

**STANDARD**

**POWER PURCHASE AGREEMENT FOR**

**PROCUREMENT OF ..... MW \_\_\_ POWER ON LONG TERM**

**BASIS**

**Between**

**[Name of Renewable Power Generator]**

**And**

**Madhya Pradesh Power Management Company Limited**

**[month and year]**

This Power Purchase Agreement is made on the \_\_\_\_\_ day of \_\_\_\_\_ of \_\_\_\_\_ at \_\_\_\_\_

Between

\_\_\_\_\_ [name of the Renewable Power Generator], \_\_\_\_\_, [details of Renewable Power Generator] (hereinafter referred to as “**Renewable Power Generator or RPG**”, 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

**Madhya Pradesh Power Management Company Limited**, a company incorporated under the Companies Act 1956, having its registered office at \_\_\_\_\_ (hereinafter referred to as “**PROCURER**”, 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 RPG and PROCURER 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 8<sup>th</sup> March 2019 and issued implementation guidelines on \_\_\_\_\_.

B. The MNRE has accorded a sanction and allotted a capacity of \_\_\_\_\_ MW to Madhya Pradesh Urja Vikas Nigam Limited for under the said scheme of 8<sup>th</sup> March 2019.

C. Madhya Pradesh Urja Vikas Nigam Limited had initiated a selection process for procurement of \_\_\_\_\_ MW of the power generated from the Grid Connected \_\_\_\_\_ Power Project on the terms and conditions contained in the EoI/RFS No. \_\_\_\_\_ dated \_\_\_\_\_.

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

E. Madhya Pradesh Urja Vikas Nigam Limited has issued the Letter of Award No. .... dated \_\_\_\_\_ in favour of the RPG for development and establishment of the \_\_\_\_\_ MW \_\_\_\_\_ Power Project as per the terms and conditions contained in the EoI/RfS.

F. The RPG has furnished the Performance Bank Guarantee in the sum of Rs ..... in favour of PROCURER as per the format prescribed by the PROCURER.

G. The RPG 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 RPG to PROCURER at \_\_\_\_\_ 33(or 66 or 110)/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 RPG to PROCURER.

**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"	Unless otherwise stated, Appropriate Commission shall be the commission of the state where PROCURER is situated;
"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 RPG and PROCURER, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State;
“Capacity Utilization 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, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) * 100\%$ ;
“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 RPG Preliminary Default Notice or PROCURER 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 PROCURER for supply by the RPG to PROCURER at the Delivery Point from the Power Project;
“Delivery Point”	“Delivery Point” shall mean the point at the voltage level of 11kV or above 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 RPG 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 there under 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 RPG.
“Dispute”	shall mean any dispute or difference of any kind between PROCURER and the RPG, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;

"Due Date"	Due Date shall mean the forty-fifth (45th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hard copy and duly acknowledged by the PROCURER 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 PROCURER.
"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 RPG 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 PROCURER;
"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 RPG in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on RPG'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 Madhya Pradesh Urja Vikas Nigam Limited to the RPG 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: <ul style="list-style-type: none"> <li>a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project;</li> <li>b) the requirements of Indian Law; and the physical conditions at the site of</li> </ul>

“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;
Renewable Power Generator	Shall mean individual farmers/ Group of farmers/ Cooperatives/ Panchayats/ Farmer Producer Organizations (FPO)/ Water User associations (WUA)/ Government agricultural institute or other agriculture related institutions/ bidding Company/Limited Liability Partnership (LLP) firm/ Partnership Firm/ Sole Proprietor or Consortium in any form submitting the Bid and is hereinafter also called Renewable Power Generator (RPG). They must participate in the selection process to be carried out by Madhya Pradesh Urja Vikas Nigam Ltd.. The successful RPG shall have to sign PPA and install the plant as per provisions of the PM KUSUM scheme guidelines and applicable rules and regulations.
“Scheduled Commissioning Date” or “SCD” of the Project	Shall mean the nine (9) Months from the Effective Date.
"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”	"Term of shall have the meaning ascribed thereto in Article 2 of this Agreement; Agreement"

## ARTICLE 2: TERM OF AGREEMENT

### ***2.1 Effective Date***

2.1.1 This Agreement shall come into effect from date of signing of this Agreement (insert date) by the parties 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 RPG 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 PROCURER, PROCURER 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 PROCURER or RPG 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 RPG agrees and undertakes to make Project Financing Arrangements for its Project and shall provide necessary documents to PROCURER in this regard within six Months from Effective Date for the project.



## ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

### 4.1 *RPG's Obligations*

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

- a) The RPG 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 RPG 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) Design, Supply, Construction, Erection, Testing and Commissioning, of Solar Power Project in accordance with the applicable Law, Grid Code, as per regulations and terms & conditions of the Agreement as well as Prudent Utility Practices.
- d) the commencement of supply of power up to the Contracted Capacity to PROCURER 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 RPG 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;
- g) fulfilling all obligations undertaken by the RPG under this Agreement.
- h) The RPG shall be responsible to for directly coordinating and dealing with the PROCURER, 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.
- i) All costs and charges including but not limited to line losses and other charges up to the point of interconnection, if applicable, associated with the evacuation arrangement shall be borne by RPG.

### 4.2 *Purchase and sale of Contracted Capacity*

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

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

4.3.1 PROCURER, in any Contract Year shall not purchase any additional energy above 23% CUF on annual basis during the PPA period from the RPG at the PPA tariff of that year. However, the excess energy generated by RPG above 23% CUF will be procured by PROCURER at 75% of

the PPA tariff of that year.

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 RPG 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 RPG is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

- a) any PROCURER Event of Default; or
- b) Force Majeure Events affecting PROCURER, or
- c) Force Majeure Events affecting the RPG,

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 RPG or PROCURER through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the RPG or PROCURER, or till such time such Event of Default is rectified by PROCURER.

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 RPG 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 RPG is unable to commission the Project by the Scheduled Commissioning Date other than for the reasons specified in Article 4.4.1, the RPG shall pay to PROCURER, 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 nine months from Effective Date: 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 11 Months from the Effective Date. In case, the Commissioning of the Project is delayed beyond 11 Months from the Effective Date, it shall be considered as an RPG Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced / amended to the Project Capacity Commissioned within 11 Months from Effective Date and the PPA for the balance Capacity will stand terminated and shall be reduced from the project capacity.

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

#### **4.6 *Acceptance/Performance Test***

4.6.1 Prior to synchronization of the Power Project, the RPG 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 RPG 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 PROCURER and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the RPG 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 RPG 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 RPG 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 PROCURER being in compliance of its obligations & undertakings under this Agreement, the RPG 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, the grid will be unavailable to the extent of **50 hours** in any contract year annually for maintenance except for first year of contract. The grid unavailability for the first year of operation shall be considered on pro-rata basis. However, 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 RPG. 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 PROCURER:

<b>Duration of Grid unavailability</b>	<b>Provision for Generation Compensation</b>
Grid unavailability in excess of XX hours in a contract year as defined in the PPA: (only period from 8 am to 6 pm to be counted):	<p><b><i>Generation Loss = [(Average Generation per hour during the Contract Year) x (number of hours of grid unavailability during the Contract Year)]</i></b>            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.</p>

The excess generation by the RPG equal to this generation loss shall be procured by PROCURER 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 RPG and PROCURER 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 RPG shall be eligible for a minimum generation compensation, from PROCURER, restricted to the following and there shall be no other claim, directly or indirectly against PROCURER:.

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

The RPG 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.

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

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

5.1.1 The RPG shall give the PROCURER 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 RPG 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 RPG at its generation facility of the Power Project at its own cost. The RPG 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 PROCURER.

5.1.4 The RPG shall immediately after each synchronization/tripping of generator, inform the substation of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code. In addition, the RPG 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 RPG shall commission the Project within nine (9) Months from the Effective Date. Declaration of COD shall only be done upon the successful visit by the Commissioning Committee and it shall also be informed to Madhya Pradesh Urja Vikas Nigam Limited.

5.1.6 The Parties agree that for the purpose of commencement of the supply of electricity by RPG to PROCURER, 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 RPG 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 RPG.

6.1.2 The RPG shall be responsible for directly coordinating and dealing with the PROCURER, 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 RPG 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 RPG.

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

## **ARTICLE 7: METERING**

### **7.1 *Meters***

7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the RPG and PROCURER 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 RPG shall bear all costs pertaining to installation, testing, calibration, Automatic Meter Reading facility, maintenance/replacement of the meters at RPG's side of Delivery Point

7.1.3 In addition to ensuring compliance of the applicable codes, the RPG 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 RPG for submission of above data regularly for the entire period of this Power Purchase Agreement to the PROCURER, 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 RPG to Ministry of New and Renewable Energy/National Institute of Solar Energy through PROCURER for entire period of PPA.

## ARTICLE 8: INSURANCES

### 8.1 *Insurance*

8.1.1 The RPG 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, PROCURER shall have claim on such proceeds of such Insurance limited to outstanding dues of PROCURER against RPG.

### 8.3 *Effect on liability of PROCURER*

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 RPG can claim compensation, under any Insurance shall not be charged to or payable by PROCURER. It is for the RPG 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 RPG 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 PROCURER subject to clause 4.3 as reflected in the Energy Accounts. In case of early part commissioning, till the achievement of full commissioning of the Project or SCD, whichever is earlier, subject to the consent for such purchase by the PROCURER, PROCURER may purchase the generation at 75% (seventy five

percent) of the PPA Tariff. Any energy produced and flowing into the grid before SCD shall not be at the cost of PROCURER. However, RPG may sell energy generated prior to SCD to any other entity other than PROCURER as per provisions of prevailing Regulations. Any excess generation in a contract year subject to clause 4.3 shall be procured by the PROCURER at 75% of the applicable PPA tariff of that year.

## ARTICLE 10: BILLING AND PAYMENT

### 10.1 *General*

10.1.1 From the commencement of supply of power, PROCURER shall pay to the RPG 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 PROCURER shall be in Indian Rupees.

10.1.2 The RPG 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 RPG shall issue to PROCURER hard copy of a signed Monthly Bill in 3 copies in accordance with the format provided by the PROCURER for the immediately preceding Month based on the JMR/Energy Account along with all relevant payment receipt documents (payments made by RPG for drawl of power, payment of reactive energy charges, Metering charges or any other charges as per regulations of SERC/SLDC, if applicable.) to respective Superintending Engineer (SE) / General Manager (GM) of the circle and after verification SE /GM will forward the verified bills to Procurer within three (03) days

Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on JMR/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 PROCURER shall pay the amount payable under the Monthly Bill by the Due Date to such account of the RPG, as shall have been previously notified by the RPG.

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 PROCURER, if any, from the RPG, will be adjusted from the monthly energy payment.

The RPG shall open a bank account (the "RPG's Designated Account") for all Tariff Payments to be made by PROCURER to the RPG, and notify PROCURER 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 PROCURER beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable to the RPG 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 RPG 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 RPG to PROCURER in the following manner and the RPG shall not raise any objections to the payments made under this article.

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

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

## 10.4 *Payment Security Mechanism*

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

10.4.1 PROCURER shall provide to the RPG, 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 RPG in accordance with this Article.

10.4.2 Not later than one (1) Month before the start of supply, PROCURER through a scheduled bank open a Letter of Credit in favour of the RPG, 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 RPG 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, PROCURER shall restore such shortfall within fifteen (15) days.

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

10.4.6 PROCURER 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

PROCURER.

10.4.8 If PROCURER 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 RPG may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from PROCURER, 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 RPG and;
- ii) a certificate from the RPG 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 PROCURER does not dispute a Monthly Bill or a Supplementary Bill raised by the RPG within fifteen (15) days of receiving such Bill shall be taken as conclusive.

10.5.2 If the PROCURER 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 RPG agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the RPG 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 RPG 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 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.

10.5.5 Upon receipt of the Bill Disagreement Notice by the PROCURER under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the PROCURER and RPG 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, PROCURER 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 RPG and PROCURER shall jointly sign such reconciliation statement. Within fifteen (15) days of

signing of a reconciliation statement, the RPG 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 RPG may raise a ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Joint Meter Reading / 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 PROCURER shall remit all amounts due under a Supplementary Bill raised by the RPG to the RPG'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 PROCURER or the RPG 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 RPG; 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 RPG 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 RPG, 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 RPG then, in order to

ensure that the RPG 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 RPG/ PROCURER shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission..

In the event of any decrease in the recurring/ nonrecurring expenditure by the RPG or any income to the RPG on account of any of the events as indicated above, RPG 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 and to determine the impact on the cost of Solar PV modules / cell. In the event of the RPG failing to comply with the above requirement, in case of any gain to the RPG, PROCURER shall withhold the monthly tariff payments on immediate basis, until compliance of the above requirement by the RPG.

## **12.2 Relief for Change in Law**

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

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

## **ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION**

### **13.1 RPG 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 PROCURER of its obligations under this Agreement, shall constitute an RPG Event of Default:

- (i) the failure to commence supply of power to PROCURER up to the Contracted Capacity, by the end  
of the period specified in Article 4, or failure to continue supply of Contracted Capacity to PROCURER after Commercial Operation Date throughout the term of this Agreement, or  
if
  - a) the RPG 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 RPG 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 RPG 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 RPG, or (c) the RPG 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 RPG will not be a RPG 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 RPG and expressly assumes all obligations of the RPG under this Agreement and is in a position to perform them; or

- (iii) the RPG repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from PROCURER in this regard; or
- (iv) except where due to any PROCURER's failure to comply with its material obligations, the RPG is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the RPG within thirty (30) days of receipt of first notice in this regard given by PROCURER.
- (v) occurrence of any other event which is specified in this Agreement to be a material breach/default of the RPG.
- (vi) except where due to any PROCURER's failure to comply with its material obligations, the RPG is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the RPG within thirty (30) days of receipt of first notice in this regard given by PROCURER.

### **13.2 PROCURER 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 RPG of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting PROCURER:

- (i) PROCURER 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 RPG is unable to recover the amount outstanding to the RPG through the Letter of Credit,
- (ii) PROCURER repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the RPG in this regard; or
- (iii) except where due to any RPG's failure to comply with its obligations, PROCURER is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by PROCURER within sixty (60) days of receipt of notice in this regard from the RPG to PROCURER; or

if

- PROCURER 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 PROCURER, or
- PROCURER 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 PROCURER Event of Default,



where such dissolution or liquidation of PROCURER or PROCURER 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 PROCURER and expressly assumes all obligations of PROCURER 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 PROCURER.

### ***13.3 Procedure for cases of RPG Event of Default***

13.3.1 Upon the occurrence and continuation of any RPG Event of Default under Article 13.1, PROCURER shall have the right to deliver to the RPG, with a copy to the representative of the lenders

to the RPG with whom the RPG has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (PROCURER 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 PROCURER 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 RPG Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, PROCURER may terminate this Agreement by giving a written Termination Notice of sixty (60) days to the RPG.

13.3.5 Subject to the terms of this Agreement, upon occurrence of a RPG Event of Default under this Agreement, the lenders in concurrence with the PROCURER, may exercise their rights, if any, under Financing Agreements, to seek substitution of the RPG by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the RPG and performing the obligations of the RPG. However, in the event the lenders are unable to substitute the defaulting RPG within the stipulated period, PROCURER 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 PROCURER including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by Madhya Pradesh Urja Vikas Nigam Limited and accepts the terms and conditions of this Agreement.

13.3.6 The lenders in concurrence with PROCURER, 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 RPG shall

cooperate with PROCURER 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 RPG to PROCURER.

13.3.7 In the event the lenders are unable to substitute the defaulting RPG within the stipulated period, PROCURER 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 PROCURER Event of Default***

13.4.1 Upon the occurrence and continuation of any PROCURER Event of Default specified in Article 13.2, the RPG shall have the right to deliver to PROCURER, a RPG 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 RPG 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 PROCURER Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, PROCURER under intimation to RPG shall, subject to the prior consent of the RPG, 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 RPG, or if no offer of novation is made by PROCURER within the stipulated period, then the RPG may terminate the PPA and at its discretion require PROCURER 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 RPG, 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 RPG.

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 RPG.

#### **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 RPG shall indemnify, defend and hold PROCURER harmless against:

- a) any and all third party claims against PROCURER 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 RPG 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 PROCURER from third party claims arising by reason of a breach by the RPG of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the RPG, for which specific remedies have been provided for under this Agreement).

14.1.2 PROCURER shall indemnify, defend and hold the RPG harmless against:

- a) any and all third party claims against the RPG, 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 PROCURER 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 RPG from third party claims arising by reason of a breach by PROCURER 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 RPG 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 PROCURER, the RPG or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 PROCURER shall have no recourse against any officer, director or shareholder of the RPG or any Affiliate of the RPG or any of its officers, directors or shareholders for such claims excluded under this Article. The RPG shall have no recourse against any officer, director or shareholder of PROCURER, or any affiliate of PROCURER 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 endeavour 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 PROCURER 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, PROCURER shall permit assignment of any of RPG's rights and obligations under this Agreement in favour of the lenders to the RPG, if required under the Financing Agreements.

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

The enforcement of the rights and obligation between the RPG and the PROCURER 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 RPG to PROCURER. Provided further that, such consent shall not be withheld by the RPG if PROCURER 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 RPG to PROCURER.

### 15.2 *Permitted Charges*

15.2.1 RPG 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) PROCURER 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 PROCURER 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) PROCURER 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.

**174 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 RPG, 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 PROCURER, 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 RPG shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/levied on the RPG, contractors or their employees that are required to be paid by the RPG 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 PROCURER shall be indemnified and held harmless by the RPG against any claims that may be made against PROCURER in relation to the matters set out in Article 17.9.1.

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

### **17.10 *Independent Entity***

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

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

**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  
[PROCURER]

For and on behalf of [RPG]

Name, Designation and Address

Name, Designation and Address

Signature with seal

Signature with seal

Witness:

- 1.
- 2.

Witness:

- 1.
- 2.