

POWER PURCHASE AGREEMENT

This Power Purchase Agreement ("**PPA**") is made on this ____ day of _____ between:

VISAKHAPATNAM PORT TRUST, a company incorporated under the provisions of the Companies Act, 1956, with its registered office at, (hereinafter referred to as "**Power Producer**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns);

and

_____, a company incorporated under the provisions of the Companies Act, 1956, with its registered office at _____ and having its facilities/ offices in the State of Andhra Pradesh (hereinafter referred to as "**Purchaser**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns).

The Power Producer and Purchaser are individually referred to as a "**Party**" and collectively as the "**Parties**".

WHEREAS

- A. The Purchaser has its facilities/ offices located in Vizag, Andhra Pradesh and for which it is presently procuring power from _____(DISCOM). The Purchaser has requested the Power Producer to supply power to the Purchaser as per the prevailing Solar Power Policy in the State of Andhra Pradesh.
- B. The Power Producer has installed a 10 MW Solar PV Power Project at a site owned by Power Producer in Dist. Vizag, in the state of Andhra Pradesh ("**Project**") and out of which 5 MW surplus capacity is available for sale to Thrid Parties in the State
- C. The Purchaser agrees to take _____ MW power produced from the "Project" and the Power Producer has agreed to supply 100% of the electricity generated from _____ MW capacity ('Contracted Power') from the "Project" to the Purchaser as per the prevailing Solar Power Policy in the State of Andhra Pradesh, subject to the terms and conditions of this Agreement;
- D. The Purchaser agrees to procure 100% of the Contracted Quantity of Power from the Power Producer; and
- E. The Power Producer and the Purchaser wish to execute this PPA to set out their rights and obligations in respect of the supply and procurement of the power generated by the Project.

NOW, THEREFORE, the Power Producer and the Purchaser agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this PPA unless the context otherwise requires:

"**Applicable Law**" means, in relation to this PPA, all laws including Electricity Laws in force, statute, decree, ordinance, regulation, notice, circular, code, rule or direction, or any interpretation of any of them by a Governmental Instrumentality and includes all applicable rules, regulations, orders, directions, notifications by a Governmental Instrumentality pursuant to or under any of them;

"**APERC**" means the Andhra Pradesh Electricity Regulatory Commission which is the principal body that regulates various functions relating to distribution, supply, fixation of tariffs and other similar electricity business in the State.

"**Contract Year**" means the fiscal year of the First Contract Year or Last Contract Year or any Fiscal Year between the above.

"**Change in Law**" means:

- (a) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, after the date of this PPA of any statute, decree, ordinance or other law, regulation, notice, circular, code, rule or direction by any Governmental Instrumentality or a change in its interpretation by a competent court, tribunal, GoI, GoAP or other statutory authority, of any of the above regulations, or
- (b) the imposition by any Governmental Instrumentality of any material condition in connection with the issuance, renewal, modification (including ceasing to have full force and effect or inclusion of any additional consents, permissions, approvals or actions of similar nature), revocation or non-renewal (other than for cause) of any consent after the COD, which in either of the above cases:
 - (i) results in any change in respect of Taxes and Duties; or
 - (ii) results in any change in the Power Producer's revenue or costs directly attributable to the Project;

"**Check Meters**" means the meters connected in parallel to the same core of the current transformers (CTs) and potential transformers (PTs) to which the Main Metering System is connected and which could be used for energy accounting and billing in case of failure of the Main Metering System;

"**COD**" means the Commercial Operation Date of the Project - the date of connection to the utility's grid and duly certified as commissioned by competent Authority of the State DISCOM/ TRANSCO,

“Contracted Quantity” means 100% of units generated by _____ MW from the 10 MW Solar PV Project, which are measured by the Main Metering System at the Delivery Point and credited to the Power Producer for further selling.

"Day" means a period of 24 consecutive hours beginning at [00-00] hours on each day;

"Delivery Point" means the physical touch point at the Project periphery from where the power generated by the Project shall be evacuated by the DISCOM/ TRANSCOM. The Delivery Point for the Project shall be the Main Metering System interfacing the _____ KV line from the Project and _____ KV bay at the _____;

"DISCOM" means the distribution companies in Andhra Pradesh viz _____ (_____) and/

"Dispute" means any dispute arising in connection with the interpretation, performance, termination of this PPA, or otherwise in connection with this PPA;

"Due Date of Payment" has the meaning ascribed to it in Clause 10.2.1;

"Effective Date" means the date on which the rights and obligations of the Parties under this PPA shall become effective on fulfilment of the conditions precedent mentioned in Article 3;

"Electricity Laws" means the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments and replacements thereof in whole or in part and any other Applicable Law related to electricity;

“Fiscal Year” means the 12 months period starting from 1st April of any calendar year and ending 31st March of the next calendar year.

"Governmental Instrumentality" means any legislative, judicial, regulatory, executive or other governmental body (including any agency, department, board, instrumentality, commission, office or authority) of the GoI or GoAP or any political sub-division thereof;

"GoI" means the Government of India;

"GoAP" means the Government of Andhra Pradesh;

“Grid” means the power evacuation infrastructure owned and maintained by the DISCOM(s) and or TRANSCOM(s)

“Grid Outage” means an interruption or reduction in the power delivery/supply capability of the Project that is due to technical problems or overload conditions in the grid of DISCOM/ TRANSCOM;

"High Tension" or "HT" means a voltage equal or higher than 400/440 volts;

"KV" means kilo volt;

"MW" means mega watt;

"Main Metering System" means all meter(s) and/or metering devices installed at the Delivery Point for measuring and recording the delivery and receipt of energy;

"Month" means a calendar month;

"MU" means Million Units

"Notice of Termination" has the meaning ascribed to it in Clause 14.1;

"Notice of Default" has the meaning ascribed to it Clause 13.3.1;

"PPA" shall mean this agreement, viz. the 'Power Purchase Agreement';

"Project" shall have the meaning given to it in Recital B;

"Prudent Utility Practices" means those practices, methods, techniques and standards as prevalent from time to time, that are generally accepted internationally for use in electrical utility industries (specifically taking into account conditions in India) and commonly used in prudent electric utility engineering and operations to design, engineer, construct, test, operate and maintain equipment lawfully, safely, efficiently and economically as applicable to power stations of size, service and type as that of the Project and that generally conforms to manufacturers' operation and maintenance guidelines;

"Power Producer Event of Default" has the meaning ascribed to in Clause 13.1;

"Purchase Price" has the meaning ascribed to in Clause 6;

"Purchaser" has the meaning ascribed to it in the recitals;

"Purchaser Event of Default" has the meaning ascribed to it in Clause 13.2;

"Quarter" means any of the following four 3 monthly periods of a Fiscal Year:

“Quarter 1” means period from 1st April to 30th June

“Quarter 2” means period from 1st July to 30th September

“Quarter 3” means period from 1st October to 31st December

“Quarter 4” means period from 1st January to 31st March

"Scheduled Outage" means a planned interruption of the generating capability of the Project:

- (a) for inspection, testing, preventive maintenance, corrective maintenance, repairs, replacements and improvements; and
- (b) which is not an Unscheduled Outage;

"**Taxes and Duties**" shall have the meaning ascribed to it in Clause 7.1;

"**Term**" has the meaning ascribed to it in Clause 2;

"**TRANSCOM**" means power transmission company in Andhra Pradesh, i.e. _____ (_____).

"**Unit**" means kilowatt hour or kWh

"**Unscheduled Outage**" means an interruption or reduction in the generating capability of the Project that:

- (a) is not a Scheduled Outage;
- (b) is a result of Grid failure
- (c) is for the purpose of performing work on specific components, which , in the reasonable opinion of the Power Producer, cannot be postponed until the next Scheduled Outage;

1.2. Interpretation

In this PPA unless the context otherwise requires:

- (a) References to any statute or statutory provision or order or regulation made there under shall include that statute, provision, order or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date hereof.
- (b) References to persons shall include bodies corporate, unincorporated associations, partnerships and any organisation or entity having legal capacity.
- (c) Headings to Clauses are for convenience only and shall not form part of the operative provisions of this PPA and shall not be taken into consideration in its interpretation or construction.
- (d) References to Recitals, Clauses and Schedules are, unless the context otherwise requires, references to recitals or Clauses of this PPA.
- (e) Unless the context otherwise requires, words importing the singular include the plural and vice versa.

2. TERM OF PPA

2.1. The term of the PPA shall be _____ (_____) years from the Effective Date ("Term").

2.2. The Parties agree that on the expiry of the Term of ____ years, this PPA may be extended for a further period which would be mutually agreed between the Parties at that point of time. The Power Producer shall issue a notice in writing to the Purchaser at least _____ months prior to the expiry of this PPA indicating its intention to extend the PPA and requesting for a confirmation from Purchaser regarding the same. If the Purchaser do not agree to the extension of the PPA, the PPA shall end upon the expiry of the Term. However, if the Parties are agreeable to

extending the Term for a further period, they shall discuss and conclude the tariff and such terms and conditions at least two (02) months before the expiry of the Term of this PPA.

3. CONDITIONS PRECEDENT TO THE EFFECTIVENESS OF PPA

- 3.1. The Purchaser shall within ____ days of execution of this Agreement, establish a Security BG/ an irrevocable revolving Letter of Credit for the full Term of this Agreement for a value of Rs _____ (_____), being the approx. average billing value per month, in favour of The Power Producer, as per format attached at _____ towards Payment Security.
- 3.2. The Purchaser and DISCOM/ TRANSCOM shall execute the Wheeling & Banking Agreement (WBA) under the Open Access System of State Govt, before the Effective Date; and
- 3.3. Power Producer and the Purchaser shall have obtained all requisite approvals, registrations, licenses and other statutory procedures under Applicable laws and be complied with by the Power Producer and the Purchaser on or before the Effective Date, as applicable.

4. POWER DELIVERY AND CONSUMPTION

- 4.1. The Power Producer shall start supply of the electricity to the Purchaser at Delivery Point within _____ days from the Effective Date or any other mutually extended date.
- 4.2. Upon the Power Producer completing all its obligations set out in Clause 3.3 above, the Purchaser shall consume 100% of the Contracted Power injected by the Power Producer at the Delivery Point. To the extent the Purchaser does not consume the energy injected on its account by the Power Producer, such a shortfall in consumption shall be banked with DISCOM/ TRANSCOM to Purchaser's account, by virtue of Purchaser having executed a Banking agreement with the Discom/ Transco. For avoidance of doubt, it is clarified that the quantum of power actually recorded at the Delivery Point shall be billed to the Purchaser under this Clause and invoiced accordingly, irrespective of the fact that whether the Purchaser avails banking or not.
- 4.3. The Purchaser, except for its own use within the State of Andhra Pradesh, shall not resell or otherwise divert any part of the power supplied by Power Producer, in any manner whatsoever.
- 4.4. It is agreed by the Purchaser that power supplied by the Power Producer shall be accorded the first priority and precedence, in terms of consumption and payment, over any other supplier of power, including DISCOM/ TRANSCOM/ TPP/ IEX or any other source. For example, in case the Purchaser has or were to have a contract with other supplier(s) of power, then out of the total power consumed by the Purchaser during any billing period, the account of the Power Producer will get the precedence over other supplier(s) of power in terms of credit for supply of power and corresponding payment by the Purchaser.
- 4.5. The estimated annual energy likely to be produced from the Solar Power Project of Power Producer is 15 to 17 lakh Units per MW capacity of the Project, depending upon Solar irradiation levels for any given year and also depending upon number of years since commissioning of the Project. This may be called the "**Estimated Annual Production**".

5. PLANT OPERATION AND MAINTENANCE

5.1. Subject to the provisions of this PPA, the Power Producer hereby represents that it shall organise operation and maintenance of the Project in coordination with contractor(s) appointed by it so as to ensure optimum utilisation of the solar resources in accordance with:

- (a) Prudent Utility Practices;
- (b) Applicable Laws;
- (c) The manuals, instructions and manufacturer's guidelines supplied by construction contractors and manufacturers of equipments etc.; and
- (d) The grid technical limits.

5.2. Scheduled Outages

5.2.1 The Power Producer shall submit to the Purchaser the proposed plan for Scheduled Outage for the next Quarters. Thereafter, on the first day of every Quarter, the Power Producer shall submit to the Purchaser its proposed plan for Scheduled Outages for the Project for the next Quarter.

5.2.2 In the event that the Scheduled Outages are statutorily mandated or are necessary due to any other urgent requirements, the Power Producer shall inform the Purchaser, in writing, as soon as practicable.

5.3. Unscheduled Outages

In the event that circumstances warrant an Unscheduled Outage, either due to event of force majeure or any other reason beyond the control of Power Producer, the Power Producer shall inform the Purchaser, in writing, on occurrence of such Unscheduled Outages and the expected commencement and estimated duration of Unscheduled Outage.

5.4. Grid Outages

In the event that DISCOM/ TRANSCOM does not evacuate power due to technical problems or capacity overload in the grid at the Project site, Power Producer will inform the Purchaser and put best efforts to restore supply as early as possible. For avoidance of doubt it is hereby clarified that non-restoration of supply within reasonable time shall not constitute breach of material obligation by the Power Producer under the PPA.

6. PURCHASE PRICE OF POWER

6.1. The basic levelised tariff (per Unit) to be paid by the Purchaser, for all the power made available by the Power Producer at the Delivery Point, shall be based on the Purchase Price specified in Table under Schedule A. This price shall remain fixed and firm during the entire Term under this PPA. Any and all Open Access expenses, T&D/SLDC losses & charges, Cross-subsidy charges, statutory taxes, charges, cess or duties or DISCOM/ TRANSCOM penalties of any kind in

relation to the power supplied to the Purchaser, whatsoever present or applicable in the future under this PPA or on the DISCOM/ TRANSCOM regulations shall be borne by the Purchaser.

- 6.2. Purchaser shall be responsible for reconciliation of taxes/ duties/ losses/ charges mentioned under cl 6.1 above with DISCOM/ SLDC on half-yearly/ annual basis during the PPA period.
- 6.3. The Power Producer shall retain full credit of any and all revenue accrued to the Project on any account including but not limited to any CDM/ REC benefits that the Power Producer may avail or become entitled to.

7. LEVIES, TAXES, DUTIES, CESS ETC.

- 7.1. Any and all, present and future open access expenses, losses & charges, statutory taxes, levy, duties, demand charges, cess or any other similar imposition(s) imposed/charged by GoI or GoAP and/or any other local bodies/authorities ("**Taxes and Duties**") in relation to supply of electricity to the Purchaser, shall be borne by the Purchaser. For the sake of clarity, the above does not include any prior period, but period pertaining after the Effective Date of this Agreement, which DISCOM/ TRANSCOM/GoAP or any other relevant body may impose on the current consumption of electricity by Purchaser. (Any new charges or taxes or duties or other levies introduced in future on Import / Export of Power from / to DISCOM/ TRANSCOM shall be borne by the Purchaser).

8. ENERGY WHEELING AND BANKING OF POWER

- 8.1. Purchaser shall enter into an energy wheeling arrangement with the DISCOM/ TRANSCOM for wheeling of power from the Delivery Point to the Purchaser as mentioned in Clause 3.2 above before the Actual Delivery of power commences under this Agreement. This shall be executed within _____days of Effective Date by Purchaser.
- 8.2. The Power Producer shall provide to the APERC/ Discom, copy of this PPA entered into with the Purchaser.
- 8.3. The wheeling and other charges for transmission of power from the Delivery Point to the Purchaser shall be paid by the Purchaser to the DISCOM/ TRANSCOM. The Power Producer shall not be liable in case of any default on the part of the Purchaser to make timely payments of the wheeling charges, taxes, duties, losses, cess, penalties and other similar charges that are payable to the DISCOM/ TRANSCOM on account of Wheeling and Banking Charges/ Open Access Charges and resultant DISCOM(s)'s / TRANSCOM(s)'s refusal to deliver/ bank the generated power.
- 8.4. The Power Producer shall supply 100% of the Contracted Quantity to the Purchaser. However, in the event that the Purchaser is unable to consume its Contracted Quantity, then it shall have the option to bank the unutilised portion of its Contracted Quantity with DISCOM/ TRANSCOM as per the prevailing policy in the state of Andhra Pradesh.
- 8.5. Notwithstanding any banking of power on account of Purchaser, the Power Producer shall bill the Purchaser for the total Units of energy based on the credit given by DISCOM/ TRANSCOM/ to

the Power Producer for Power injected into the grid at the Delivery Point for further wheeling for the use of Purchaser and the Purchaser shall pay as per the payment procedure in Clause 10.2.

- 8.6. In a specific case wherein due to some specific constraints laid down by any Govt. Authority due to technical problems or overload conditions in the grid of DISCOM/ TRANSCOM at the Project site, resulting into inability of Power Producer to make the generated power available for Purchaser's consumption, the Power Producer shall have the right to sell the generated power elsewhere. In the event of sale of generated power by the Power Producer to any third party, Purchaser shall not have any objection for sale of generated power by the Power Producer during such period of constraint, until restoration of above mentioned constraints. The Purchaser further undertakes that it shall not claim, rights or benefits over the revenues generated out of sale to any third party in accordance with this Clause.

9. MEASUREMENT OF ENERGY

9.1. Installation of Energy Meters

- 9.1.1. The Power Producer shall, at its own cost, install and maintain Main Meter at its Delivery Point to accurately record export and import of power from the Project. The metering system shall be tested, calibrated, maintained and owned by the Power Producer or its contractor.
- 9.1.2. The energy supplied by the Power Producer, in accordance with the credit report given by the DISCOM/ TRANSCOM, at the Delivery Point shall be considered for arriving at the energy supplied to the Purchaser for consumption. The Purchaser shall pay Purchase Price as per Schedule A, based on such energy credit given by DISCOM/ TRANSCOM to the Power Producer for power injected into the grid at the Delivery Point for further use of Purchaser.

9.2. Reading and Correction of Meters

- 9.2.1. DISCOM/ TRANSCOM and the Power Producer will jointly read the meter at the Delivery Point.
- 9.2.2. In the event that the Main Metering System is not in service as a result of maintenance, repairs or testing, then the Check Meters readings would be used to calculate total power exported from the Project.

9.3. Sealing and Maintenance of Meters

- 9.3.1. The Main Metering System and the Check Meters shall be sealed by the representatives of the Power Producer in the presence of representatives of the DISCOM/ TRANSCOM.
- 9.3.2. When the Main Metering System and/or the Check Meters and/or any component thereof is found to be outside the acceptable limits of accuracy or otherwise not functioning properly, it shall be repaired, re-calibrated or replaced by the Power Producer as soon as possible at its own cost and without causing any inconvenience or loss to the Purchaser.

9.4. Maintenance of Records

9.4.1. The Power Producer shall keep complete and accurate records and all other data required for the purposes of the operation of the Project. Among such other records and data, the Power Producer shall maintain an accurate and up-to-date operating log at the Project with records of the following:

- (a) hourly logs of real and reactive power generation, frequency, transformer tap position, bus voltage(s), Main Metering System and Check Meter readings and any other data mutually agreed between the Parties;
- (b) Any unusual conditions found during operation/inspection(s);
- (c) Charts and print outs of event loggers, for system disturbances/outages.

The Power Producer shall preserve such data for a minimum period of five years or for any statutorily imposed period, whichever is longer.

10. BILLING, PAYMENT PROCEDURE AND PAYMENT SECURITY MECHANISM

10.1. Billing

10.1.1. The Purchaser shall be billed on a monthly basis for the power credit given by DISCOM/ TRANSCOM to the Power Purchaser for the power injected into the grid by the Power Producer at the Delivery Point. Additionally, if any amount has been paid by the Power Producer on behalf of the Purchaser, the same shall be reimbursed by the Purchaser at actual.

10.1.2. The Power Producer shall send to the Purchaser at its designated office, (or send by post/fax/email to the designated representative of the Purchaser) the invoice for the previous month within 7 days of meter reading and availing the credits from DISCOM/ TRANSCOM, if any (in accordance with billing system adopted by the DISCOM/ TRANSCOM).

10.2. Payment Procedure

10.2.1. The Purchaser shall make all payment by RTGS/ NEFT against the invoices (Hard Copy/ E-Mail/ Fax) raised by Power Producer, within a period of Seven (07) days from the date of submission/ transmission of the invoice to the Purchaser ("**Due Date of Payment**"). The Purchaser shall have deemed to have received the invoice, in the event the invoice is

10.2.1.1. delivered by E-Mail/ Fax, when delivery receipt is received to the Power Producer;

10.2.1.2. delivered by hand, when personally delivered;

10.2.1.3. delivered by courier, three business days after it being couriered by Purchaser.

10.2.2. The Purchaser shall provide and maintain, at all time during the Term of this PPA, an irrevocable and unconditional Bank Guarantee in favour of the Power Producer (as per format attached herewith) from a scheduled commercial Bank of Rs. (in figures) _____(in words) at least 7 days before the Actual commencement of power flow under this Agreement, in a format and substance acceptable to the Power Producer.

10.3. **Payment Delay or Default**

- 10.3.1. Late payments, after Due Date of Payment, shall carry an interest at 1.25% per month, calculated for the period of delay expressed in number of days on the unpaid amount of the invoice, till the recovery of all dues including interest on delayed payment. Any payment received shall first be appropriated towards interest on overdue payment.
- 10.3.2. In case of breach of any obligation of the Purchaser under this Agreement, including but not limited to non-performance of any payment obligation within 60 days of Due Date, the Power Producer will have the right to discontinue and disconnect the supply after issuing a notice in writing to Purchaser, fifteen (15) days prior to such intended disconnection and in which case the Power Producer shall be free to sell power to any third party until liquidation of all its dues settled by the Purchaser. In such case, in addition to other rights available with the Power Producer, the Power Producer shall have right to call upon/invoke the Bank Guarantee submitted by the Purchaser for realization of the outstanding payments under the invoice raised, including but not limited to all/ any outstanding purchase price, the cost of any and all open access expenses, losses & charges, banking charges, electricity duty, statutory taxes, charges or duties or DISCOM/TRANSCOM penalties of any kind; and
- 10.3.3. In case the payment default continues for more than 6 months, the Power Producer shall be entitled, at its option, to (i) call upon/invoke the Bank Guarantee, to the extent available, for payment of all outstandings owed to the Power Producer by the Purchaser under this PPA; (ii) terminate the PPA; (iii) exercise any other rights that may be available to them under law or equity for recovery of its dues under this Agreement. The Power Producer shall have exclusive recourse to each of the rights available to it.
- 10.3.4. The Purchaser agrees that all disputes relating to its payment obligations shall be raised by it at least three days prior to the due date of payment and in the event of any such dispute, the Purchaser shall deposit 100 % of the disputed amount upfront with the arbitrator. In the event no such dispute is raised at least three days prior to the due date of payment, the Purchaser shall not have the right to raise a dispute in relation to such payment.
- 10.3.5. Notwithstanding anything contained in this Agreement, the Purchaser shall comply with its payment obligations under this Agreement, irrespective of any amounts owed to it by the Power Producer under any other arrangement / contract, and the Purchaser shall not be entitled to deduct or set off any amounts owed to it by the Power Producer from any payments that are due from it under this Agreement.
- 10.3.6. In the event that the Purchaser disputes an Invoice, it shall give notice of such a dispute within 15 days of receiving the Invoice setting out details of the disputed amount. The Purchaser shall pay by the Due Date 100% of any undisputed amount and in case the invoice is disputed, the Purchaser shall pay an amount based on average consumption of last three consecutive undisputed Invoices. Amount so recovered shall be subject to final adjustment on resolution of the dispute. Thereafter, the Parties shall discuss and try to resolve the disputed amount within a week of receipt of such notice of dispute. If the Parties resolve the dispute, an appropriate adjustment shall be made in the next Invoice. If the dispute has not been resolved by the date of the next Invoice, the dispute shall

be referred to a committee of one member from each of Purchaser and Power Producer. If the dispute is still not resolved by the next following Invoice, it shall be referred to Arbitration.

11. DISPUTE RESOLUTION

- 11.1 If any dispute of any kind whatsoever shall arise between the Parties, in connection with or arising out of PPA, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, termination or execution (a “**Dispute**”), the Parties shall seek to resolve the Dispute by mutual consultation. If the Parties fail to resolve the Dispute by mutual consultation within 15 Days after notice of the Dispute by one Party to the other Party, then the provisions of Clause 11.2 shall apply.
- 11.2 Any Dispute that is not settled by mutual consultation of the Parties in accordance with the provisions of this Clause shall be settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996. The number of arbitrators shall be 3 (three). The language to be used in the arbitral proceedings shall be English. Each Party shall appoint 1 (one) arbitrator and the 2 (two) appointed arbitrators by the Parties shall jointly appoint a third arbitrator. The third arbitrator shall act as the presiding arbitrator of the tribunal. The Parties shall cooperate in good faith in providing to the arbitrators any information reasonably needed to resolve the dispute. The seat of arbitration shall be at Visakhapatnam.
- 11.3 Notwithstanding any pending arbitration, Parties shall continue to perform their obligations under the PPA (including the performance of the work) during the arbitration proceedings, and including in the event that a Party submits a request to the arbitrators to determine whether and when the termination of the PPA had occurred, each Party’s obligations and rights under the PPA shall be continuing and in full force during the term of the arbitration proceeding until an award stating the occurrence and timing of the termination of the PPA has been rendered.
- 11.4 The Parties agree that any arbitration award will be final and binding upon the Parties and (to the fullest extent permitted by Applicable Law) the Parties waive their right to any form of appeal or other similar recourse to a court of law.

12. NOTICE

- 12.1. Any communication to be made by one Party to the other Party under this PPA shall be validly made when delivered by registered mail (with acknowledgement of receipt). The communication shall be considered as effective at the date of acknowledgement of receipt.
- 12.2. The communication should be addressed as below

Power Producer:

Purchaser:

- 12.3. The Parties may by notice, change the address and/or addresses to which such communications are to be delivered or mailed.

13. EVENTS OF DEFAULT

13.1. Power Producer Events of Default

The occurrence and continuation of any of the following events, unless any such event occurs as a result of force majeure event shall constitute a Power Producer's events of default ("**Power Producer Event of Default**"):

- (a) Material Breach of any of the provisions of this PPA;
- (b) Bankruptcy, liquidation or dissolution of the Power Producer pursuant to Applicable Law, except for the purpose of a merger, demerger, consolidation or re-organisation, that does not affect the ability of the resulting entity to perform all its obligations under this PPA and provided that such resulting entity fulfils all of the obligations of the Power Producer states herein;

13.2. Purchaser Event of Default

The occurrence and continuation of any of the following events, unless any such event occurs as a result of force majeure event shall constitute a Purchaser's event of default ("**Purchaser Event of Default**"):

- (a) Material Breach of any of the provisions of this PPA including representations by the Purchaser and If the Purchaser fails to consume the Contracted Quantity of power generated and supplied by the Power Producer at Delivery Point as set out in this Agreement;
- (b) Bankruptcy, liquidation or dissolution of the Purchaser pursuant to Applicable Law, except for the purpose of a merger, consolidation or reorganisation that does not affect the ability of the resulting entity to perform all its obligations under this PPA and provided that such resulting entity expressly assumes all such obligations;
- (c) Transfer, pursuant to Applicable Law, of either the rights and/or obligations of the Purchaser hereunder or all or a substantial portion of the assets or undertakings of the Purchaser, except where such transfer, in the opinion of the Power Producer, does not affect the ability of the transferee to perform all its obligations under this PPA and provided that such transferee expressly assumes all such obligations in compliance to Applicable Laws.
- (d) The Purchaser assigns or purports to assign its rights and transfers its obligations under this PPA and/or Shareholders' Agreement;

- (e) Failure to make payment of undisputed amount exceeding Rupees one lakh (Rs 1,00,000) and above within 30 days after the Due Date of Payment; and
- (f) Failure to fulfil its obligation under Clause 3.1.
- (g) Decline in the credit rating of the Purchaser below BB= or its equivalent (as assigned by CARE, ICRA or CRISIL).

13.3. Notice of Default

- 13.3.1. Upon the occurrence of either Party's events of default, the Power Producer or the Purchaser, as the case may be, shall deliver a notice to the defaulting Party ("**Notice of Default**") within 15 days of knowledge of such default, which shall specify in reasonable detail the event of default leading to serving of Notice of Default to that Party.
- 13.3.2. Upon serving the Notice of Default, the Parties shall consult each other for period of 30 days in order to envisage the steps that may be taken to mitigate the consequences of the event of default and to cure the same. The defaulting Party shall be entitled to get a cure period of 30 days from the date on which the consultation period expires. If the event of default occurs if either of the Party has transferred its rights or obligations under this PPA to a third party, or has been dissolved pursuant to Applicable Law or bankruptcy etc., the consultation period or cure period shall not be applicable.

14. TERMINATION

- 14.1. On the expiry of the cure period as provided in Clause 13.3.2 and unless otherwise agreed between the Parties, if the event of default is not remedied within such specified period, the non-defaulting Party may serve a termination notice of [30] days ("**Notice of Termination**").
- 14.2. On expiry of the Notice of Termination, the non-defaulting Party shall be entitled to terminate this PPA after intimating the defaulting Party, unless the event leading to the Notice of Termination is rectified or complied with to the satisfaction of the non-defaulting Party.
- 14.3. In case of termination by the Power Producer due to Purchaser Event of Default, the board of directors of the Power Producer shall have the right to encash the Bank Guarantee submitted by Purchaser, apart from adopting any other means available to it for securing its interest under this Agreement.
- 14.4. Upon termination of the PPA, the Power Producer shall be free to sell power to any third party and invoke/call upon the Bank Guarantee for payment of all outstandings owed to the Power Producer by the Purchaser pursuant to the provisions of this PPA.
- 14.5. Termination of this PPA shall be without prejudice to the accrued rights and liabilities of the Parties as on the date of termination, unless waived in writing by the Parties.

- 14.6. Notwithstanding anything contained in this Agreement, No Party to this Agreement can terminate the agreement for convenience without consent of the other Party.
- 14.7. Upon termination of this PPA, the defaulting party shall pay all the dues of the other party within 30 days of date of such termination.

15. REPRESENTATIONS AND WARRANTIES

15.1. The Power Producer represents and warrants to the Purchaser that:

- a) It has the power to execute, deliver and perform the terms and provisions of this PPA and has taken all necessary actions to authorize the execution, delivery and performance by it of this PPA;
- b) It has duly executed and delivered this PPA and this PPA constitutes its legally valid and binding obligation enforceable in accordance with its terms;
- c) Neither the execution, delivery or performance by the Power Producer of this PPA, nor compliance by it with the terms and provisions hereof will :
 - (i) Contravene any material provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental authority; or
 - (ii) Conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Power Producer is a party or by which it or any of its properties or assets are bound; or
 - (iii) Violate any provision of the Power Producer's constituent documents; and
- (a) No order, consent, approval, license, authorisation or validation of, or filing, recording or registration with or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorise, or is required in connection with, the execution, delivery and performance of this PPA.
- (b) it shall obtain and keep in force all requisite approvals, licenses, authorisations, certification or any other consent required under Applicable Law for the commissioning as well as O&M of the Project and for performing its obligations under this PPA.

15.2. The Purchaser represents and warrants to the Power Producer that:

- (a) It has the power to execute, deliver and perform the terms and provisions of this PPA and has taken all necessary actions to authorize the execution, delivery and performance by it of this PPA;
- (b) It has duly executed and delivered this PPA and this PPA constitutes its legally valid and binding obligation enforceable in accordance with its terms;
- (c) Neither the execution, delivery or performance by the Purchaser of this PPA, nor compliance by it with the terms and provisions hereof will:

- i. Contravene any material provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental authority; or
- ii. Conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Purchaser is a party; or
- iii. Violate any provision of the Purchaser's constituent documents; and

16. INDEMNIFICATION

- 16.1. The Power Producer shall protect, defend, indemnify and hold harmless the Purchaser from and against any and all losses arising directly out of acts or omissions of the Power Producer in the performance of its obligations under this PPA or under the WBA with DISCOM/ TRANSCOM (so long as it affects the Purchaser).
- 16.2. The Purchaser shall protect, defend, indemnify and hold harmless the Power Producer from and against any and all losses, costs, expenses, charges, arising directly out of acts or omissions of the Purchaser in the performance of its obligations under this PPA or under the WBA and its obligation to DISCOM/ TRANSCOM/ APERC as per its various Orders / Agreements from time to time relating to the Purchaser.

17. FORCE MAJEURE

- 17.1. In the event a Party is rendered unable to perform any obligations required to be performed by it under this PPA by force majeure, the particular obligations shall, upon notification to the other Party, be suspended for the period of force majeure.
- 17.2. Subject to Clause 17.6, force majeure shall mean any event or circumstances or combination of events or circumstances that wholly or partly prevents or unavoidably delays any Party in the performance of its obligations under this PPA, but only if and to the extent that such events and circumstances are not within the reasonable control, directly or indirectly, of the affected Party and could not have been avoided even if the affected Party had taken reasonable care. Such events may mean acts of the GoAP/GoI in its sovereign capacity, acts of God, grid failure, air crash, lockouts, terrorist activities, cyclones, sabotage, war, civil war, quarantine restrictions, freight embargoes, radioactivity and earthquakes to the extent they, or their consequences, satisfying the above requirements.
- 17.3. Upon the occurrence of an event of force majeure, the Party claiming that, it has been rendered unable to perform any of its material obligations under this PPA, shall notify the other Party in writing within [5] five days of the commencement thereof giving the particulars and satisfactory evidence in support of its claim. Upon cessation of such event of force majeure, the affected Party shall within [24] hours of its cessation, intimate the other Party of such cessation.

- 17.4. Time for performance of the relative obligations suspended by force majeure shall then stand extended by the period of delay, which is directly attributable to force majeure. The Party giving such notice shall be excused from timely performance of its obligations under this PPA, for so long as the relevant event of force majeure continues and to the extent that such Party's performance is prevented, hindered or delayed, provided the Party or Parties affected by the event of force majeure shall use reasonable efforts to mitigate the effect thereof upon its performance of the obligations under this PPA.
- 17.5. Delay or non-performance by a Party hereto caused by the occurrence of an event of force majeure shall not:
- (a) Constitute a default or breach of this PPA; and
 - (b) Give rise to any claim for damages or additional cost of expenses occasioned thereby.
- 17.6. Force majeure shall expressly not include the following, except to the extent resulting from a force majeure:
- (a) Non-performance caused by, or connected with, non-performing Party's
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with any of the Applicable Laws; or
 - iii. Breach of, or default under this PPA.
 - (b) strikes, stoppage of work by labour union and other similar problems with labours who are labours employed by the Parties.

In the event of a force majeure event continuing beyond 180 days from date of its occurrence or such other period as may be mutually agreed to by the Parties, this PPA shall stand terminated.

The obligation by a party to pay any undisputed amount which is due to the other party shall continue even during the occurrence of force majeure event.

18. MISCELLANEOUS

18.1. Severability

18.1.1. If any one or more of the provisions contained in this PPA are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby, and the Power Producer shall enter into good faith negotiations with the Purchaser to replace the invalid, illegal or unenforceable provisions.

18.2. Execution and Delivery of Instruments

The Parties hereby agree to execute and deliver all such instruments and take all such actions as may be necessary to make effective fully the purposes of this PPA.

18.3. Counterparts

This PPA may be executed in one or more duplicate counterparts, and when executed and delivered by the Parties, shall constitute a single binding agreement.

18.4. Governing Law and Jurisdiction

18.4.1. This PPA shall be governed by, and construed in accordance with, the laws of India.

18.4.2. The courts of New Delhi shall have an exclusive jurisdiction in all matters arising out of and concerning this PPA.

18.5. Confidentiality

18.5.1. The Parties shall, on a confidential basis, at all times forthwith provide to each other such information as is available and is necessary or useful to enable the other Party to perform its obligations under this PPA. Either Party may, however, use or disclose confidential information to a third party to the extent necessary for the performance of and control of the financing, construction, and operation of the Project, subject to a prior consent from the other Party provided that either Party may disclose any such confidential information without the consent of the other Party to a relevant government agency, if it is mandatory for statutory compliance.

18.5.2. Upon the transfer of the reports and studies, prepared as a result of investigation conducted by the Power Producer, to the Purchaser, either Party shall not disclose such reports and studies to any third party or publish the same in any manner, except with the prior approval of such other Party.

18.5.3. The Parties hereto will cause their directors, officers, employees, servants, agents and contractors to be similarly bound by the covenants specified in Clauses 18.7.1 and 18.7.2

18.5.4. Each Party will keep commercial terms of this agreement strictly confidential and not divulge to any third party without written consent of the other Party, unless it is statutorily required by law or is required for submission to lenders, investors etc.

18.6. Amendment

The Parties may amend this PPA by way of an amendment executed in writing by authorised representatives of both Parties.

18.7. No Waiver

18.7.1. No waiver by either Party of any event(s) of default by the other Party in the performance of any of the provisions of this PPA shall:

- (a) operate or be construed as a waiver of any other or future/further event(s) of default whether of a like or different character;
- (b) Be effective unless duly executed in writing by a duly authorised representative of such Party.

18.7.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this PPA nor time or other indulgence granted by one Party to the

other shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other rights hereunder, which shall remain in full force and effect.

18.8. Relationship of the Parties

This PPA shall not be interpreted or construed to be or create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

18.9. Survival

Cancellation, expiration or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality, provided, however, that all obligations surviving the cancellation, expiration or early termination of this PPA shall only survive for a period of 3 years.

19 Change in Law

- (a) The term “Change in law” shall mean the occurrence of any of the following events after the Effective Date, resulting into any additional recurring / non-recurring expenditure by the Power Producer or any income to the Power Producer:
- (i) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law; or
 - (ii) a change in the interpretation of any Law by any Governmental Authority having the legal power to interpret or apply such Law, or any competent court; or
 - (iii) the imposition of a requirement for obtaining any Government Approvals which was not required earlier; or
 - (iv) a change in the terms and conditions prescribed for obtaining any Government Approvals or the inclusion of any new terms or conditions for obtaining such Government Approvals; or
 - (v) any introduction of any tax made applicable for supply of power by the Power Producer as per the terms of this Agreement.

- (vi) Withdrawal of any prevailing subsidies, exemptions or any other benefits by the Govt
- (vii) Any risk of change of tax rate whatsoever related to sale of power lies with the Power Producer. Likewise any risk of change of tax rate whatsoever related to purchase of power lies with the Purchaser.
- (viii) Any implications of Change in Law would be to the Purchaser's account at actuals, against documentary evidence to be provided by the Power Producer.

(b) Application and Principles for computing impact of Change in Law

While determining the consequence of Change in Law under this clause, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly bill payment, to the extent contemplated in this clause, the affected Party to the same economic position as if such Change in Law has not occurred.

(c) Solar Power Payment Adjustment Payment on account of Change in Law

Subject to provisions mentioned above, the adjustment in Solar Power Payment shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or
- (ii) the date of order/judgment of the competent court or tribunal or Governmental Authority, if the Change in Law is on account of a change in interpretation of Law.

IN WITNESS, therefore, the Parties hereto have executed and delivered this PPA at Viskhapatnam on the date first written above.

Witness

1.

For On Behalf of _____

Authorised Signatory

Witness
1.

For On Behalf of _____

Authorised Signatory

Schedule – A

The price to be paid by the Purchaser, for all the power credited by the DISCOM/ TRANSCOM to the Power Producer at the Delivery Point, shall be based on the Tariff specified in Table below, in line with provisions under clause 6.1 of this PPA.

Table
Tariff
_____ per unit