Annexure-I

STANDARD

POWER PURCHASE AGREEMENT FOR

PROCUREMENT OF ….. MW _____ POWER ON LONG TERM BASIS

Between

[Name of Solar Power Generator]

And

[MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD]
[MSEDCL]
[month and year]

This Power Purchase Agreement is made on the _____ day of _____ of _____ at _____

Between

_____ [name of the Solar Power Generator], _____, [details of Solar Power Generator] (hereinafter referred to as "Solar **Power Generator or SPG**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **First Part**;

And

_____[MSEDCL], a company incorporated under the Companies Act 1956, having its registered office at _____(hereinafter referred to as "MSEDCL", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the **Second Part**;

The SPG and MSEDCL are individually referred to as 'Party' and collectively referred to as 'Parties'.

WHEREAS:

A. The Ministry of New and Renewable Energy [MNRE] has launched a scheme for farmers on 8th March 2019 and issued implementation guidelines on _____.

B. The MNRE has accorded a sanction and allotted a capacity of 500 MW to MSEDCL for under the said scheme of 8th March 2019.

C. MSEDCL had initiated a selection process for procurement of 500 MW of the power generated from the Grid connected Solar Power Project on the terms and conditions contained in the EoI/RfS No._____ dated _____.

D. The SPG has been selected in the Process for development, generation and supply of electricity from the ____MW _____ Power Project to be established by SPG at _____[location of proposed power plant] and electricity generated to be fed to the _____ [Name and location of 33/11 kV sub-station];

E. MSEDCL has issued the Letter of Award No…….. dated……in favour of the SPG for development and establishment of the ……MW _____ Power Project as per the terms and conditions contained in the EoI/RfS.

F. The SPG has furnished the Performance Bank Guarantee in the sum of Rs……..in favour of MSEDCL as per the format prescribed by the MSEDCL.

G. The SPG has fulfilled the terms and conditions for signing this Power Purchase Agreement as a definitive agreement for establishing the _____ Power Project of……..MW at ……..,

for generation and sale of electricity by the SPG to MSEDCL at _____33/11 kV S/S;

H. The parties have agreed to execute this Power Purchase Agreement in terms of the EoI/RfS and the Letter of Award in regard to the terms and conditions for establishment of the _____ Power Project at ……, and for generation and supply of electricity by the SPG to MSEDCL.

Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 *Definitions*

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

"Act" or "Electricity Act, 2003"	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
"Agreement" or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	Maharashtra Electricity Regulatory Commission (MERC)
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to SPG and MSEDCL, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State;
"Capacity Utilisation Factor" or "CUF"	shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time; However for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity; In any Contract Year, if 'X' MWh of energy has been metered out at the Delivery Point for 'Y' MW Project capacity, CUF= (X MWh/(Y MW*8766)) X100%;
"Change in Law"	shall have the meaning ascribed thereto in Article 12 of this Agreement;

"Commercial Operation Date (COD)"	shall mean the date on which the commissioning certificate is issued upon successful commissioning (as per provisions of this Agreement) of the project;
"Competent Court of Law"	shall mean any court or tribunal or any similar judicial or quasi- judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
"Consents, Clearances and	shall mean all authorizations, licenses, approvals, registrations, permits, waivers,
"Permits"	privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
"Consultation Period"	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a SPG Preliminary Default Notice or MSEDCL Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
"Contract Year"	shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that: (i) in the financial year in which the COD would occur, the Contract Year shall end on the date immediately before the COD and a new Contract Year shall commence once again from the COD and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement
"Contracted Capacity"	shall mean …… [Insert capacity] MW contracted with MSEDCL for supply by the SPG to MSEDCL at the Delivery Point from the _____ Power Project;
"Delivery Point"	"Delivery Point" shall mean the point at the voltage level of 11kV of the 33/11 kV Sub-station. Metering shall be done at this interconnection point where the power is injected into the 33/11 kV Sub-station. For interconnection with grid and metering, the SPG shall abide by the relevant and applicable regulations, Grid Code notified by the State Commission and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time, or orders passed thereunder by the Appropriate Commission or CEA. All charges and losses related to Transmission of power from project up to Delivery Point as notified by the Appropriate Commission shall be borne by the SPG.

“Dispute”	shall mean any dispute or difference of any kind between MSEDCL and the SPG, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
"Due Date"	Due Date shall mean the forty-fifth (45th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received online or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the MSEDCL.
“Effective Date”	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
“Electricity Laws”	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
“Event of Default”	shall mean the events as defined in Article 13 of this Agreement;
“Expiry Date”	Shall mean the date occurring twenty five (25) years from the Commercial Operation Date subject to that the supply of power shall be limited for a period of 25 years from the COD unless extended by the Parties as per this Agreement;
“Financing Agreements”	shall mean the agreements pursuant to which the SPG has sought financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of MSEDCL;
"Force Majeure" or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 11 of this Agreement;
“Indian Governmental Instrumentality”	shall mean the Government of India, Governments of state of _____ and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the above state Government or both, any political sub-division of any of them including any court or Appropriate Commission or tribunal or judicial or quasi-judicial body in India;
“Insurances”	shall mean the insurance cover to be obtained and maintained by the SPG in accordance with Article 8 of this Agreement;

"Interconnection Facilities"	shall mean the facilities on SPG's side of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;
"Invoice" or "Bill"	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Letter of Award" or "LoA"	shall mean Letter of Award issued by the MSEDCL to the SPG for the project;
"MNRE"	shall mean the Ministry of New and Renewable Energy, Government of India;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Security Mechanism"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;

“Power Project” or “Project”	shall mean the _____ power generation facility of Contracted Capacity of ……..[Insert capacity] MW, located at ……., [Insert name of the District and State] having a separate control system, metering and separate points of injection into the grid at Delivery point of 33/11 kV substation. The Project shall include all units and auxiliaries such as water supply, treatment or storage facilities, bay(s) for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility, whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement;
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 13 of this Agreement;
“Project Capacity”	shall mean the maximum AC capacity of the Project at the point of injection on which the Power Purchase Agreement has been signed.
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project; b) the requirements of Indian Law; and the physical conditions at the site of the Power Project
“Rebate”	shall have the same meaning as ascribed thereto in Article 10.3.5 of this Agreement;
"Rupees", "Rs.", “₹”	shall mean Indian rupees, the lawful currency of India;
“Scheduled Commissioning Date” or “SCD” of the Project	Shall mean …… [Insert Date that is Twelve (12) Months from the Date of issuance of LoA by the MSEDCL to the SPG];
"Tariff"	Shall have the same meaning as provided for in Article 9 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
“Termination Notice”	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;

"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;

ARTICLE 2: TERM OF AGREEMENT

2.1 *Effective Date*

2.1.1 This Agreement shall come into effect from _____ and such date shall be referred to as the Effective Date.

2.2 *Term of Agreement*

2.2.1 Subject to Article 2.3 and 2.4 of this Agreement, this Agreement shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period at least one hundred eighty (180) days prior to the Expiry Date, on mutually agreed terms and conditions.

2.2.2 The SPG is free to operate their plants beyond the Expiry Date if other conditions like land lease / Right to Use of Land (as applicable), permits, approvals and clearances etc. allow. In such case unless otherwise agreed by the MSEDCL, MSEDCL shall not be obligated to procure power beyond the Expiry Date.

2.3 *Early Termination*

2.3.1 This Agreement shall terminate before the Expiry Date if either MSEDCL or SPG terminates the Agreement, pursuant to Article 13 of this Agreement.

2.4 *Survival*

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 16 (Governing Law and Dispute Resolution), Article 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

ARTICLE 3: CONDITIONS SUBSEQUENT

3.1 The SPG agrees and undertakes to make Project Financing Arrangements for its Project and shall provide necessary documents to MSEDCL in this regard within six Months from the Date of issue of LoA by MSEDCL for the project.

ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 S*PG's Obligations*

4.1.1 The SPG undertakes to be responsible, at SPG's own cost and risk, for:

a) The SPG shall be solely responsible and make arrangements for Land & associated infrastructure for development of the Project and for Connectivity with the 33/11 kV sub-station for confirming the evacuation of power by the Scheduled Commissioning date or COD, whichever is earlier, and all clearances related thereto;
   The SPG shall furnish the necessary documents to establish possession in the name of the Project Developer of the required land/ Lease Agreement;

b) obtaining all Consents, Clearances and Permits as required and maintaining all documents.

c) Designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.

d) the commencement of supply of power up to the Contracted Capacity to MSEDCL no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement;

e) Connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point. The SPG shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point.

f) owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;

f) fulfilling all obligations undertaken by the SPG under this Agreement.

g) The SPG shall be responsible to for directly coordinating and dealing with the MSEDCL, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Power and due compliance with deviation and settlement mechanism and the applicable Grid code/State Regulations.

4.2 *Purchase and sale of Contracted Capacity*

4.2.1 Subject to the terms and conditions of this Agreement, the SPG undertakes to sell to MSEDCL and MSEDCL undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.

4.3 *Right to Contracted Capacity & Energy*

4.3.1 MSEDCL, in any Contract Year shall not be obliged to purchase any additional energy from the SPG beyond the contract capacity. If for any Contract Year except for the first year of operation, the SPG has to generate minimum energy of …...Million kWh (MU) till the end of 10 years from the COD and …….. Million kWh (MU) for the rest of the Term of the Agreement, on account of reasons solely attributable to the SPG. For the first year of operation, the above limits shall be considered on pro-rata basis. The lower limit will, however be relaxable by MSEDCL to the extent

of grid non-availability for evacuation which is beyond the control of the SPG. There shall be no penalty to SPG for shortfall in solar power generation from minimum prescribed CUF.

4.3.2 In case at any point of time, the peak of capacity reached is higher than the contracted capacity and causes disturbance in the system at the point where power is injected, the SPG will have to forego the excess generation and reduce the output to the contract capacity and shall also have to pay the penalty/charges (if applicable) as per applicable regulations.

4.4 *Extensions of Time*

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

a) any MSEDCL Event of Default; or
b) Force Majeure Events affecting MSEDCL, or
c) Force Majeure Events affecting the SPG,

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to Article 4.4.5, for a reasonable period but not less than 'day for day' basis, to permit the SPG or MSEDCL through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPG or MSEDCL, or till such time such Event of Default is rectified by MSEDCL.

4.4.2 In case of extension due to reasons specified in Article 4.4.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of three (3) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5. In case neither party terminates the agreement under this clause, the agreement shall stand terminated on the expiry of twelve (12) months of the continuation of the Force majeure event unless the parties mutually agree to extend the agreement for the further period.

4.4.3 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Article 16.

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

4.4.5 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond the date pursuant to Article 4.5.2.

4.4.6 Delay in commissioning of the project beyond the scheduled commissioning date for reasons other than those specified in Article 4.4.1 shall be an event of default on part of the SPG and shall be subject to the consequences specified in the Article 4.5.

4.5 *Liquidated Damages not amounting to penalty for delay in Commissioning*

4.5.1 If the SPG is unable to commission the Project by the Scheduled Commissioning Date other than for the reasons specified in Article 4.4.1, the SPG shall pay to MSEDCL, damages for the delay in such commissioning and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:
Delay beyond the Scheduled Commissioning Date upto (& including) the date as on Twelve months from the Date of issue of LoA: The total Performance Bank Guarantee amount shall be encashed on per day basis and proportionate to the balance capacity not commissioned.

4.5.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee shall be limited to 14 Months from the Date of issue of LoA. In case, the Commissioning of the Project is delayed beyond 14 Months from the Date of issue of LoA, it shall be considered as an SPG Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced / amended to the Project Capacity Commissioned within 14 Months of the Date of issue of LoA and the PPA for the balance Capacity will stand terminated and shall be reduced from the project capacity.

4.5.3 The SPG further acknowledge that the amount of the liquidated damages fixed is genuine and reasonable pre-estimate of the damages that may be suffered by MSEDCL.

4.6 *Acceptance/Performance Test*

4.6.1 Prior to synchronization of the Power Project, the SPG shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by respective authorities.

4.7 *Third Party Verification*

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

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

4.8 ***Breach of Obligations***

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

4.9 ***Generation compensation for Off-take constraints***

4.9.1 Generation Compensation in offtake constraints due to Grid Unavailability: During the operation of the plant, there can be some periods where the Project can generate power but due to temporary transmission unavailability, the power is not evacuated, for reasons not attributable to the SPG. In such cases, subject to the submission of documentary evidences from the competent authority, the generation compensation shall be restricted to the following and there shall be no other claim, directly or indirectly against MSEDCL:

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

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

4.9.2 Offtake constraints due to Backdown: The SPG and MSEDCL shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. In the eventuality of backdown, subject to the submission of documentary evidences from the competent authority, the SPG shall be eligible for a minimum generation compensation, from MSEDCL, restricted to the following and there shall be no other claim, directly or indirectly against MSEDCL:.

Duration of Backdown	**Provision for Generation Compensation**
Hours of Backdown during a monthly billing cycle.	***Mininum Generation Compensation = 50% of [(Average Generation per hour during the month) X (number of backdown hours during the month)] X PPA tariff*** Where, Average Generation per hour during the month (kWh) = Total generation in the month (kWh) ÷ Total hours of generation in the month

The SPG shall not be eligible for any compensation in case the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions. The Generation Compensation shall be paid as part of the energy bill for the successive month after JMR/AMR.

ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

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

5.1.1 The SPG shall give the MSEDCL at least thirty (30) days' advanced preliminary written notice and at least fifteen (15) days' advanced final written notice, of the date on which it intends to synchronize the Power Project to the Grid System.

5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the SPG to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.

5.1.3 The synchronization equipment and all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the SPG at its generation facility of the Power Project at its own cost. The SPG shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/ and checking/verification is made by the concerned authorities of the MSEDCL.

5.1.4 The SPG shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code. In addition, the SPG will inject in-firm power to grid time to time to carry out operational/ functional test prior to commercial operation. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.

5.1.5 The SPG shall commission the Project within Twelve (12) Months from the Date of issue of LoA. Declaration of COD shall only be done upon the successful visit by the Commissioning Committee.

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

ARTICLE 6: DISPATCH AND SCHEDULING

6.1 *Dispatch and Scheduling*

6.1.1 The SPG shall be required to schedule its power as per the applicable regulations of SERC /SLDC or any other competent agency and same being recognized by the SLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the SPG.

6.1.2 The SPG shall be responsible for directly coordinating and dealing with the MSEDCL, State Load Dispatch Centers, and other authorities in all respects in regard to declaration of availability, scheduling and despatch of Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations.

6.1.3 The SPG shall be responsible for any deviation from scheduling and for any resultant liabilities on account of charges for deviation as per applicable regulations. UI charges on this account shall be directly paid by the SPG.

6.1.4 Auxiliary power consumption will be treated as per the state regulations. MSEDCL shall supply electricit y to the Power Producer at the MSEDCL"s prevailing HT Industrial Tariff rate in force from time to time and Solar Power Producer shall pay for this electricity at applicable tariff.

ARTICLE 7: METERING

7.1 *Meters*

7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the SPG and MSEDCL shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.

7.1.2 The SPG shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at SPG's side of Delivery Point.

7.1.3 In addition to ensuring compliance of the applicable codes, the SPG shall install Main & Check meters at the Delivery Point, along with Stand-by meter(s) as per the applicable regulations of the State where the Project is located.

7.2 *Reporting of Metered Data and Parameters*

7.2.1 The grid connected renewable power plants will install necessary equipment for regular monitoring of required data and simultaneously for monitoring of the electric power generated from the Project.

7.2.2 Online arrangement would have to be made by the SPG for submission of above data regularly for the entire period of this Power Purchase Agreement to the MSEDCL, the MNRE and concerned agency as per applicable regulation / directions.

7.2.3 Reports on above parameters on monthly basis (or as required by regulation / guidelines) shall be submitted by the SPG to Ministry of New and Renewable Energy/National Institute of Solar Energy through MSEDCL for entire period of PPA.

ARTICLE 8: INSURANCES

8.1 *Insurance*

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

8.2 *Application of Insurance Proceeds*

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

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

8.2.2 If a Force Majeure Event renders the Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, MSEDCL shall have claim on such proceeds of such Insurance limited to outstanding dues of MSEDCL against SPG.

8.3 *Effect on liability of MSEDCL*

8.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the SPG can claim compensation, under any Insurance shall not be charged to or payable by MSEDCL. It is for the SPG to ensure that appropriate insurance coverage is taken for payment by the insurer for the entire loss and there is no under insurance or short adjustment etc.

ARTICLE 9: APPLICABLE TARIFF

9.1 The SPG shall be entitled to receive the Tariff of Rs. ……../ kWh, fixed for the entire term of this Agreement, with effect from the COD, for the power sold to the MSEDCL as reflected in the Energy Accounts.

ARTICLE 10: BILLING AND PAYMENT

10.1 *General*

10.1.1 From the commencement of supply of power, MSEDCL shall pay to the SPG the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with Article 9. All Tariff Payments by MSEDCL shall be in Indian Rupees.

10.1.2 The SPG shall be required to make arrangements and payments for import of energy (if any) as per applicable regulations.

10.2 *Delivery and Content of Monthly Bills/Supplementary Bills*

10.2.1 The SPG shall submit MSEDCL online Monthly Bill for the immediately preceding Month based on the AMR/Energy Account along with all relevant documents (payments made by SPG for drawl of power, payment of reactive energy charges, Metering charges or any other charges as per regulations of SERC/SLDC, if applicable.)

Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on AMR/Energy Accounts. The Monthly Bill amount shall be the product of the energy as per Energy Accounts and the Applicable Tariff. Energy drawn from the grid will be regulated as per the regulations of respective State the Project is located in.

10.3 *Payment of Monthly Bills*

10.3.1 MSEDCL shall pay the amount payable under the Monthly Bill by the Due Date to such account of the SPG, as shall have been previously notified by the SPG.

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

i) deductions required by the Law; and
ii) Amount claimed by MSEDCL, if any, from the SPG, will be adjusted from the monthly energy payment.

The SPG shall open a bank account (the “SPG’s Designated Account") for all Tariff Payments to be made by MSEDCL to the SPG, and notify MSEDCL of the details of such account at least sixty (60) Days before the dispatch of the first Monthly Bill.

10.3.3 ***Late Payment Surcharge***

In the event of delay in payment of a Monthly Bill by MSEDCL beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable to the SPG at the rate of 1.25% per month on the

outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by the SPG through the Supplementary Bill.

10.3.5 ***Rebate***

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the SPG to MSEDCL in the following manner and the SPG shall not raise any objections to the payments made under this article.

a) A Rebate of 2% shall be payable to the MSEDCL for the payments made within a period of seven clear working days of the presentation of online copy of Bill along with required supporting documents at MSEDCL office.
b) Any payments made after seven clear working days of the date of presentation of online copy of the Bill along with the required supporting documents at MSEDCL office up to the Due Date shall be allowed a rebate of 1 %.
c) For the above purpose, the date of presentation of Bill shall be the next Business Day of delivery of the physical copy of the Bill at MSEDCL. .
d) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc. and on Supplementary Bill.

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

10.4 ***Payment Security Mechanism***

Letter of Credit (LC):

10.4.1 MSEDCL shall provide to the SPG, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the SPG in accordance with this Article.

10.4.2 Not later than one (1) Month before the start of supply, MSEDCL through a scheduled bank open a Letter of Credit in favour of the SPG, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

i) for the first Contract Year, equal to the estimated average monthly billing;
ii) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year.

10.4.3 Provided that the SPG shall not draw upon such 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.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, MSEDCL shall restore such shortfall within fifteen (15) days.

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

10.4.6 MSEDCL shall ensure that the Letter of Credit shall be renewed not later than its expiry.

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

10.4.8 If MSEDCL fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the SPG may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from MSEDCL, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

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

10.5 Disputed Bill

10.5.1 If the MSEDCL does not dispute a Monthly Bill or a Supplementary Bill raised by the SPG within fifteen (15) days of receiving such Bill shall be taken as conclusive.

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

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

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

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

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

10.5.5 Upon receipt of the Bill Disagreement Notice by the MSEDCL under Article 10.5.4, authorized representative(s) or Director Commercial of the MSEDCL and SPG shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

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

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

10.6 Quarterly and Annual Reconciliation

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

10.6.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the SPG and MSEDCL shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the SPG shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

10.7 *Payment of Supplementary Bill*

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

i) Adjustments required by the Energy Accounts (if applicable); or

ii) Change in Law as provided in Article 12

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

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

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

ARTICLE 11: FORCE MAJEURE

11.1 *Definitions*

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

11.2 *Affected Party*

11.2.1 An affected Party means MSEDCL or the SPG whose performance has been affected by an event of Force Majeure.

11.3 *Force Majeure*

11.3.1 A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if and only if it is declared / notified by the competent state / central authority / agency (as applicable);
b) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action if and only if it is declared / notified by the competent state / central authority / agency (as applicable); or
c) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.

11.4 *Force Majeure Exclusions*

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

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

11.5 *Notification of Force Majeure Event*

11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

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

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

11.6 *Duty to Perform and Duty to Mitigate*

11.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 11.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.7 *Available Relief for a Force Majeure Event*

11.7.1 Subject to this Article 11:

(a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

(b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations;

(c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.

(d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

ARTICLE 12: CHANGE IN LAW

12.1 *Definitions*

In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after the last date of the bid submission, including

(i) the enactment of any new law; or

(ii) an amendment, modification or repeal of an existing law; or

(iii) the requirement to obtain a new consent, permit or license; or

(iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the SPG; or (v) any change in the rates of any Taxes including any duties and cess or Introduction of any new tax made applicable for setting up the power project and supply of power from the Power project by the SPG Which have a direct effect on the Project. However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the SPG, or (iii) any change on account of regulatory measures by the Appropriate Commission.

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

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

12.2 *Relief for Change in Law*

12.2.1 The aggrieved Party shall be required to approach the MERC for seeking approval of Change in Law.

12.2.2 The decision of the MERC to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.

ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

13.1 S*PG Event of Default*

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

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

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

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

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

(ii) if (a) the SPG becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the SPG, or (c) the SPG goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the SPG will not be a SPG Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or

reorganization and where the resulting company retains creditworthiness similar to the SPG and expressly assumes all obligations of the SPG under this Agreement and is in a position to perform them; or

(iii) the SPG repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from MSEDCL in this regard; or

(iv) except where due to any MSEDCL's failure to comply with its material obligations, the SPG is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPG within thirty (30) days of receipt of first notice in this regard given by MSEDCL.

(v) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SPG.

(vi) except where due to any MSEDCL's failure to comply with its material obligations, the SPG is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPG within thirty (30) days of receipt of first notice in this regard given by MSEDCL.

13.2 MSEDCL *Event of Default*

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

(i) MSEDCL fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the SPG is unable to recover the amount outstanding to the SPG through the Letter of Credit,

(ii) MSEDCL repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the SPG in this regard; or

(iii) except where due to any SPG's failure to comply with its obligations, MSEDCL is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by MSEDCL within sixty (60) days of receipt of notice in this regard from the SPG to MSEDCL; or

if

- MSEDCL becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of sixty (60) days, or
- any winding up or bankruptcy or insolvency order is passed against MSEDCL, or
- MSEDCL goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that it shall not constitute a MSEDCL Event of Default, where such dissolution or liquidation of MSEDCLor MSEDCL is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to MSEDCL and expressly assumes all obligations of MSEDCL and is in a position to perform them; or;

(iv) Occurrence of any other event which is specified in this Agreement to be a material breach or default of MSEDCL.

13.3 *Procedure for cases of SPG Event of Default*

13.3.1 Upon the occurrence and continuation of any SPG Event of Default under Article 13.1, MSEDCL shall have the right to deliver to the SPG, with a copy to the representative of the lenders to the SPG with whom the SPG has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (MSEDCL Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

13.3.2 Following the issue of a MSEDCL Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

13.3.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the SPG Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, MSEDCL may terminate this Agreement by giving a written Termination Notice of sixty (60) days to the SPG.

13.3.5 Subject to the terms of this Agreement, upon occurrence of a SPG Event of Default under this Agreement, the lenders in concurrence with the MSEDCL, may exercise their rights, if any, under Financing Agreements, to seek substitution of the SPG by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the SPG and performing the obligations of the SPG. However, in the event the lenders are unable to substitute the defaulting SPG within the stipulated period, MSEDCL may terminate the PPA and may acquire the Project assets for an amount equivalent to 90% of the debt due or less as mutually agreed, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.
Provided that any substitution under this Agreement can only be made with the prior consent of MSEDCL including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by MSEDCL and accepts the terms and conditions of this Agreement.

13.3.6 The lenders in concurrence with MSEDCL, may seek to exercise right of substitution under Article 13.3.5 by an amendment or novation of the PPA in favour of the selectee. The SPG shall cooperate with MSEDCL to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized. In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a new entity, an amount of Rs. 1 Lakh per

MW +18% GST per transaction as facilitation fee (non-refundable) shall be deposited by the SPG to MSEDCL.

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

13.4 *Procedure for cases of MSEDCL Event of Default*

13.4.1 Upon the occurrence and continuation of any MSEDCL Event of Default specified in Article 13.2, the SPG shall have the right to deliver to MSEDCL, a SPG Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

13.4.2 Following the issue of a SPG Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

13.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

13.4.4 After a period of two hundred ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or MSEDCL Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, MSEDCL under intimation to SPG shall, subject to the prior consent of the SPG, novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the SPG, or if no offer of novation is made by MSEDCL within the stipulated period, then the SPG may terminate the PPA and at its discretion require MSEDCL to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and 150% (one hundred and fifty per cent) of the adjusted equity or, (ii) pay to the SPG, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the SPG.
Provided further that at the end of three (3) months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the SPG.

13.5 *Termination due to Force Majeure*

13.5.1 If the Force Majeure Event or its effects continue to be present beyond a period as specified in Article 4.4.2, either Party shall have the right to cause termination of the Agreement. In such an event this Agreement shall terminate on the date of such Termination Notice without any further liability to either Party from the date of such termination.

ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1 *Indemnity*

14.1.1 The SPG shall indemnify, defend and hold MSEDCL harmless against:

a) any and all third party claims against MSEDCL for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the SPG of any of its obligations under this Agreement; and

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by MSEDCL from third party claims arising by reason of a breach by the SPG of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the SPG, for which specific remedies have been provided for under this Agreement).

14.1.2 MSEDCL shall indemnify, defend and hold the SPG harmless against:

a) any and all third party claims against the SPG, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by MSEDCL of any of their obligations under this Agreement; and

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the SPG from third party claims arising by reason of a breach by MSEDCL of any of its obligations.

14.2 **Procedure for claiming Indemnity**

14.2.1 ***Third party claims***

a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or 14.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

i) the Parties choose to refer the dispute before the Arbitrator in accordance with Article 16.3.2; and

ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

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

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

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

14.3 *Indemnifiable Losses*

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

14.4 *Limitation on Liability*

14.4.1 Except as expressly provided in this Agreement, neither the SPG nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of MSEDCL , the SPG or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

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

14.5 ***Duty to Mitigate***

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

ARTICLE 15: ASSIGNMENTS AND CHARGES

15.1 ***Assignments***

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party, except to the Project Lenders or Lender's Representative as security for their debt under the Financing Agreements, other than by mutual consent between the Parties to be evidenced in writing. Such assignment shall be agreed to by MSEDCL subject to the compliance of provisions contained in this Agreement and more specifically to the provisions of Article 4.1.1 of this Agreement. In no case, such assignment shall be permissible prior to the declaration of COD.

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

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

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

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement. An amount of Rs. 1 Lakh per Transaction as Facilitation Fee (non-refundable) shall be deposited by the SPG to MSEDCL. Provided further that, such consent shall not be withheld by the SPG if MSEDCL seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a New Entity, an amount of Rs. 1 Lakh per Transaction as Facilitation Fee (non-refundable) shall be deposited by the SPG to MSEDCL.

15.2 ***Permitted Charges***

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

ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION

16.1 ***Governing Law***

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

16.2 ***Amicable Settlement and Dispute Resolution***

16.2.1 ***Amicable Settlement***

i. 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:
   (a) a description of the Dispute;
   (b) the grounds for such Dispute; and
   (c) all written material in support of its claim.

ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 16.2.1(i), furnish:
   (a) counter-claim and defences, if any, regarding the Dispute; and
   (b) all written material in support of its defences and counter-claim.

iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 16
   (i) if the other Party does not furnish any counter claim or defence under Article 16
   (ii) or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 16.2.1.
   (iii) the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

16.3 **Dispute Resolution**

16.3.1 **Dispute Resolution by the Appropriate Commission**

i) Where any Dispute or differences arises in relation to this agreement of any nature whatsoever including the construction, interpretation or implementation of the provisions of this agreement as well as claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, and relates to any matter agreed to be referred to the Appropriate Commission, shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

ii) MSEDCL shall be entitled to co-opt the lenders (if any) as a supporting party in such proceedings before the Appropriate Commission.

16.3.2 **Dispute Resolution through Arbitration**

i) If the Dispute arising as per Article 16.2.1 is not amicably resolved & such dispute is not covered in Article 16.3.1(i), such Dispute shall be resolved by arbitration under the provisions of the Electricity Act, 2003 (as amended from time to time) as under: Proceedings as well as appointment of the arbitrator(s) shall be carried out by the Appropriate Commissions under the Electricity Act 2003 as amended from time to time. As stipulated by the said Electricity Act

2003, the said arbitration will take place as per the provisions of the Arbitration and Conciliation Act 1996 as amended from time to time.

ii) ii) The place of arbitration shall be the _____(City where head quarter of MSEDCL is located). The language of the arbitration shall be English.

iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.

iv) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.

v) The award shall be of majority decision.

vi) MSEDCL shall be entitled to co-opt the lenders (if any) as a supporting party in such arbitration proceedings.

16.4 *Parties to Perform Obligations*

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

ARTICLE 17: MISCELLANEOUS PROVISIONS

17.1 *Amendment*

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

17.2 *Third Party Beneficiaries*

17.2.1 This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

17.3 *Waiver*

17.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party.

17.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

17.4 ***Confidentiality***

17.4.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

a) to their professional advisors;

b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or

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

17.5 ***Severability***

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

17.6 ***Notices***

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

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

Address:
Attention:
Email:
Fax. No. :
Telephone No. :

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

Address:
Attention:
Email:
Fax. No. :
Telephone No. :

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

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

17.7 *Language*

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

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

17.8 *Restriction of Shareholders / Owners' Liability*

17.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 2013.

17.9 *Taxes and Duties*

17.9.1 The SPG shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the SPG, contractors or their employees that are required to be paid by the SPG as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.

17.9.2 MSEDCL shall be indemnified and held harmless by the SPG against any claims that may be made against MSEDCL in relation to the matters set out in Article 17.9.1.

17.9.3 MSEDCL shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the SPG by MSEDCL on behalf of SPG.

17.10 *Independent Entity*

17.10.1 The SPG shall be an independent entity performing its obligations pursuant to the Agreement.

17.10.2 Subject to the provisions of the Agreement, the SPG shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the SPG or contractors engaged by the SPG in connection with the performance of the Agreement shall be under the complete control of the SPG and shall not be deemed to be employees, representatives, contractors of MSEDCLand nothing contained in the Agreement or in any agreement or contract awarded by the SPG shall be construed to create any contractual relationship between any such employees, representatives or contractors and MSEDCL.

17.11 **Compliance *with Law***

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

17.13 ***Breach of Obligations***

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

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

For and on behalf of [MSEDCL]	For and on behalf of [SPG]
Name, Designation and Address	Name, Designation and Address
Signature with seal	Signature with seal
Witness: 1. 2.	Witness: 1. 2.