., / LOI No. (if applicable) / Amount of BG and Validity of BG correctly mentioned in the BG	
g)	Whether overwriting/cutting if any on the BG have been properly authenticated under signature & seal of executants?	

ANNEX 2

FORMAT OF THE LETTER OF CREDIT

Date: XX/XX/XXXX

Name and Address of the SPPD,

WITH RECOURSE TO DRAWERS

Dear Sir,

[FIRST PROCURER'S NAME] / [SECOND PROCURER'S NAME] and RUMSL have entered into a power purchase agreement dated [*insert date*] (the **Agreement**) with [*insert name*], with its [registered/principal] office at [•] (hereinafter referred to as **SPD**, which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns).

In terms of Article 10.6(a) of the Agreement, [FIRST PROCURER'S NAME]/ [SECOND PROCURER'S NAME] is required to 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 letter of credit, which may be drawn upon by the SPD in accordance with the Agreement.

Accordingly, you are hereby authorized to draw on [FIRST PROCURER'S NAME], [Address] / [SECOND PROCURER'S NAME], [Address] for a sum not exceeding INR XXXXXX (In words) available by your draft drawn on them in your designated account no. XXXXXX, IFSC code XXXXXX sight drawn for the invoice value and accompanied by:

(Capitalised terms used herein but not defined shall have the meaning ascribed to them in the Agreement.)

- (1) Usance Draft: a sum not exceeding INR XXXXXX (In words) payable monthly. In case above dates happen to be holiday, the LC could be operated on the next working day.
- (2) The LC will be operated only for an amount remaining unpaid up to and including Due Date of the payment of the Monthly Bills and/or Supplementary Bills.
- (3) Sight draft for the amount of the Monthly Bills and/or Supplementary Bills in 2 sets.
- (4) Signed Monthly Bills and/or Supplementary Bills in 2 Sets.
- (5) Certificate regarding correctness of the Monthly Bills and/or Supplementary Bills by M/s XXXXXX (SPD Name) and certificate of claimed amounts remaining unpaid till due date.
- (6) The name of the signatory shall be any authorized representative of XXXXXX (SPD Name) under whose signature the bill is presented for payment.
- (7) All bank charges for opening and operation of LC to be borne by [FIRST PROCURER'S NAME]/ [SECOND PROCURER'S NAME]. The LC is available for negotiation with any bank in India.
- (8) Please dispatch one additional copy of each document for our record.

(10) The monthly ceiling for the negotiation under this LC is INR XXXXXX (In words). Partial drawings are allowed under this LC. The LC will be reinstated to on retirement of each draw automatically. Such reinstatement will be advised to the beneficiary by the bank evidencing supply of energy from their power project to [FIRST PROCURER'S NAME]/ [SECOND PROCURER'S NAME]

(11) Pro-rata shipment permissible. Transshipment prohibited.

CREDIT EXPIRY DATE: This Letter of Credit is effective from date of its issue and irrevocably valid in [Place Name]/ [Place Name] until XX.XX.XXXX.

Drafts drawn under this Credit are to be negotiated with recourse to the drawers and are to bear the following clause.*Drawn under XXXX (Bank Name), Branch- [Place Name]/ [Place Name] Letter of Credit No. XXXXXXXX dated XX.XX.XXXX

Draft drawn under this Letter of Credit are negotiable by the (Bank Name) Branch, XXXXX only.

We hereby engage with drawers and/or bonafide holders that drafts drawn and negotiated in conformity with the terms of this credit will be duly honoured on presentation/that drafts accepted within the terms of this credit will be duly honoured on maturity.

This LC is operative will be reinstated only after realisation of the bills drawn for the Monthly Bills and/or Supplementary Bills and nil dues for the previous month and account of [FIRST PROCURER'S NAME]/ [SECOND PROCURER'S NAME] is regular. At no point of time our liability under this LC should exceed INR XXXXXX.

This credit is subject to Uniform Custom and Practice for Documentary Credit (2007 revision) International Chamber of Commerce Publication No. 600.

Authorized Signatory

Note: *This is an indicative format and is subject to final approval by the Procurers and/or RUMSL. The format to be finalised prior to the execution of Project Agreements with due consultation with the Selected Bidder.*

ANNEX 3

FORMAT OF THE VESTING CERTIFICATE

With respect to the Power Purchase Agreement dated [●] executed between [FIRST PROCURER'S NAME], the SPD and RUMSL hereby acknowledges:

- (a) compliance and fulfilment by the SPD of its obligations set out in Article 24.2;
- (b) receipt of actual possession of the Unit from the SPD; and
- (c) receipt from the SPD of a certificate confirming that there are no liens or encumbrances whatsoever on the Unit,

on the basis that upon the issue of this Vesting Certificate, [[FIRST PROCURER'S NAME]/RUMSL] shall be deemed to have acquired, all title, interest of the SPD in or about the Unit and shall be deemed to have vested, unto [[FIRST PROCURER'S NAME]/RUMSL] free from all Encumbrances.

Notwithstanding anything to the contrary contained hereinabove it shall be a condition of this Vesting Certificate that in the event of any defect or deficiency in any of the transfer requirements set forth in Article 24.2 of the Agreement being found or discovered at any time hereafter, nothing contained in this Vesting Certificate shall be construed or interpreted as waiving the obligation of the SPD to rectify and remedy the same and/or relieving the SPD in any manner of the same.

Agreed and accepted

For SPD

For [FIRST PROCURER'S NAME]

By:.....

By:.....

Name:

Name:

Title:

Title:

Dated:

Dated:

For RUMSL

By:.....

Name:

Title:

Dated:

ANNEX 4

INDICATIVE FORMAT OF THE SUBSTITUTION AGREEMENT

[ON APPROPRIATE STAMP PAPER]

This Substitution Agreement (**Substitution Agreement**) is executed on this [●] day of [●] 2017 at [Bhopal]:

BETWEEN

[**Procurer's Name**], a company incorporated under the laws of India (Company Identification Number: []), having its registered office at _____ (**FIRST PROCURER'S NAME**);

[**Second Procurer's Name**], a company incorporated under the laws of India (Company Identification Number: []), having its registered office at _____ (**SECOND PROCURER'S NAME**);

REWA ULTRA MEGA SOLAR LIMITED, a company incorporated under the laws of India (Company Identification Number: U40102MP2015PLC034450), having its registered office at Urja Bhawan Link Road No. 2, Shivaji Nagar, Bhopal – 462003, Madhya Pradesh, India (**RUMSL**);

[**SPV Name**], a company incorporated under the laws of India (Company Identification Number: U40106RJ2010PTC031977), having its registered office at B-4 Plot No. 12, Basement-2, Gopi Nath Marg, Purohit ji ka Bagh, MI Road, Jaipur- 302001, Rajasthan, India (**SPD**);

AND

[●] a company incorporated under the laws of India (Company Identification Number: [●]), having its registered office at [●], [acting for itself and for and on behalf of the lenders listed in Annex 1 hereto] (the **Lenders**).

[Procurer's Name], [Second Procurer's Name], RUMSL, the SPD and the Lenders are hereinafter collectively referred to as **Parties** and individually as **Party**.

WHEREAS:

- (A) The GoMP has decided to develop the 750 MW capacity of the Rewa Solar Project as three units of ground mounted grid-connected solar photovoltaic power plants of 250 MW capacity each, to be developed on a pre-identified land parcel inside the Rewa Solar Project. The energy generated from the Unit is envisaged to be supplied to [Procurer's Name] and [Second Procurer's Name]. The land for the project is being provided by NRED. Following the process of selection of Bidders, as set out in the RFP, RUMSL accepted the Bid to develop 1 number of Unit(s) comprising 250 MW capacity of the Rewa Solar Project on 10 February 2017. Subsequently, RUMSL issued the letter of award on 21 February 2017 to the Selected Bidder appointing it as the SPD to implement the Unit.
- (B) With a view to facilitate obtaining financing for the Unit by the SPD and to enable the SPD to design, construct, finance, commission, operate and maintain the Unit pursuant to and in accordance with the Project Agreements (*as defined below*), the Parties have agreed that, subject to the terms and conditions of the Project Agreements and the Financing Documents (*as defined below*), the Lenders shall have the right to substitute the SPD or step-in.

- (C) The Parties have agreed to execute this Substitution Agreement on the terms and conditions mentioned herein below.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The capitalised terms not defined herein shall have the meaning ascribed to them in the Project Agreements:

Annex means annex to this Substitution Agreement.

Arbitration shall have the meaning ascribed to it in Article 8.2.

Appointed Representative means Lender's representative that has been notified to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL pursuant to a Step-In Notice, in accordance with Article 6.

Dispute means any difference or dispute of whatsoever nature relating to this Substitution Agreement between the Parties arising under, out of or in connection with this Substitution Agreement.

[SECOND PROCURER'S NAME] PPA means the power purchase agreement executed between [SECOND PROCURER'S NAME], the SPD and RUMSL.

Financial Assistance means all funded and non-funded financial assistance, including loans, advances and guarantees (but excluding subordinated shareholder loans) or any re-financing that the SPD may avail of for the Unit from the Lenders in accordance with the Financing Documents.

Financial Default means SPD event of default as set out under the Financing Documents.

Financing Documents means collectively, the documents executed or to be executed with Lenders, in respect of the Financial Assistance and includes any document providing Security for the Financial Assistance.

Indemnified Party shall have the meaning ascribed to it in Article 7.2.

Indemnifying Party shall have the meaning ascribed to it in Article 7.2.

Lenders mean [the financial institutions set out in Annex 1].

Lenders' Agent means [*Insert name of the Lenders' Agent*].

Lenders' Certificate shall have the meaning ascribed to it in Article 3.2(a)(ii).

Lenders' Dues means the aggregate of all monies owed by the SPD to the Lenders under the Financing Documents on account of principal thereunder for funding the whole or any part of the cost to be incurred for implementing the Unit and all accrued interest, additional interest, liquidated damages, commitment fees, commission, prepayment premium, costs, charges and other monies including financing charges and fees owed by the SPD to the Lenders under the

Financing Documents for the Unit up to the Transfer Date, payable under the Financing Documents.

Month means the calendar month as per the Gregorian calendar.

[FIRST PROCURER'S NAME] PPA means the power purchase agreement executed between [FIRST PROCURER'S NAME], the SPD and RUMSL.

Notice of SPD Event of Default shall have the meaning ascribed to it in Article 3.3(a).

Notice of Financial Default shall have the meaning ascribed to it in Article 3.2(a).

Notice of Dispute shall have the meaning ascribed to it in Article 8.1.

Party means the [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME], RUMSL the SPD or the Lenders.

Person means any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation or any other legal entity.

Notice of Intent means the notice given by the Lenders pursuant to Article 6.2 stating that the Lenders intends to issue a Step In Notice.

Project Agreements means the [FIRST PROCURER'S NAME] PPA, [SECOND PROCURER'S NAME] PPA, the Implementation Support Agreement and the Coordination Agreement.

Proposal shall have the meaning ascribed to it in Article 4.1 (c).

RFP means request for proposal dated 16 March 2016.

Receiver shall have the meaning ascribed to it in Article 5.1.

Recital means recital of this Substitution Agreement.

Selectee means a new company proposed by the Lenders pursuant to this Substitution Agreement for the remaining Term by amendment of the Project Agreements.

SPD means [•].

SPD Event of Default means occurrence of a SPD Event of Default as defined under the [FIRST PROCURER'S NAME] PPA and the [SECOND PROCURER'S NAME] PPA.

Step-In Date means the date on which the Lenders gives a Step-In Notice.

Step-in Notice has the meaning ascribed to it in Article 6.1.

Step-Out Date means the date falling 20 Days after the date of a Step-Out Notice.

Step-Out Notice means a notice from the Lenders or Appointed Representative to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL pursuant to Article 6 (Step Out).

Substitution Agreement means this substitution agreement.

Substitution Notice under Financing Documents shall have the meaning ascribed to it in Article 3.2(b).

Substitution Notice under Project Agreements shall have the meaning ascribed to it in Article 3.3(b).

1.2 Interpretation

In this Substitution Agreement:

- (a) References to any statute or statutory provision or order or regulation made there under shall include that statute, provision, order or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date hereof.
- (b) Headings to Articles are for information only and shall not form part of the operative provisions of this Substitution Agreement and shall not be taken into consideration in its interpretation or construction.
- (c) References to Recitals, Articles or Annexes are, unless the context otherwise requires, are references to recitals, articles or annexes of this Substitution Agreement.
- (d) Unless the context otherwise requires, reference to one gender includes a reference to the other, words importing the singular include the plural and vice versa.
- (e) References to the words "include" or "including" shall be construed as being suffixed by the term "without limitation".
- (f) Unless otherwise stated, any reference to any period commencing "from" a specific day or date and "till" or "until" a specific day or date shall include both such days or dates.
- (g) The Annex to this Substitution Agreement shall form an integral part and parcel of this Substitution Agreement and shall be in full force and effect as though it was expressly set out in the body of this Substitution Agreement.
- (h) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by either of the Parties, the notice, consent or approval shall be given on their behalf only by any authorized persons.

2. ASSIGNMENT

2.1 Assignment of Rights and Title

The SPD hereby agrees to assign its rights, title and interest under the Project Agreements to and in favour of the Lenders pursuant to and in accordance with the provisions of this Substitution Agreement and the Project Agreements by way of Security in respect of the Financial Assistance provided by the Lenders.

3. SUBSTITUTION OF SPD

3.1 Right of Substitution

[FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL hereby irrevocably agree to substitute the SPD with a Selectee, selected by the Lenders in accordance with the provisions of this Substitution Agreement and approved by [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL, by amendment of the Project Agreements in favour of the Selectee for the purpose of securing the payments of the Lenders' Dues.

It is clarified that nothing contained herein shall entitle the Lenders to operate the Unit themselves under and in accordance with the Project Agreements either individually or collectively.

3.2 Procedure in case of a Financial Default

(a) Upon occurrence of a Financial Default, the Lenders' Agent shall notify the SPD by a notice in writing, with a copy simultaneously sent to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL about the occurrence of a Financial Default (**Notice of Financial Default**). The Notice of Financial Default shall be accompanied by a certificate issued by the authorised officer of the Lenders' Agent, certifying:

- (i) the occurrence of a Financial Default; and
- (ii) the amount of the Lenders' Dues (**Lenders' Certificate**).

The Lenders' Certificate shall be conclusive evidence of occurrence of such Financial Default and of such Lenders' Dues. Such Lenders' Certificate shall be final, conclusive and binding upon the SPD for the purpose of this Substitution Agreement and the Financing Documents.

(b) The Lenders' Agent may, within 45 Days of the date of the Notice of Financial Default to the SPD and without prejudice to any other right or remedy available to the Lenders under the Financing Documents and/or this Substitution Agreement, notify [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME], RUMSL and the SPD on behalf of all the Lenders, about the Lenders decision to invite, negotiate and procure offers, either through private negotiations or public auction or a process of tendering of the remaining Term and the rights and obligations of the SPD under the Project Agreements to a Selectee, subject to approval of such Selectee by [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL (**Substitution Notice under Financing Documents**). In such an event, the Lenders/Lenders' Agent shall be entitled to substitute the SPD with the Selectee within 60 Days of the issuance of the Substitution Notice under Financing Documents. In the event the Lenders/Lenders' Agent do not convey their intention to substitute the SPD with a Selectee within the prescribed time period, [FIRST PROCURER'S NAME] and [SECOND PROCURER'S NAME] shall be entitled to terminate the respective Project Agreements to which [FIRST PROCURER'S NAME] and [SECOND PROCURER'S NAME] are parties, forthwith by issuing the Termination Notice in accordance with the terms of the respective Project Agreements.

In the event the Lenders/Lenders' Agent fails to substitute the SPD within the aforementioned time period, [FIRST PROCURER'S NAME] and [SECOND

PROCURER'S NAME] shall be entitled to terminate the respective Project Agreements to which [FIRST PROCURER'S NAME] and [SECOND PROCURER'S NAME] are parties by issuing the Termination Notice in accordance with the terms of their respective Project Agreements.

3.3 Procedure in case of a SPD Event of Default

- (a) Upon occurrence of a SPD Event of Default, [FIRST PROCURER'S NAME] and/or [SECOND PROCURER'S NAME], as the case may be, shall notify the SPD by a notice in writing, with a copy simultaneously sent to the Lenders/Lenders' Agent, about the occurrence of a SPD Event of Default (**Notice of SPD Event of Default**).

The Notice of SPD Event of Default shall be the conclusive evidence of occurrence of such SPD Event of Default. Such Notice of SPD Event of Default shall be final, conclusive and binding upon the SPD for the purpose of this Substitution Agreement and the Project Agreements.

- (b) In the event the SPD Event of Default is not cured within the time period prescribed under the Project Agreements, [FIRST PROCURER'S NAME] and/or [SECOND PROCURER'S NAME], as the case may be, shall inform the Lenders/Lenders' Agent of its intention to issue a Termination Notice and allow 30 (thirty) Days to the Lenders/Lenders' Agent to make a representation, stating the intention to substitute the SPD by a Selectee (**Substitution Notice under Project Agreements**).

In the event that the Lenders/Lenders' Agent issue the Substitution Notice under Project Agreements, within 180 (one hundred and eighty) Days of issue of such notice, they shall be entitled to undertake and complete the substitution of the SPD by a Selectee, in accordance with the provisions of this Substitution Agreement. The Lenders' right to substitute shall be without prejudice to any other right or remedy available to the Lenders under the Financing Documents and/or this Substitution Agreement. In the event the Lenders/Lenders' Agent do not convey their intention to substitute the SPD with a Selectee, or fail to substitute the SPD within the prescribed time period, [FIRST PROCURER'S NAME] and [SECOND PROCURER'S NAME] shall be entitled to terminate the Project Agreements forthwith by issuing the Termination Notice in accordance with its provisions.

3.4 Criteria for Selection of Selectee

- (a) The Lenders' Agent shall apply the following criteria while selecting a Person as the Selectee:
- (i) the Person shall be capable of properly discharging the duties, obligations and liabilities of the SPD under the Project Agreements;
 - (ii) the Person shall provide Security to the satisfaction of the Lenders for repayment of Lenders' Dues;
 - (iii) the Person shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues of the SPD to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL under and in accordance with the respective Project Agreements and of Lenders' Dues upon terms and conditions as agreed to with the Lenders;

- (iv) the Person shall have the Net Worth, experience and technical qualification to implement the Unit and shall hold the minimum Capital of the SPD as set forth in the RFP, the [FIRST PROCURER'S NAME] PPA and the [SECOND PROCURER'S NAME] PPA;
 - (v) the Person shall have not been in breach of any agreement between itself and [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL or any Government Authority; and
 - (vi) any other appropriate condition or criterion, whereby continuity in the performance of the SPD's obligations under the Project Agreements is maintained and the Security in favour of the Lenders under the Financing Documents is preserved.
- (b) At any time prior to the approval of a Person as the Selectee by [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME], and RUMSL pursuant to this Substitution Agreement, [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] or RUMSL may require the Lenders' Agent to satisfy [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] or RUMSL as to the eligibility of such Person and the decision of [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] or RUMSL, as the case may be in this behalf, which shall be reasonable, final, conclusive and binding on the Lenders and such Person.

4. MODALITIES OF SUBSTITUTION

4.1 Modalities

The following modalities shall be applicable to any substitution of the SPD by the Selectee:

- (a) the Lenders' Agent may invite, negotiate, procure offers either through private negotiations or public auction or process of tender or otherwise for the substitution of the SPD by another Person;
- (b) the Lenders' Agent shall on behalf of the Lenders propose to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME], and RUMSL, pursuant to Article 4.1(c), the name of such Person proposed to be the Selectee for acceptance and shall apply as necessary to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL for:
 - (i) grant to such Person, as substitute to the SPD, the right to design, construct, finance, operate, maintain and transfer the Unit under and in accordance with and subject to and on the terms and conditions set out in the Project Agreements;
 - (ii) amendment of the Project Agreements to grant to such Person, upon being approved as the Selectee, the same terms and conditions and the remaining Term under the Project Agreements; and
 - (iii) the execution of a new substitution agreement with such Person, upon being approved as the Selectee, for the remaining Term, on the same terms and conditions as set out in this Substitution Agreement,
- (c) the Lenders' Agent shall be entitled, within a period of 180 (one hundred and eighty) Days from the date of the Substitution Notice under Financing Documents or

Substitution Notice under the Project Agreements, as the case may be, to select and propose a Person as the Selectee to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL for its approval (**Proposal**). The Proposal of the Lenders' Agent pursuant to this Article 4.1(c) shall contain the particulars and information in respect of such Person, the Lenders' Dues and any other data and information as may be relevant for [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL to consider and take a decision on the Proposal.

Without prejudice to the foregoing, the Lenders' Agent agrees and undertakes to provide to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL, such further and other information and clarifications in respect of any data, particulars or information, furnished by the Lenders' Agent as [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and/or RUMSL may reasonably require. [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL shall convey its approval or otherwise of such Proposal, including such Person proposed as the Selectee, in its sole discretion within 30 (thirty) Days of (i) the date of receipt of the Proposal by [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME], and RUMSL; or (ii) the date when the last of further and other information and such clarifications in respect of any data, particulars or information comprised in the Proposal, as have been provided by the Lenders' Agent to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL, whichever is later. It is expressly agreed between the Parties that the Proposal shall be accompanied by an unconditional undertaking of the Person proposed as the Selectee that it shall, upon approval by [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL of the Proposal including such Person, observe, comply, perform and fulfill the terms and conditions of the Project Agreements on the footing as if such Person being the Selectee was the original private entity under the Project Agreements and shall be liable for and shall assume, discharge and pay the Lenders' Dues under and in accordance with the terms and conditions of the Financing Documents. Upon approval of the Proposal by [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL, the Person shall become the Selectee hereunder;

- (d) [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL shall, upon its satisfaction of the eligibility of the Selectee and in accordance with the provisions of this Substitution Agreement and subject to the provisions of Article 4.1(e), proceed to substitute the SPD with the Selectee by amendment of the Project Agreements or such other form of document as [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL may reasonably require, on the same terms and conditions as under the Project Agreements for the remaining Term;
- (e) the substitution as aforesaid shall be subject to the Selectee obtaining Applicable Permits necessary for implementing and/or operating and maintaining the Unit under and in accordance with the Project Agreements;
- (f) the objection, if any, of [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and/or RUMSL on the choice of the Selectee shall be made after hearing the Lenders' Agent, provided however, that in the event of a refusal as stated above, the Lenders' Agent may propose another Person as the Selectee. In the event that no objection is raised with respect to the Person proposed to be the Selectee by [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL within the period set forth in Article 4.1(c), the Person proposed as the Selectee shall be deemed to have been accepted by [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL;

- (g) the substitution aforesaid, pursuant to the Security interest hereby created in favour of the Lender, shall be deemed to be complete only upon the Selectee accepting and complying with the terms and conditions stipulated in the Project Agreements; and
- (h) all actions of the Lenders' Agent hereunder shall be deemed to be on behalf of the Lenders and be binding upon them. The Lenders' Agent is authorised to receive payment of compensation, payment to cure default and any other payments, consideration for transfer in accordance with the Substitution Notice under Financing Documents or Substitution Notice under the Project Agreements, as the case may be, the Project Agreements and the Financing Documents and give valid discharge on behalf of all the Lenders.

4.2 Waiver of SPD's Right to Remedy

The SPD hereby irrevocably agrees and waives any right to challenge the Lenders' decision to apply to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL for substitution as aforesaid and neither the SPD nor [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME], RUMSL shall be entitled to prevent the Lenders' Agent from proceeding to seek such a substitution of the SPD by the Selectee as hereinbefore provided. The SPD agrees and confirms that the SPD shall not have any right to seek re-evaluation of the SPD's assets and the Project Agreements, otherwise than as contracted in the Financing Documents while [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL permits substitution as hereinbefore provided, pursuant to the Lenders Agent's request. The Parties acknowledge that the rights of the Lenders hereunder are irrevocable and shall not be contested in any proceedings before any court of law and the SPD shall not have any right or remedy to prevent, obstruct, injunct or restrain [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME], RUMSL and/or the Lenders from effecting or causing the substitution as aforesaid. No third party shall have the right to question the decision of the Lenders/Lenders Agent, [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL.

4.3 No Guarantee

Nothing contained in these Articles shall mean or be interpreted as provision of any guarantee or surety by [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL and it is expressly agreed that [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME], and RUMSL has not provided any surety, guarantee or counter guarantee whether directly or indirectly for the recovery of amount of Financial Assistance advanced by the Lenders to the SPD.

5. INTERIM PROTECTION OF SERVICES AND PRESERVATION OF SECURITY

- 5.1 In the event that the Lenders notify [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL of a Financial Default and the SPD has failed to cure such default for a period of more than 30 (thirty) Days, or in special circumstances affecting the Security of the Lenders, the Lenders shall be entitled to institute protective legal proceedings for a receivership (**Receiver**) to maintain, preserve and protect the assets, other than the Project Agreements, held as Security for the Lenders provided always that such Receiver shall be [FIRST PROCURER'S NAME] or RUMSL, if, in the opinion of [FIRST PROCURER'S NAME] or RUMSL, it is necessary and required for the operation and maintenance of the Unit and the Parties hereby consent and agree to the same. The Lenders' Agent shall in such an event notify [FIRST PROCURER'S NAME] or RUMSL to assume receivership of the Unit assets held as Security and [FIRST PROCURER'S NAME] or RUMSL shall operate and maintain the same pending the substitution of the SPD by the Selectee. In the event [FIRST PROCURER'S NAME] or RUMSL does not assume receivership and declines the request of

the Lenders' Agent, the Lenders' Agent shall for itself and each of the Lenders, be entitled to seek the appointment of a Receiver from the competent court having jurisdiction for the Unit assets held as Security.

The Receiver shall be responsible for protecting the Unit assets in receivership and shall render a true and proper account of the receivership to the Lenders in accordance with the terms of its appointment. The Receiver shall operate and maintain the Unit in accordance with the obligations of the SPD under the Project Agreements. Any Person other than [FIRST PROCURER'S NAME] or RUMSL may be appointed as the Receiver only with the prior consent of [FIRST PROCURER'S NAME] and RUMSL. In a declaratory suit for appointment of the Receiver, notwithstanding that no recovery mortgage suit or proceeding for enforcement of the Lenders' Security under the Financing Documents is instituted by the Lenders' Agent for itself or the Lenders, any action for appointment of [FIRST PROCURER'S NAME] or RUMSL as the Receiver or appointment of an independent Receiver by the court shall be without prejudice to the other rights and remedies of [FIRST PROCURER'S NAME], RUMSL and of the Lenders under the Financing Documents.

6. **Step-in Right**

6.1 Without prejudice to Lender's rights under the Financing Documents, the Lender may give [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL a Step-in Notice (**Step-in Notice**) at any time during which an SPD event of default under any of the Project Agreement is subsisting whether or not a Termination Notice has been served by [FIRST PROCURER'S NAME] and/or [SECOND PROCURER'S NAME], as the case may be.

6.2 The Lender shall give [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL not less than 30 Days prior notice (**Notice of Intent**) of:

- (a) its intention to issue a Step-in Notice; and
- (b) the identity of the proposed Appointed Representative.

While selecting a Person as the Appointed Representative, the Lender shall ensure that the Person is capable of properly discharging the duties, obligations and liabilities of the SPD under the Project Agreements.

The modalities set out in Article 4 shall also be applicable for the selection and appointment of the Appointed Representative.

6.3 Where a Notice of Intent is issued and at that time no Termination Notice has been served by [FIRST PROCURER'S NAME] and/or [SECOND PROCURER'S NAME], as the case may be, [FIRST PROCURER'S NAME] shall, not later than 20 Days after the date of that Notice of Intent, give to the Lenders a notice containing details of any amount owed by the SPD to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME], RUMSL and any other liabilities or obligations of the SPD to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL which are accrued and outstanding at the date of the Notice of Intent and which shall fall due after the date of the Notice of Intent and on or prior to the date falling 60 Days after the date of the Notice of Intent.

6.4 The Appointed Representative shall assume jointly with the SPD the rights of the SPD under the Project Agreements and thereafter until the end of the Step-in Period [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL shall deal with the Appointed Representative and the SPD.

- 6.5 The Appointed Representative may at any time during the Step-In Period deliver to [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL a Step-Out Notice which shall specify the Step-Out Date.
- 6.6 On expiry of the Step-In Period:
- (a) the obligations and liabilities of the Appointed Representative against [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL under the Project Agreements arising after the expiry of the Step-In Period shall be assumed by the SPD to the exclusion of the Appointed Representative; and
 - (b) [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL shall no longer deal with the Appointed Representative and shall deal with the SPD in connection with the Project Agreements.
- 6.7 The SPD shall continue to be bound by the terms of the Project Agreements, notwithstanding the occurrence of a Step-In Notice, a Step-In Period, a Step-Out Notice, Step-Out Date, any action by the Lenders or Appointed Representative and/or any provision of this Agreement.

7. INDEMNITY

7.1 Indemnity

- (a) The SPD shall indemnify, defend and hold harmless [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME], RUMSL and the Lenders/Lenders' Agent against any and all proceedings, actions and third party claims for any loss, damage, cost and expenses of whatever kind and nature arising out of any breach by the SPD of any of its obligations under this Substitution Agreement or on account of failure of the SPD to comply with Applicable Laws and Applicable Permits.
- (b) The Lender/Lenders' Agent shall indemnify, defend and hold harmless [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL against any and all proceedings, actions and third party claims for any loss, damage, cost and expenses arising out of the Lenders'/Lenders' Agent's failure to fulfill its obligations under this Substitution Agreement, materially or adversely affecting the performance of the SPD's or [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] or RUMSL's obligations under the Project Agreements, other than any loss, damage, cost and expenses arising out of acts done in discharge of their lawful functions by the Lenders/Lenders' Agent.

7.2 Notices and Contest of Claims

In the event that any Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 7.1 or in respect of which it is entitled to reimbursement (**Indemnified Party**), it shall notify the other Party responsible for indemnifying such claim hereunder (**Indemnifying Party**) within 30 (thirty) Days of receipt of claim and shall not settle or pay the claim without prior approval of the Indemnifying Party,

such approval not being unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting it. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnified Party may reasonably require.

8. DISPUTE RESOLUTION

8.1 Amicable Settlement

In the event of a Dispute either Party may give the other written notice at any time of a Dispute having arisen (**Notice of Dispute**). The Notice of Dispute shall set out brief details of the nature of the Dispute.

The Parties agree that they shall endeavour to resolve any Dispute amicably and in good faith within 30 (thirty) Days of a Notice of Dispute being served by one Party on the other Party in respect of that Dispute. In the event that resolution of the Dispute is reached pursuant to this Article 8.1, the resolution and its terms shall be recorded in writing and signed by one representative from each of the Parties.

8.2 Dispute Resolution by Arbitration

Failing amicable settlement and/or settlement of a Dispute pursuant to the provisions of Article 8.1, each of the Parties unconditionally and irrevocably agrees to the submission of such Dispute to binding arbitration governed by the Arbitration and Conciliation Act, 1996.

Any arbitration proceedings commenced pursuant to this Article 8.2 shall be referred to as the **Arbitration**.

If a Dispute is referred to Arbitration by any Party such Dispute shall be resolved by a sole arbitrator to be appointed by mutual agreement of the Parties. If Parties fail to appoint an arbitrator within 30 (thirty) Days after service of the notice of Arbitration, such arbitrator shall be appointed in accordance with the provisions of the Arbitration Act.

8.3 Place of Arbitration

The place of the Arbitration shall be New Delhi.

8.4 English Language

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

8.5 Fees and Expenses

The fees and expenses of the arbitrator and all other expenses of the Arbitration shall be initially borne and paid by respective Parties, subject to determination by the arbitrator. The arbitrator may provide in the award for the reimbursement to the prevailing Party of its costs and expenses

in bringing or defending the Arbitration claim, including legal fees and expenses incurred by such Party.

8.6 Performance of Obligations during the Pendency of the Arbitration Proceedings

The Substitution Agreement and rights and obligations of the Parties shall remain in full force and effect pending the award under any Arbitration proceedings pursuant to this Article 8.

8.7 Survival

The provisions of this Article 8 shall survive the termination of the Substitution Agreement.

9. GOVERNING LAW AND JURISDICTION

The Substitution Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in Bhopal shall have exclusive jurisdiction over matters arising out of or relating to this Substitution Agreement.

10. MISCELLANEOUS

10.1 Representations and Warranties

The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Substitution Agreement.

10.2 Notices

Notices under this Substitution Agreement shall be sent to the addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by registered post acknowledgement due and delivered to other Parties.

10.3 Amendments to Substitution Agreement

- (a) This Substitution Agreement shall not be affected by re-organisation of any Lender, Lenders' Agent, [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] or RUMSL and the successor-in-interest of such Lender, Lenders' Agent, [FIRST PROCURER'S NAME], [SECOND PROCURER'S NAME] and RUMSL shall have the benefit of this Substitution Agreement.
- (b) No amendment, variation or modification to this Substitution Agreement shall be valid and effectual unless made in writing and executed by the duly authorised representatives of all the Parties.
- (c) All stamp duties or other imposts and charges as are applicable on this Substitution Agreement or on amendment of the Project Agreements for the purpose of substitution as aforesaid shall be borne by and be to the account of the SPD. In the event of Lenders making such payment for time being, it shall be deemed to be a part of the Lenders' Dues.

10.4 Harmonious Construction

- (a) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Substitution Agreement, the Project Agreements and this Substitution

Agreement shall be read together and construed harmoniously. The terms of this Substitution Agreement shall prevail in the event of any inconsistencies with the Project Agreements.

- (b) The consultation, recommendation or approval of the Lenders' Agent under this Substitution Agreement shall always be taken as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same and hereby waives its right to question or dispute it.
- (c) This Substitution Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- (d) It shall not be necessary for the Lenders or the Lenders' Agent to enforce or exhaust any other remedy available to them before invoking the provisions of this Substitution Agreement.

In witness whereof the Parties hereto have signed this Agreement on this _____ day of _____ 2017.