

NOTICE INVITING TENDER

1.	ORGANISATION	VISAKHAPATNAM PORT TRUST
2.	DEPARTMENT	Mechanical & Electrical Engineering Department
3.	Tender No.	IM&EE/MOF/EMP/960/PPA/2017-18/86 Dt:08.03.2017
4.	NAME OF THE WORK	Sale of electrical (green) energy to third parties at VPT leased lands from solar plant of Visakhapatnam Port Trust
5.	Estimate	Rs 2.79 crore
6.	SCOPE OF WORK	Sale of 5 MW (AC) power (green energy) from 10 MW Solar PV Project at VPT, Visakhapatnam by entering into PPA for 6 months
7.	FORM OF CONTRACT AND CLASS OF CONTRACT	Direct consumers having minimum "contracted demand of 1 MW " from EPDCL / AP Transco and should be presently on VPT port leased lands
8.	Bidding type	Limited 1).M/s Coromandal International Limited 2).M/s ESSAR STEEL (Hy-grade Pellets) 3).M/s Gas Authority Of India Limited 4).M/s. Rain C-II Carborn India Ltd. 5). M/s VGCB Pvt Ltd. 6).M/s West Quay Multiport Pvt. Ltd. 7).M/s. Andhra Petro Chemicals Ltd. 8).M/s Hindustan Shipyard Limited 9).M/s. NALCO 10).M/s. VCTPL 11).M/s. Vizag Seaport Pvt. Ltd., 12).M/s. Adani Coal Terminal Pvt. Ltd 13). M/s HPCL VVS pipe line 14). M/s HPCL (POL Terminal) 15). M/s HPCL (Black Oil Terminal) 16). M/s ISPRL 17). M/s. S.A.LPG.Company (P) Ltd 18). M/S. HPCL,(Refinery)
9.	Bid call No	1 st call
10.	Cost of tender documents	1500/-
11.	SOLVENCY (From a Nationalized or Scheduled Bank within last one year)	50.lakhs
12.	AVERAGE ANNUAL TURN OVER (During last three Financial years)	Rs 16.77 lac per MW
13.	EMD/BID SECURITY	Rs 1,11,773 per MW
4.	Tender DOCUMENT DOWNLOADING START DATE	08-03-2017 from 17.00 Hours
5.	PRE BID MEETING FOR OBTAINING CLARIFICATIONS	14-03-2017 from 15.00 Hours
6.	TENDER DOCUMENT DOWNLOADING END DATE	20-03-2017 upto 13.00 Hours
7.	LAST DATE AND TIME FOR RECEIPT OF TENDER	20-03-2017 upto 14.00 Hours

	DOCUMENTS	
8..	TENDER OPENING DATE	20-03-2017 AT 15.00 Hrs
9.	OFFICER INVITING TENDERS	CHIEF MECHANICAL ENGINEER / VPT
10.	TENDER OPENING AUTHORITY	CHIEF MECHANICAL ENGINEER / VPT
11.	ADDRESS	O/o Chief Mechanical Engineer, 2 nd Floor, Administrative Office Building, Visakhapatnam Port Trust, Port Area, Visakhapatnam – 530 035
12.	CONTACT DETAILS	CHIEF MECHANICAL ENGINEER / Superintendent Engineer Tel. No: 0891 – 287 3400 /287 3404 FAX: 0891-2564787 / 2565023 Email: cme.phr.vpt@gov.in cme.pkr.vpt@gov.in

The detailed TENDER DOCUMENT may be downloaded from VPT website
<http://www.vizagport.com>

Important Note: Prospective Bidders are requested to remain updated for any notices/amendments/clarifications etc. to the Bid document through the websites _____ No separate notifications will be issued for such notices/amendments/clarifications etc. in the print media or individually.

Section 1

Introduction & Background

1.1. INTRODUCTION

- 1.1.1. Visakhapatnam Port Trust (hereinafter called “VPT”) is a Government of India Enterprise under the administrative control of the Ministry of Shipping and is one of the 12 Major Ports in India.
- 1.1.2. VPT wishes to invite proposals for sale of solar power up to **5MW** from their grid connected 10 MW Solar PV Project in Visakhapatnam, Andhra Pradesh. VPT shall enter into Power Purchase Agreement (PPA) with the selected Bidders based on this Bid, for purchase of solar power for a period of 6 months based on the terms, conditions and provisions of this Bid.

1.2. BACKGROUND

- 1.2.1 Out of 10 MW Solar PV project, 6.25 MW was commissioned in Aug’2016 while the balance 3.75 MW is scheduled for commissioning in Mar 2017. VPT has commissioned the Project out of its own resources and shall be utilising **5MW** capacity for its own use at the Port and its facilities including township, offices, etc.

- 1.2.2 VPT intends to sell only the surplus power of 5MW to third parties – for consumption within Visakhapatnam, Andhra Pradesh, by utilising the Open Access Policy of Andhra Pradesh State Govt., through the process of **Special limited tenders**.
- 1.2.3 The bidders shall be direct Consumers of 'Contracted energy' from EPDCL / AP Transco .
- 1.2.4 The Operation & Maintenance (O&M) of the Solar PV Power Plant shall be the responsibility of VPT throughout the life of the project and VPT undertakes to maintain the plant in accordance with the prudent O&M practices for such power plants.

Section 2

DEFINITIONS

Following terms used in the document will carry the meaning and interpretations as described below:

Definitions

"Act" or "Electricity Act, 2003" shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;

"Affiliate" shall mean a Company that, directly or indirectly,

- i. controls, or
- ii. is controlled by, or
- iii. is under common control with, a Company developing a Project or a Member in a Consortium developing the Project and control means ownership by one Company of at least 26% (twenty six percent) of the voting rights of the other Company;

"Bid document" shall mean the bidding document issued by VPT including all attachments; clarifications and amendments thereof vide bid no. _____ dated _____;

"Bidder" shall mean Bidding Company submitting the Bid. Any reference to the Bidder includes Bidding Company including its successors, executors and permitted assigns

"Capacity Utilization Factor (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

"Chartered Accountant" shall mean a person practicing in India or a firm whereof all the partners practicing in India as a Chartered Accountant(s) within the meaning of the Chartered Accountants Act, 1949

“Company” shall mean a body corporate incorporated in India under the Companies Act, 1956 or the Companies Act, 2013, as applicable

“Commercial Operation Date (COD)” shall mean the date on which the project was declared commissioned by the statutory authorities.

“Contracted capacity” shall mean the A.C capacity in MW contracted with VPT for supply by the VPT at the Delivery Point from the Solar Power Project

“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 the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement

“CTU or Central Transmission Utility” shall mean the Central Transmission Utility as defined in sub-section (10) of section 2 of the Electricity Act 2003

“Day” shall mean calendar day

“Effective Date” shall mean the date of execution of Power Purchase Agreement (PPA) by both the parties

“Inter-connection point / Delivery / Metering Point” shall mean the point at 33 kV or above where the power from the solar power project is injecting into the CTU/ STU substation (including the dedicated transmission line connecting the solar power project with the CTU/ STU substation). Metering shall be done at this interconnection point at the substation where the power is injected into the CTU/STU substation, i.e. the Delivery Point. For interconnection with grid and metering, the SPDs shall abide by the relevant CERC Regulations, Grid Code and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time

“Letter of Intent” or “LOI” shall mean the letter issued by Visakhapatnam Port Trust (VPT) to the Selected Bidder for award of the Project

“Month” shall mean calendar month;

“Parent” shall mean a Company, which holds not less 51% equity either directly or indirectly in the Bidding Company;

“Pooling Substation/Pooling Point” shall mean the pooling point voltage and metering arrangement

“PPA” shall mean the Power Purchase Agreement signed between the successful Bidder and VPT according to the terms and conditions of the standard PPA enclosed with this bid.

“Power Project” or “Project” shall mean the solar power generation facility having separate points of injection into the grid at Inter-connection/Delivery/Metering Point or in case of sharing of transmission lines by separate injection at Pooling Point and having a separate boundary, control systems and metering.

“Project Capacity” shall mean the maximum AC capacity at the delivery point that can be scheduled and on which the Power Purchase Agreement shall be signed.

“Project Commissioning” the Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the Guidelines/bid/PPA;

“Selected Bidder or Successful Bidder” shall mean the Bidder selected pursuant to this bid to enter into PPA with VPT for purchase of power from the Project as per the terms of PPA;

“Solar PV Project” shall mean the Solar Photo Voltaic power Project that uses sunlight for direct conversion into electricity through Photo Voltaic technology;

“STU or State Transmission Utility” shall mean the Board or the Government Company notified by the respective State Government under Sub-Section I of Section 39 of the Electricity Act, 2003;

“Week” shall mean calendar week;

Section 3

BID INFORMATION AND INSTRUCTIONS TO BIDDERS

3.1. Obtaining bid Document, Cost of documents

Prospective Bidders interested to participate in the bidding process are required to submit their Project proposals in response to this bid document – refer the NIT for method of obtaining bid and its cost. A Bidding Company will be eligible to participate in the bidding process only on submission of cost of bid documents. The bids submitted without cost of the bid document and/or Bank Guarantee against EMD shall not be considered for the bidding and such bids shall not be opened by VPT.

3.2. Total Capacity Offered

5 MW (AC) of Solar power generated from the Project is being offered for sale to Bidders, for consumption of power within Visakhapatnam port area . The PPA would be initially signed for a period of 6 (six) months on a levelised tariff basis for the entire duration of PPA, wherein the basic tariff would remain fixed and firm for this duration of 6 months. The power sale shall be governed by the prevailing Open Access Policy of the Govt of Andhra Pradesh for Solar Power.

It is expected that every 1MW (AC) of the Solar Project at VPT would generate approx. 17.9 lakh units (kWh) of energy annually. Thus, 5MW capacity would generate approx. 89.56 lakh units and this may be considered as the **‘Contracted Energy’** for sale of power from the Project. The successful bidder shall be entering into PPA for taking this full Contracted Energy from the Project (in proportion to MW Capacity offered by him).

3.3. Maximum Eligibility for Project capacity allocation for a Bidder

Following conditions shall be applicable to the Bidders for submission of bids against this Bid:

3.3.1. A Bidder can submit bids for **a minimum of 1 MW capacity** and maximum of 5 MW

on the basis of levelised basic tariff payable for the PPA period of 6 months. The capacity can be quoted **in multiples of 0.5 MW** only, viz a bidder can quote for 1.0, 1.5, 2.0 MW and so on. The quoted tariff shall remain fixed & firm for the entire duration of PPA. A period less than 6 months duration shall not be accepted by VPT.

3.3.2. In addition to the basic tariff, the Other Charges which shall be payable at actuals by the Bidder would constitute the following (but not limited to these):

i) **T&D losses** – Presently Distribution losses are not applicable under the Open Access Policy of AP State Govt. for Solar Power while the Transmission losses would be applicable @ 4% on basic tariff.

ii) **T&D charges**- Presently T&D charges are not applicable under the Open Access Policy of AP State Govt. for Solar Power

iii) **SLDC charges** for Scheduling of power is chargeable under 2 heads (Annual Fee and Operating Charges) and are decided by SLDC for every Financial Year. For the applicable rates, bidders may refer to the website of APSLDC.

iv) **Cross-subsidy charges** are waived under AP State Open Access Policy for Solar Power for a period for 5 years from COD (Commercial Operation date) of the Project.

v) **The Banking Charges** are presently levied by SLDC of AP State Govt and which would be applicable, as the Solar Project would generate only during daytime, while the Bidder may require the 'Contracted Capacity' of Power on a continuous basis. The banking charges would have to be borne by the successful bidders (along with its periodic settlement with SLDC).

vi) **Taxes & Duties:** Any taxes, duties, levies, cess, etc. if presently leviable and liable to be paid during the PPA term on purchase of power shall have to be fully borne and paid directly by the successful bidder. However if any such taxes, duties, levies, cess, etc are presently leviable and liable to be paid during the PPA term on sale of power by the Solar power generator, same shall be borne and paid directly by VPT to the concerned agency(ies).

vii) **Statutory Variations:** Introduction of new or variation in taxes & duties, levies, etc. as well as in the applicable charges payable under the Open Access Policy of AP State Govt, shall be payable and fully borne by respective Parties from the dates these become applicable. These shall have to be fully borne by successful Bidder for the remaining period under the PPA.

3.3.3. The above charges mentioned under (i) to (v) shall be payable at actuals by the successful bidder directly to the DISCOM / State Govt. entities. Reconciliation thereof with DISCOM on half-yearly/ annual basis shall be the responsibility of successful bidder and whose copy shall be shared with VPT during the PPA period.

3.3.4. In case any of the taxes, duties, levies or charges are to be borne by successful bidder under the terms of this Bid but become payable by VPT due to prevailing laws/regulations of the State Govt., then such amounts shall be billed on a monthly

basis by VPT, along with supporting documents, for reimbursement by the Bidder.

3.3.5. Multiple bids from same company including its Parent/ Ultimate Parent /Affiliates/Group Companies shall make all the bids submitted by the Group invalid.

3.4. The evaluation of bids shall be carried out as described in Section 4.

3.5. Qualification Requirements

Short-listing of Bidders will be based on meeting the following criteria:

A. General Eligibility Criteria

The bidders shall be direct Consumers of 'Contracted Energy' from EPDCL / AP Transco and **should be presently on VPT port leased lands.**

Only Companies incorporated in India under the Companies Act 1956 or Companies Act, 2013 as applicable are eligible to submit bids.

3.6. Financial Requirements for Bidders

The Bidders should have an average annual turnover of minimum Rs 16.76 lakhs / MW (for the quoted capacity) during the last three financial years.

3.7. Technical eligibility

When bids are submitted by bulk consumers, the bidders should be an existing end Customer of AP State DISCOM and having grid connectivity with the STU (State Transmission Utility).

3.8. Permissions, etc required from the State Government and other local bodies

Upon signing the PPA with successful bidder, the Bidder shall have to sign the Wheeling & Banking agreement with AP State DISCOM and/or any other agency called for, to take the **Contracted Energy** from VPT, as per the terms & conditions agreed under the PPA and prevailing regulations of the AP State.

3.9. Earnest Money Deposit (EMD) and Performance Bank Guarantees (PBG)

- i) **Earnest Money Deposit (EMD)** shall be furnished in the form of DD/ Bank Guarantee @ Rs 1,11,773 per MW (based upon quoted capacity by bidder) according to Format attached with this Bid and valid for 180 days beyond the last date of bid submission. This shall be submitted by the Bidder along with their bid, failing which the bid shall be summarily rejected. If EMD is furnished by DD, same shall be drawn in favour of 'Visakhapatnam Port Trust' and payable at Visakhapatnam.
- ii) **Security Bank Guarantee (SBG):** The successful Bidder shall have to submit Security Bank Guarantee according to the Format attached for a value @ **Rs 5.58 Lakh / MW** (based upon quoted capacity by bidder) within 10 days of issuance of Lol by VPT and before signing of PPA.
- iii) On receipt and after successful verification of the Security Bank Guarantee in the acceptable form and upon execution of PPA, the BG submitted towards EMD shall be returned by VPT to the successful Bidder.

- iv) All Bank Guarantees towards EMD and Security BG shall be submitted only from any of the Scheduled banks in India.
 - v) All expenditure towards execution of all types of Bank Guarantees such as stamp duty etc. shall be borne by the Bidders.
- 3.10. The successful bidder shall sign the PPA within **20 days** of acceptance of Security BG by VPT.
- 3.11. The bidder shall ensure that the Security BG is kept live and valid for the entire duration of the PPA.

3.12. Forfeiture of EMD

The BG towards EMD shall be encashed by VPT in following cases:

- i) If the bidder withdraws or varies the bid after due date and time of bid submission and during the validity of the bid;
- ii) If the bidder fails to furnish required Security Bank Guarantee within the stipulated time period
- iii) In case VPT offers to execute the PPA with the Selected Bidder and the Selected Bidder does not execute the PPA within the stipulated time period;

3.13. Power Purchase Agreement

- 3.13.1. VPT shall enter into Power Purchase Agreement (PPA) with Bidders selected based on this Bid. A copy of standard Power Purchase Agreement to be executed between VPT and the selected Bidder is attached herewith as Annexure 1.
- 3.13.2. VPT will be obliged to sell only the 'Contracted Energy' under the PPA and would not be liable for any consumption of energy in excess of the same. Any excess power consumption shall be charged and payable by bidder directly to DISCOM as per the applicable rates of DISCOM.
- 3.13.3. Any extension of the PPA period beyond 6 months shall be through mutual Agreement between the successful bidder and VPT.
- 3.13.4. VPT has kept a reserve basic tariff of **Rs 6.24_/KWH** for this Bid and the Bidders are required to quote a levelised basic tariff for the 6 months duration under PPA that is equal to or more than this tariff. **If any Bidder quotes a tariff lesser than this reserve tariff, his bid shall be summarily rejected** and will not be considered for award by VPT.

3.14. Instructions to Bidders for bid proposals

The bidder including its Parent, Affiliate or Ultimate Parent or any Group Company shall submit only a single response to Bid.

3.15. Important notes and instructions to Bidders

- a. VPT reserves the right to seek additional information from the Bidders, if found necessary, during the course of evaluation of the response to Bid.
- b. Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter.
- c. Response to Bid not submitted in the specified formats will be liable for rejection by VPT.
- d. Bidders delaying in submission of additional information or clarifications sought (within the prescribed time limits) will be liable for rejection.
- e. Non-submission and/or submission of incomplete data/ information required under the provisions of Bid shall not be construed as waiver on the part of VPT of the obligation of the Bidder to furnish the said data/information unless the waiver is in writing.
- f. Only Visakhapatnam Courts shall have exclusive jurisdiction in all matters pertaining to this Bid.

3.16. Method of Submission of Response to Bid by the bidder

Documents to be submitted

The bidder has to submit the documents as part of Response to Bid to the address mentioned in Bid Information Sheet before the due date and time of bid submission.

Bidding Envelope (to contain both sealed Envelopes 1 and Envelope 2) Super scribed as **“Bidding Envelope 1 & 2 against Bid No _____ Due for submission on _____ and addressed to VPT, with bidder’s name & address also mentioned on the envelope:”**

1. Techno-Commercial Bid (Envelope 1):

2. This envelope shall contain the following documents:

- a) Covering letter as per format attached (original)
- b) Bid document fee (DD in original)
- c) Bank Guarantee/DD towards EMD (in original)
- d) Copy of VPT land leased document
- e) Copy of valid solvency certificate from any nationalized bank
- f) Board Resolution in favor of signatory (in original)
- g) Certificate of Incorporation of Bidding Company (certified copy)
- h) Certified copies of annual audited accounts for the last 3 financial years

“Financial Bid (Envelope 2)”

Bidders shall submit separate Financial Bid containing the following documents:

- a) Covering letter containing the Financial Bid as per Format attached

In each of the Envelopes, all the documents enclosed shall be indexed and flagged appropriately, with the index list indicating the name of the document against each flag.

All the Envelopes shall be properly sealed with the signature of the Authorized Signatory running across the sealing of the envelopes.

3.17. Validity of the Response to Bid

The Bidder shall submit the response to Bid, which shall remain valid up to Ninety (90) days from the last date of submission of response to Bid ("Bid Validity"). VPT reserves the right to reject any response to Bid which does not meet the afore-mentioned validity requirement.

3.18. Clarifications/Pre Bid meeting/ Enquires/ Amendments

- i) Clarifications / Doubts, if any, on Bid document may be emailed to VPT within the dates given in the NIT
- ii) Enquiries/ clarifications may be sought by the Bidder from:

Name of the Authorized Person of VPT:	Contact Details:
Mr. P.Kamaraju	Phone (Off): 0891-2873404 E-mail: cme.pkr.vpt@gov.in

3.19. Right of VPT to reject a Bid

VPT reserves the right to reject any or all of the responses to Bid, cancel the Bid, or annul the bidding process for any project at any stage without assigning any reasons whatsoever and without thereby any liability.

Section 4

Bid evaluation methodology

4.1. Bid Evaluation

Bid evaluation will be carried out considering the information furnished by Bidders as per provisions specified in Section 3 of this Bid. The detailed evaluation procedure and selection of bidders are described in subsequent clauses in this Section.

4.2. Techno-commercial Evaluation of Bidder's offer

A. First Envelope Evaluation (Step-1):

- i) The first envelope (Covering Bid submitted of only those bidders will be opened by VPT whose required documents are received at VPT office on or before the due date and time of bid submission.
- ii) Documents (as mentioned in the previous clause) received after the bid submission deadline specified in the Bid Information Sheet shall be rejected and returned unopened, if super-scribed properly with address, to the bidder.

- iii) VPT will examine all the documents submitted by the Bidders and ascertain meeting of eligibility conditions prescribed in the Bid. During the examination of the bids, VPT may seek clarifications / additional documents to the documents submitted etc. from the Bidders if required to satisfy themselves for meeting the eligibility conditions by the Bidders. Bidders shall be required to respond to any clarifications/additional documents sought by VPT within 7 days from the date of such intimation from VPT. All correspondence in this regard shall be made through email only. It shall be the responsibility of the Bidder to ensure that the email id of the authorized signatory of the Bidder is functional. The Bidder may provide an additional email id of the authorized signatory in the covering letter. No reminders in this case shall be sent. It shall be the sole responsibility of the Bidders to remove all the discrepancies and furnish additional documents as requested. VPT shall not be responsible for rejection of any bid because of the above.
- iv) The response to Bid submitted by the Bidder shall be scrutinized to establish Techno-Commercial eligibility as per Bid.

B. Second Envelope (Financial Bid) Evaluation (Step-2):

In this step evaluation shall be done based on the Tariff quoted by the bidders in the Financial Bid.

- i) Second Envelope of only those bidders shall be opened whose Techno-commercial bids (in Envelope 1) are found to be qualified.
- ii) Only those Bids shall be considered by VPT which have offered a basic tariff of at least **Rs 6.24/- / KWH** for the Contracted Energy on a levelised basis for the full PPA period.
- iii) If the bidders quote with more than two digits after decimal, it shall be ignored after first two decimal places. (For e.g. if the quoted tariff is Rs 6.337, then it shall be considered as Rs 6.33).
- iv) On completion of Techno-commercial bid evaluation, if it is found that only one bidder is eligible, opening of the financial bid of that bidder will be at the discretion of VPT. Thereafter VPT will take appropriate action as deemed fit.
- v) **Ranking of bidders after Financial bid Evaluation:** In case of tie between two bidders, i.e. if the tariffs quoted by them is exactly same, then preference shall be given to the bidder who offers to take larger capacity of power (in MW) for consideration of allotment by VPT. In addition, in case both tariff as well as capacity quoted are same, then VPT may divide the capacity equally to both bidders, provided the same is acceptable to them.
- vi) If the bidder quoting highest tariff has offered to take full offered Capacity, the entire **5 MW** shall be allotted to him.
- vii) Firstly, the bidder who has quoted highest tariff would be allotted the full capacity offered by him and then the second highest bidder shall thereafter be allotted the capacity offered by him and so on, until the full 5 MW capacity gets allotted.

Section 5

5.0 FORMATS FOR BID SUBMISSION

The following formats are required to be submitted as part of the Bid. These formats are designed to demonstrate the Bidder's compliance with the Qualification Requirements set forth in Section 3 and other submission requirements specified in the Bid.

- i) Format of Covering Letter (Format 5.1)
- ii) Format for Board Resolution (Format 5.2)
- iii) Format for Earnest Money Deposit (Format 5.3)
- iv) Format for Performance BG (Format 5.4)
- v) Format for submission of financial bid (Format 5.5)

The Bidder may use additional sheets to submit the information for his detailed response.

FORMAT-5.1

Covering Letter

(The covering letter should be on the Letter Head of the Bidding Company)

Date: _____
Reference No: _____

From: _____ (Insert name and address of Bidding Company)
Tel.#:
Fax#:
E-mail address#

To
VPT

Sub: Response to Bid No ----- dated ----- for sale of 5 MW Solar Power developed by VPT

Dear Sir,

We, the undersigned [insert name of the 'Bidder'] having read, examined and understood in detail the Bid including Qualification Requirements in particular, terms and conditions of the standard PPA for supply of power for 6 months to VPT hereby submit our response to Bid. *We confirm that in response to the aforesaid Bid, neither we nor any of our Ultimate Parent Company/ Parent Company/ Affiliate/ Group Company has submitted response to Bid other than this response to Bid, directly or indirectly, in response to the aforesaid Bid.*

1. We give our unconditional acceptance to the Bid, dated [Insert date in dd/mm/yyyy], standard PPA, issued by VPT. In token of our acceptance to the Bid and PPA, the same have been initialed by us and enclosed with the response to Bid. We shall ensure that the PPA are executed as per the provisions of the Bid and shall be binding on us.

2. Earnest Money Deposit (EMD):
3. We have enclosed EMD of Rs. (Insert Amount) in the form of bank guarantee no..... [*Insert bank guarantee number*] dated [*Insert date of bank guarantee*] as per Format from [*Insert name of bank providing bank guarantee*] and valid up to.....in terms of Clause 3.11 of this Bid. **The total capacity of the Solar PV power offered by us is MW [*Insert the capacity proposed in words as well*].**
4. We hereby declare that in the event our Bid get selected and we are not able to submit Bank Guarantee of the requisite value(s) towards PBG, and/or we are not able to sign PPA with VPT within the stipulated periods, VPT shall have the right to encash the EMD submitted by us.
5. We have submitted our response to Bid strictly as per this Bid, without any deviations, conditions and without mentioning any assumptions or notes in the said Formats.
6. We hereby unconditionally and irrevocably agree and accept that the decision made by VPT in respect of any matter regarding or arising out of the Bid shall be binding on us. We hereby expressly waive and withdraw any deviations and all claims in respect of this process.
7. Familiarity with Relevant Indian Laws & Regulations:

We confirm that we have studied the provisions of the relevant Indian/ relevant State Govt laws and regulations as required to enable us to submit this response to Bid and execute the PPA in the event of our selection as Successful Bidder.
8. It is confirmed that our response to the Bid is consistent with all the requirements of submission as stated in the Bid, including all clarifications and amendments and subsequent communications from VPT.
9. The information submitted in our response to the Bid is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our response to the Bid.
10. We confirm that all the terms and conditions of our Bid are valid up to _____ (*Insert date in dd/mm/yyyy*) for acceptance (i.e. a period of ninety (90) days from the last date of submission of response to Bid).
11. Contact Person

Details of the representative to be contacted by VPT are furnished as under:

Name :

Designation :

Company :

Address :

Phone Nos. :

Mobile Nos. :

Fax Nos. :

E-mail address :
12. We have neither made any statement nor provided any information in this Bid, which to the best of our knowledge is materially inaccurate or misleading. Further, all the confirmations, declarations and representations made in our Bid are true and accurate. In case this is found to be incorrect after our selection as Successful Bidder, we agree that the same would be treated as a Bidder's event of default under PPA and consequent provisions of PPA shall apply.

Dated the _____ day of _____, 20...

Thanking you,
Yours faithfully,

(Name, Designation and Signature of Person Authorized by the Board)

Attested

(Signature of the executant)

(Signature & stamp of Notary of the place of execution)

Place:-----
Date:-----

FORMAT- 5.2

Format for Board Resolutions

The Board, after discussion, at the duly convened Meeting on (Insert date), with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 1956 or Companies Act 2013, as applicable, passed the following Resolution:

RESOLVED THAT Mr/Ms....., be and is hereby authorized to do on our behalf, all such acts, deeds and things necessary in connection with or incidental to our response to Bid No. _____ for 'Selection of Purchaser for Solar Power' from the Solar PV Project installed by Visakhapatnam Port Trust (VPT) at Vizag, Andhra Pradesh, India, including signing of Bid, Power Purchase Agreement and submission of all documents and providing information / response to Bid to VPT, representing us in all matters before VPT, and generally dealing with VPT in all matters in connection with our bid for the said Project.

Certified true copy

(Signature, Name and stamp of Company Secretary)

Notes:

- 1) This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary/ Director.
- 2) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.

- 3) This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act, 1956 or Companies Act, 2013as applicable may be suitably modified to refer to the law applicable to the entity submitting the resolution.

FORMAT- 5.3

Format of BG for Earnest Money Deposit

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution.)

Ref. _____ Bank Guarantee No. _____

Date: _____

In consideration of the -----[Insert name of the Bidder] (hereinafter referred to as 'Bidder') submitting the response to Bid inter alia for selection of the Project/Projects of the cumulative capacity of MW [Insert cumulative Project capacity proposed] under for purchase of power therefrom, in response to the Bid No. _____ dated ____ issued by Visakhapatnam Port Trust (hereinafter referred to as VPT) and VPT considering such response to the Bid of[insert the name of the Bidder] as per the terms of the Bid, the _____ [insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to VPT at [Insert Name of the Place from the address of VPT] forthwith on demand in writing from VPT or any Officer authorized by it in this behalf, any amount upto and not exceeding Rupees -----[Insert amount not less than that derived on the basis of Rs. _____ Lakhs per MW for the cumulative capacity proposed, on behalf of M/s. _____ [Insert name of the Bidder] .

This guarantee shall be valid and binding on this Bank up to and including _____ [insert date of validity in accordance with Clause 3.9 of this Bid] and shall not be terminable by notice or any change in the constitution of the Bank or the term of contract or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. _____ (Rs. _____ only). Our Guarantee shall remain in force until _____ [insert date of validity in accordance with Clause 3.9 of this Bid]. VPT shall be entitled to invoke this Guarantee till _____ [insert date of validity in accordance with Clause 3.9 of this Bid].

The Guarantor Bank hereby agrees and acknowledges that the VPT shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by VPT, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to VPT.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by -----[Insert name of the Bidder] and/or any other person. The Guarantor Bank shall not require VPT to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against VPT in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Visakhapatnam shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly VPT shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder or to enforce any security held by VPT or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to VPT and may be assigned, in whole or in part, (whether absolutely or by way of security) by VPT to any entity to whom VPT is entitled to assign its rights and obligations under the PPA.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. _____ (Rs. _____ only) and it shall remain in force until _____ [Date to be inserted on the basis of Clause 3.9 of this Bid]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if VPT serves upon us a written claim or demand.

Signature _____
Name _____
Power of Attorney No. _____

For
_____ [Insert Name of the Bank] _____

E-mail ID of the bank:

Banker's Stamp and Full Address.
Dated this ____ day of _____, 20__

FORMAT- 5.4

Format for Security Bank Guarantee

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution.)

In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected Bidder) submitting the response to Bid inter alia for purchase of the capacity ofMW from the Solar Power project installed by Visakhapatnam Port Trust (VPT) at the[Insert name of the place] under for purchase of power there from on long term basis, in response to the Bid dated..... issued by Visakhapatnam Port Trust (hereinafter referred to as VPT) and VPT considering such response to the Bid of[insert the name of the selected Bidder] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Bidder and issuing Letter of Intent No ----- dt _____ to (Insert Name of selected Bidder) as per terms of Bid and the same having been accepted by the selected Bidder resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power from VPT,As per the terms of the Bid, the _____ [insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to VPT at Viaskhapatnam forthwith on demand in writing from VPT or any Officer authorised by it in this behalf, any amount upto and not exceeding Rupees----- [Total Value] only, on behalf of M/s _____ [Insert name of the selected Bidder]. As per the terms and conditions of Bid, this Bank Guarantee is to remain valid during the entire PPA term.

This guarantee shall be valid and binding on this Bank up to and including.....and shall not be terminable by notice or any change in the constitution of the Bank or the term of contract or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. _____ only.

Our Guarantee shall remain in force until.....and VPT shall be entitled to invoke this Guarantee till

The Guarantor Bank hereby agrees and acknowledges that VPT shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by VPT, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to VPT.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by -----[Insert name of the selected Bidder] and/or any other person. The Guarantor Bank shall not require VPT to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against VPT in respect of any payment made hereunder

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Visakhapatnam shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly VPT shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the selected Bidder, to make any claim against or any demand on the selected Bidder or to give any notice to the selected Bidder or to enforce any security held by VPT or to exercise, levy or enforce any distress, diligence or other process against the selected Bidder .

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to VPT and may be assigned, in whole or in part, (whether absolutely or by way of security) by VPT to any entity to whom VPT is entitled to assign its rights and obligations under the PPA.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. _____ (Rs. _____ only) and it shall remain in force until We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if VPT serves upon us a written claim or demand.

Signature _____
Name _____
Power of Attorney No. _____

For _____ [Insert Name of the Bank] _____

E-mail ID of the bank:

Banker's Stamp and Full Address.
Dated this ____ day of ____, 20__

Witness:
1.
Signature
Name and Address

2.
Signature
Name and Address

- Notes:
1. The Stamp Paper should be in the name of the Executing Bank and of appropriate value.
 2. The Performance Bank Guarantee shall be executed by any of the Scheduled Banks in India.

FORMAT- 5.5

**FINANCIAL PROPOSAL
Covering Letter
(On Bidder's letter head)**

[Date and Reference]

To,
VPT

Sub: Response to NIT no _____ for Selection of Bidder for purchase of Solar Power from VPT Solar project, Visakhapatnam, Andhra Pradesh

Dear Sir,

I/ We, _____ (Bidder's name) enclose herewith the Financial Proposal for selection of our firm for purchase of a cumulative capacity of ____MW from VPT Solar power project at Vizag, Andhra Pradesh.

We hereby declare and confirm that only we are participating in the tender Selection process for the NIT No. _____ and that our Parent, Affiliate or Ultimate Parent or any Group Company with which we have direct or indirect relationship are not separately participating in this selection process.

We hereby submit that we shall enter into PPA with VPT and take the 'Contracted Energy' for a period of 6 (Six) months from the Effective Date, on a levelised tariff basis, wherein the basic tariff would remain fixed and firm for the entire duration of PPA, in line with the terms & conditions under your Bid.

The basic tariff payable by us would be Rs _____/kWH (Rupees in words _____).

We further declare that the above statement is true & correct. We are aware that if at any stage it is found to be incorrect, our response to Bid will be rejected and if LOI has been issued or PPA has been signed, the same will be cancelled and the bank guarantees will be encashed and recoveries will be effected for the payments done.

I/ We agree that this offer shall remain valid for a period of 90 (Ninety days) from the due date of submission of the response to Bid or such further period as may be mutually agreed upon..

Authorized Signature

Name:

Designation

Name of the Bidder
Address

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 Viskhatnam 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 kWh