POWER PURCHASE AGREEMENT

FOR

SUPPLY OF 50 MW SOLAR POWER

FROM

GRID CONNECT SOLAR PV POWER PLANT

FOR
12 YEARS

By

[M/s Essel Urja Private Ltd. Mumbai]

With

Uttar Pradesh Power Corporation Ltd. (UPPCL), Lucknow

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भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL



उत्तर ... RADESH

BP 757416

19 JUN 2013

THIS POWER PURCHASE AGREEMENT [the "Agreement"] **is made on the** 27th **day of** Dec. **of** 2013 **at Lucknow.**

Between

M/s Essel Urja Private Ltd. , a project company formed by M/s Essel Infraprojects Ltd & a company incorporated under the Companies Act 1956, having its registered office at 135, Continental Bldg., Dr. Annie Besant Road, Worli, Mumbai-400 018 (herein after referred to as **"Seller"** or **"Solar Power Producer or SPP"**, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **FIRST PART**;

And

Uttar Pradesh Power Corporation Ltd., Lucknow a Company incorporated in India and registered under the Companies Act, 1956, having its registered office at Shakti Bhawan, 14 – Ashok Marg, Lucknow – 226 001 (hereinafter referred to as **"UPPCL"**, or **"Procurer"** which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **SECOND PART**;

Essel Urja Private Limited

(A. P. MISHRA)
MD,UPPCL

Seller or "Solar power producers" and Procurer are individually referred to as 'Party' and collectively referred to as 'Parties'.

WHEREAS:

a) Uttar Pradesh Solar Power Policy, 2013 has been issued by Government of Uttar Pradesh for promoting the Solar Energy in Uttar Pradesh.

b) Uttar Pradesh Power Corporation Ltd. (UPPCL) hereinafter referred to as "Procurer", has been duly authorised to enter into this Agreement on behalf of DISCOMS namely Paschimanchal Vidyut Vitran Nigam Ltd, Poorvanchal Vidyut Vitran Nigam Ltd, Madhyanchal Vidyut Vitran Nigam Ltd, Dakshinanchal Vidyut Vitran Nigam Ltd and will directly purchase power generated from these selected 200 MW Solar PV Projects for 12 years.

c) As per Uttar Pradesh Solar Power Policy 2013, UPNEDA had initiated a competitive bidding process through issue of RfP (Request for Proposal) Document for selecting SPP for setting up of Solar PV Project (total aggregate capacity of 200 MW) for supply of solar energy for 12 years to procurers.

d) **M/s Essel Infraprojects Ltd., Mumbai (SPP)** had registered itself with UPNEDA and after meeting the eligibility requirements and has got selected by UPNEDA for the construction, operation & maintenance and supply of power from the Solar PV project of capacity 50 MW to the Procurer in accordance with the terms of this Agreement. The details of the plant are given in Schedule –3.

e) **M/s Essel Infraprojects Ltd., Mumbai** [SPP or "Seller"] has provided to UPNEDA, Contract Performance Guarantee(s) as per format specified in RfP. M/s Essel Infraprojects Ltd. have formed a project company M/s Essel Urja Private Ltd for implementation and operation of this project.

f) The SPP has agreed to sign this Power Purchase Agreement with Procurer for sale of Solar Photovoltaic Power by the SPP to the Procurer for 12 years as per the terms and conditions of this Agreement.

g) Procurer agree to procure Solar Photovoltaic Power up to the Contracted Capacity from the SPP as per the terms of this Agreement.

h) The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by SPP to Procurer.

i) All the other RfP Project Documents will be executed by the Procurer and the Seller simultaneously with the signing of this Agreement.

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

(A. P. MISHRA)
MD,UPPCL

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Essel Urja Private Limited

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, the following words and expressions shall have the respective meanings set forth herein:

"Act or Electricity Act 2003"	shall mean the Electricity Act, 2003 as amended from time to time.
"Affected Party"	means the Procurer or Seller whose performance has been affected by an event of Force Majeure.
"Affiliate"	Company 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;
"Agreement" or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof
"Appropriate Commission"	shall mean the CERC, or the UPERC or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be
"Approvals"	means the permits, clearances, licenses and consents as are listed in Schedule 8 hereto and any other statutory approvals required for generation and sale of power
"Average Pooled Purchased Cost (APPC)"	shall mean the weighted average price at which an electricity distribution company buys power from various sources.
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party
"Billing Period"	Shall be the calendar month ending with the Metering Date. The first Billing Period shall commence from the Commercial Operation Date and end with the Metering Date corresponding to the month in which the Commercial Operation Date occurs.
"Billing Date"	shall be the first Business Day after the Metering Date of each Billing Period.
"Business Day"	shall mean with respect to Seller and Procurer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in **Lucknow.**

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"Capacity Utilisation Factor" or "CUF"	shall mean 19% availability of the Solar PV Project at the terminal Point of the solar plant on Contract Year basis;
"Commercial Operation Date"	Shall mean the date on which the Plant is available for commercial operation and such date as specified in a written notice given at least ten days in advance by the Seller to UPNEDA / Procurer(s).
"Change in Law"	shall have the meaning ascribed thereto in Article 12.1 of this Agreement;
"Competent Court of Law	shall mean any court or tribunal or any similar judicial or quasi-judicial body in Lucknow that has jurisdiction to adjudicate upon issues relating to this Agreement;
"Consultation Period"	shall mean the period of sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Seller Preliminary Default Notice or Procurer Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
"Contract Year"	shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;
"ContractedCapacity"	shall mean 50 MW (AC) of Solar PV power contracted with Procurer(s) for sale of such power by the Seller (50 MW AC capacity means 50 MW AC output at the delivery point i.e. at the grid sub-station where the Project would be connected to.);
"Day"	shall mean a day, if such a day is not a Business Day, the immediately succeeding Business Day;
"Delivery Date"	shall mean the date on which the Seller commences supply of the aggregate Contracted Capacity to the Procurers;
"Dispute"	shall mean any dispute or difference of any kind between the Seller and the Procurer in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
"Due Date"	shall mean the last day of the month provided the bill is received and acknowledged by the Procurer(s) up to 4th day of the month. For the bills received and acknowledged by the Procurer(s) after 4th, it shall be 30th day from such date;

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"Effective Date"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Accounts"	shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
"Event of Default"	shall mean the events as defined in Article 13 of this Agreement;
"Expiry Date"	Shall mean the date occurring twelve (12) years from the date of commercial operation of the Solar PV Project;
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 11 of this Agreement;
"Grid Code" / "IEGC" or "State Grid Code"	shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
"Incremental Receivables"	shall mean the amount of receivables, in excess of the amounts which have already been charged or agreed to be charged in favour of the parties by way of a legally binding agreement, executed prior to the Effective Date;
"Indian Governmental Instrumentality"	shall mean the Government of India, Governments of State of Uttar Pradesh and any Ministry, Department, Board, Authority, Agency, Corporation, Commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
"Invoice" or "Bill"	shall mean either a Monthly Invoice, Monthly Bill or a Supplementary Invoice /Supplementary Bill by any of the Parties;
"Injection Point"	Is the point located at the substation of Transco / Discom, the injection point shall also be the Delivery point or the metering point for estimation of energy generation, shall also mean **"Point of Connectivity"**
"Injected Energy"	Shall mean the kilowatt hours of Electricity actually fed and

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	measured by the energy meters at the Injection Point in a Billing Period and certified in the SLDC / STU / CTU.
"Interconnection Facilities"	in respect of the Seller shall mean all the facilities installed by the Seller at the Solar PV Power Plant to transmit the energy to the grid.
"Interconnection Point"	shall mean the point where the power from the transmission line reaches to the switchyard bus of Transco / Discom at the Injection Point, the interconnection point shall be located in the periphery of Transco / Discom substation.
"Installed Capacity"	means the capacity of the Project at the generating terminal(s) and shall be equal to 50 MW.
"KV"	means Kilovolts.
"KWH"	means Kilowatt-hour.
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Metering Date"	for a Billing Period, means the midnight of the last Day of the calendar month.
"Metering Point"	for purposes of recording of Injected Energy located at Injection Point.
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month
"MW"	means Megawatts.
"O & M Default"	shall mean any default on the part of the Seller for a continuous period of ninety (90) days to (i) operate and/or (ii) maintain (in accordance with Prudent Utility Practices).
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Security Mechanism"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;

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"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 13 of this Agreement;
"Project"	Shall mean the Solar PV Project as detailed under schedule-I of this Agreement.
"Project Site"	means any and all parcels of real property, rights-of-way, easements and access roads related to the Plant.
"Prudent Utility Practices"	means those practices, methods, techniques and standards, that are generally accepted for use in electric utility industries 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 the size, service and type of the Project, and that generally conform to the manufacturers' operation and maintenance guidelines.
"RBI"	shall mean the Reserve Bank of India;
"Rebate"	shall have the same meaning as ascribed thereto in Article 10.3.4 of this Agreement;
"RPC"	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Rupees", "Rs." Or "`"	shall mean Indian rupees, the lawful currency of India;
"Scheduled Commercial Operation Date" or "Scheduled COD"	shall be a date, 18 months from the Effective Date, when the Solar PV Project is required to be commissioned as per the terms and conditions of the PPA;
"SERC"	shall mean the Electricity Regulatory Commission of any State in India constituted under Section 82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Sub-section (1) of Section 83 of the Electricity Act 2003;
"SLDC"	State Load Dispatch Center as Constituted under Section 31 of Electricity Act 2003.
"SLDC Charges"	shall mean the charges levied by any of the relevant SLDCs on the Procurers;
"Solar Photovoltaic" or "Solar PV"	shall mean the solar power project that uses sunlight for direct conversion into electricity and that is being set up by the Seller(s) to provide Solar Power to the Procurer;
"Solar Power"	shall mean power generated from the Solar PV Project;

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"State Transmission Utility" or "STU"	Means State Transmission Utility as notified by the Government of the State for electricity transmission.
"Tariff"	Shall have the same meaning as provided for in Article 9 of this Agreement; As quoted by the Seller though competitive bidding and as attached in Schedule 10 of this Agreement
"Tariff Payments"	shall mean the payments to be made under Monthly Bills as referred to in Article 10;
"Technical Limits"	means the limits and constraints described in Schedule 6, relating to the operations, maintenance and dispatch of the Project.
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Voltage of Injection"	means the voltage at which the Electricity generated by the Project is required to be injected to the STU / CTU / Discomand shall be (to be provided later) KV. (To be decided in consultation with STU / CTU / Discom)
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

1.2 Interpretation

Save where the contrary is indicated, any reference in this Agreement to:

1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexure(s);

1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;

1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (100,000);

1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;

1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether

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present or future, actual or contingent;

1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;

1.2.7 "Rupee", "Rupees" "Rs." or "`"shall denote Indian Rupees, the lawful currency of India;

1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

1.2.9 Words importing the singular shall include the plural and vice versa;

1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented only if agreed to between the parties;

1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;

1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;

1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;

1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;

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1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

1.2.18 In the event of any inconsistency between this Agreement and GoUP's Solar Policy read with RfP document, the later shall prevail upon.

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ARTICLE 2: TERM OF AGREEMENT

2.1. Effective Date

2.1.1 This Agreement shall be deemed to have come into force with effect from the date of signing of this agreement and shall remain in full force from the date of commissioning of last unit of the Solar PV Plant from which solar power is committed to be supplied under this Agreement and such date shall be referred to as the Effective Date.

2.2. Term of Agreement

2.2.1 This Agreement subject to Article 2.4 and 2.5 shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date.

2.3. Extension of PPA

2.3.1 180 Days prior to expiry of this agreement, on willingness of SPP, UPPCL will extend this agreement with SPP for a further period of 13 years at the price of eleventh year APPC. However the budgetary support form UP State Government as incentive as per provision in the solar policy will be available only for initial 12 years of PPA and will not be available for the extended PPA of 13 years.

2.4. Early Termination

2.4.1 This Agreement shall terminate before the Expiry Date:

i. if either Seller or all the Procurers (jointly) terminates this Agreement, pursuant to Article 13 (Events of Default and Termination), of this Agreement; or

ii. in such other circumstances as the Seller or all the Procurers (jointly) may agree, in writing;

2.5. Survival

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

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which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

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ARTICLE 3: CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE SELLER / PROCURER

3.1. Satisfaction of conditions subsequent by the SPP /Seller

3.1.1 The SPP agrees and undertakes to duly perform and complete all of the following activities at the SPP's own cost and risk within two hundred forty (240) days from the Date of Signing of PPA, unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by UPNEDA:

a) The SPP/Seller shall have acquired land and taken possession of the total land required for the Solar PV Project or will acquired total land required for within two hundred forty (240) days of signing of PPA.

b) The SPP/Seller shall have obtained all Consents, Clearances and Permits required for supply of power to the Procurer(s) as per the terms of this Agreement. In case a Project Company is incorporated and the Consents, Clearances and Permits have been obtained in the name of a company other than the Project Company, all such Consents, Clearances and Permits shall have been transferred in the name of such Project Company;

c) The SPP shall have achieved Financial Closure and has provided a certificate to UPNEDA from the lead banker to this effect;

d) The SPP shall have sent a written notice to UPNEDA and Procurers indicating the Installed Capacity for the Power Project expressed in MW;

e) The SPP shall have signed a Transmission Agreement with UPPTCL/ DISCOM confirming the evacuation and connectivity of Transmission system with their Power Project switchyard.

f) [To be included if the Seller opts for substitution rights of the Lender(s)] The Seller shall have provided an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the terms of this Agreement and all other RfP Documents;

g) The SPP shall have fulfilled the Qualifying requirements according to criteria mentioned in RfP Clause 2.10for Selection of Developer(s) for Procurement of 200 MW Power from Grid Connect Solar Power Projects through Tariff Based Competitive Bidding Process and produce the documentary evidence for same.

h) The SPP shall have submitted to UPNEDA the relevant documents as stated above, complying with the conditions subsequent, within two hundred forty

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(240) days.

3.2. Consequences of non-fulfilment of conditions subsequent

3.2.1 In case of failure to submit the documents to UPNEDA within timeframe the provision of RfP as mentioned below shall apply:

A. Upto 10 MW Solar PV Projects

a. Delay up to One (1) month:

In case the commissioning of project is delayed or the developer is not able to meet the timelines as mentioned above then the Project Developer shall pay to UPNEDA the **Liquidated Damages (LD)** at the rate of **Rs. 50,000/- per MW per day** of delay. LD shall be payable on weekly basis and in advance before commencement of the week starting on Monday and shall be paid in the form of DD/Pay order payable to UPNEDA at Lucknow.

On non-submission of the above mentioned amount UPNEDA shall have the right to invoke the Bank Guarantees submitted by the developer.

b. Delay above One (1) month:

For not achieving Commissioning / Schedule Delivery Date or not achieving the timelines mentioned above UPNEDA / Procurer(s) shall encash the Bank Guarantee (BG) in the following manner:

i. Delay up to two (2) months - 20% of the total Performance bank guarantee.

ii. Delay of more than two (2) months and up to three (3) months - 40% of the total Performance Bank Guarantee in addition to BG in clause-i above.

iii. Delay of more than three (3) months and up to four (4) months - the remaining Performance Bank Guarantees in addition to BG in clause-i and ii above.

Delay in the timelines for over and above four (4) months form respective task will lead to create the necessary grounds for UPNEDA / UPPCL for termination of LoI / PPA.

B. Above 10 MW Solar PV Projects

a. Delay up to Three (3) months:

In case the commissioning of project is delayed or the developer is not able to meet the timelines as mentioned above then the Project Developer shall pay to UPNEDA the **Liquidated Damages (LD)** at the rate of **Rs. 50,000/- per MW per day** of delay. LD shall be payable on weekly basis and in

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advance before commencement of the week starting on Monday and shall be paid in the form of DD/Pay order payable to UPNEDA at Lucknow.

On non-submission of the above mentioned amount UPNEDA shall have the right to invoke the Bank Guarantees submitted by the developer.

b. Delay above Three (3) months:

For not achieving Commissioning / Schedule Delivery Date or not achieving the timelines mentioned above UPNEDA / Procurer(s) shall encash the Bank Guarantee (BG) in the following manner:

i. Delay up to four (4) months - 20% of the total Performance bank guarantee.

ii. Delay of more than four (4) months and up to five (5) months - 40% of the total Performance Bank Guarantee in addition to BG in clause-i above.

iii. Delay of more than five (5) months and up to six (6) months - the remaining Performance Bank Guarantees in addition to BG in clause-i and ii above.

Delay in the timelines for over and above six (6) months form respective task will lead to create the necessary grounds for UPNEDA / UPPCL for termination of this PPA.

3.2.2 For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

3.2.3 In case of inability of the SPP to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.

3.2.4 Provided that due to the provisions of this Article 3.2, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Commissioning Date.

3.2.5 If Schedule Delivery Date is delayed due to construction of transmission line by Government of Uttar Pradesh then no penalty shall be imposed on the developer.

3.3. Performance Bank Guarantee

3.3.1 The Performance Bank Guarantee has been submitted by SPP within 15 days of issue of LoI for guaranteeing the commencement and continuity of the supply of power up to the Contracted Capacity within the time specified in this Agreement.

3.3.2 If the SPP fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement, subject to conditions mentioned in Article 4.7, UPNEDA shall have the right to encash the Performance Bank Guarantee without prejudice to the other rights of UPNEDA under this Agreement.

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3.4. Return of Performance Bank Guarantee

3.4.1 Subject to Article 3.3, UPNEDA shall return / release the Performance Bank Guarantee within three (3) months after the Commissioning Date.

3.4.2 The return / release of the Performance Bank Guarantee shall be without prejudice to other rights of UPNEDA under this Agreement.

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ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 SPP's Obligations

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

a) Obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; and

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

c) The commencement of supply of power up to the Contracted Capacity to Procurer(s) later than the Scheduled Commissioning Date; and continuance of supply of Power throughout the term of agreement; and.

d) Connecting the Power Project switchyard with the STU/ DISCOM Transmission Lines at the outgoing Terminal Bay of the Power Project switchyard (Delivery Point); and

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

f) Maintaining its controlling shareholding prevalent at the time of signing of PPA up to a period of one (1) year after Commercial operational Date; and

g) Fulfilling all obligations undertaken by the SPP under this Agreement.

4.2 Minimum CUF Limits

4.2.1 The Projects developed on conventional solar PV technology should have a minimum CUF of 15% in any given contract year. In case the developers fail to supply energy pertaining to minimum CUF in a contract year then the developer shall pay a penalty equal to 10% of the project tariff to the Procurer, for such shortfall in units.

4.3 Grid Connectivity

4.3.1 The grid connectivity and associated evacuation facilities from the solar power plant substation/switchyard to distribution/transmission system "feed in substation" will be provided in accordance with UPERC (Grant of Connectivity to Intra-State Transmission System) Regulations 2010 as amended from time to time.

4.3.2 The responsibility of getting connectivity with the transmission system owned by the Discom/STU will lie with the Project Developer. The cost of the transmission

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line up to the "feed in substation" viz the point of interconnection where the metering is done shall be borne by the Solar Project Developer. This transmission line shall be constructed by the STU or Discom, whoever owns the feed in substation. However the entire cost of transmission including cost of construction of line, wheeling charges, losses etc. as per applicable Regulations of the commission will be borne by the Project Developer and will not be met by the STU/Discom.

4.3.3 However, for the projects coming up in Non-Bundelkhand region the seller shall have the option to construct the transmission line on their own in co-ordination with STU/DISCOMS as the case may be and in accordance with the provisions of Electricity Act 2003 and applicable Regulations of the Commission.

4.3.4 Seller(s) shall be responsible for the Operation and maintenance of dedicated transmission line up to the point of connectivity. Such arrangement shall be as per the regulations specified by the Appropriate Commission, as amended from time to time.

4.3.5 Construction and operation/maintenance of evacuation system associated with plants shall be the responsibility of generating company.

4.3.6 The Interconnection /Metering Point shall be located at the substation of Transco / Discom, and generating company shall bear the cost for construction of interconnection / metering facilities upto the point of connectivity.

4.3.7 For the projects coming in Bundelkhand region of the state of Uttar Pradesh, expenditure on the construction of transmission line and substation at the Transco / Discom end will be borne by Government of Uttar Pradesh as mentioned in the Solar Policy of Uttar Pradesh 2013.

4.3.8 The Solar PV Project shall be connected to the nearest substation at the appropriate voltage level.

4.4 Information regarding Interconnection Facilities

4.4.1 The SPP shall be required to obtain all information with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on both sides i.e. transmission side (Discom / Transco side) and SPP's side (power plant side) of the injection Point to enable delivery of electricity to injection point / interconnection point.

4.5 Purchase and sale of Contracted Capacity

4.5.1 Subject to the terms and conditions of this Agreement, the SPP undertakes to sell to Procurer and Procurer undertakes to pay Tariff for all the energy supplied at the Delivery corresponding to Contracted Capacity.

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4.6 Right to Contracted Capacity & Energy

4.6.1 Procurer, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the SPP beyond the contracted capacity with a maximum CUF of 21%. If during any contract year, it is found that SPP has not been able to generate minimum energy 65.700 Million kWh (MU) on account of solely attributable to SPP, the non-compliance by SPP shall pay such compensation to procurers.

4.7 Extensions of Time

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

a) any STU/Procurers Event of Default; or

b) Force Majeure Events affecting STU/Procurers, or

c) Force Majeure Events affecting the SPP,

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.7.2, for a reasonable period but not less than 'day for day' basis, to permit the SPP or STU/Procurers through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPP or Procurers, or till such time such Event of Default is rectified by STU/Procurers.

4.7.2 Subject to Article 4.7.6, in case of extension occurring due to reasons specified in Article 4.7.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Commissioning Date would not be extended by more than six (6) Months.

4.7.3 In case of extension due to reasons specified in Article 4.7.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of three (3) months any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.

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

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

4.7.6 Notwithstanding anything to the contrary contained in this Agreement, any

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extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond six months or date determined pursuant to Article 4.7.1 whichever is later.

4.8 Liquidated Damages for delay in commencement of supply of power to Procurers

4.8.1 If the SPP is unable to commence supply of power to **Procurers** by the Scheduled Commissioning Date other than for the reasons specified in Article 4.7.1, the SPP shall pay to **UPNEDA,** Liquidated Damages for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per following:

A. Upto 10 MW Solar PV Projects

a. Delay up to One (1) month:

In case the commissioning of project is delayed or the developer is not able to meet the timelines as mentioned above then the Project Developer shall pay to UPNEDA the **Liquidated Damages (LD)** at the rate of **Rs.50,000/- per MW per day** of delay. LD shall be payable on weekly basis and in advance before commencement of the week starting on Monday and shall be paid in the form of DD/Pay order payable to UPNEDA at Lucknow.

On non-submission of the above mentioned amount UPNEDA shall have the right to invoke the Bank Guarantees submitted by the developer.

b. Delay above One (1) month:

For not achieving Commissioning / Schedule Delivery Date or not achieving the timelines mentioned above UPNEDA / Procurer(s) shall encash the Bank Guarantee (BG) in the following manner:

i. Delay up to two (2) months - 20% of the total Performance bank guarantee.

ii. Delay of more than two (2) months and up to three (3) months - 40% of the total Performance Bank Guarantee in addition to BG in clause-i above.

iii. Delay of more than three (3) months and up to four (4) months - the remaining Performance Bank Guarantees in addition to BG in clause-i and ii above.

Delay in the timelines for over and above four (4) months form respective task will lead to create the necessary grounds for UPNEDA for termination of this PPA.

B. Above 10 MW Solar PV Projects

a. Delay up to Three (3) months:

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In case the commissioning of project is delayed or the developer is not able to meet the timelines as mentioned above then the Project Developer shall pay to UPNEDA the **Liquidated Damages (LD)** at the rate of **Rs. 50,000/- per MW per day** of delay. LD shall be payable on weekly basis and in advance before commencement of the week starting on Monday and shall be paid in the form of DD/Pay order payable to UPNEDA at Lucknow.

On non-submission of the above mentioned amount UPNEDA shall have the right to invoke the Bank Guarantees submitted by the developer.

b. Delay above Three (3) months:

For not achieving Commissioning / Schedule Delivery Date or not achieving the timelines mentioned above UPNEDA / Procurer(s) shall encash the Bank Guarantee (BG) in the following manner:

i. Delay up to four (4) months - 20% of the total Performance bank guarantee.

ii. Delay of more than four (4) months and up to five (5) months - 40% of the total Performance Bank Guarantee in addition to BG in clause-i above.

iii. Delay of more than five (5) months and up to six (6) months - the remaining Performance Bank Guarantees in addition to BG in clause-i and ii above.

Delay in the timelines for over and above six (6) months form respective task will lead to create the necessary grounds for UPNEDA / UPPCL for termination of LoI / PPA.

4.8.2 If Schedule Delivery Date is delayed due to construction of transmission line by Government of Uttar Pradesh then no penalty shall be imposed on the developer.

4.8.3 The maximum time period allowed for commissioning of the Project without payment of Liquidated Damages and encashment of Performance Bank Guarantee shall be limited to 13monthsfor the project capacity up to 25 MW and 18 months for the project capacity above 25 MW from the date of signing of this agreement it shall be considered as an SPP Event of Default and provision of article shall apply and PPA will be terminated and the Project shall be removed from the list of selected projects.

4.8.4 If the SPP fails to pay the amount of liquidated damages within the period of ten (10) days as specified in Article 4.8.1, UPNEDA shall be entitled to recover the said amount of the liquidated damages by invoking the Performance Bank Guarantee. If existing Performance Bank Guarantee is for an amount which is less than the amount of the liquidated damages payable by the SPP to UPNEDA under this Article 4.8, then the SPP shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Performance Bank Guarantee by UPNEDA.

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4.9 Acceptance/Performance Test

4.9.1 Prior to synchronization of the Power Project, the SPP shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by an agency identified by the UPPCL to carry out testing and certification for the solar power projects.

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ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

5.1 Synchronisation, Commissioning and Commercial Operation

5.1.1 The SPP shall give the concerned UPLDC / SLDC and Procurer and UPNEDA at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice, of the date on which it intends to synchronise the Power Project to the Grid System.

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

5.1.3 The synchronization equipment shall be installed by the SPP at its generation facility of the Power Project at its own cost. The SPP shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned sub-station/Grid System of Transco / Discom and checking/verification is made by the concerned Transco and Discoms Authorities of the Grid System.

5.1.4 The SPP shall immediately after each synchronization /tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with State Grid Code.

5.1.5 The SPP shall commission the project within 18 months for 50 MW power plant.

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ARTICLE 6: DISPATCH

6.1 Dispatch

6.1.1 The Power Project shall be required to maintain compliance to the applicable Grid Code requirements and directions, if any, as specified by concerned SLDC/UPLDC from time to time.

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ARTICLE 7: METERING

7.1 Meters

7.1.1 As per state metering code, for measurement of solar energy supplied by Solar generating stations within the State, meter shall be provided on each outgoing feeder at the power station designated as main meter for billing purpose. Check meter shall be provided along with main meter on each outgoing feeder. Meters shall also be provided on the other end of the 33kV /132 KV feeder to serve as secondary back-up meter. Meters on each generator and each auxiliary transformer shall work as backup meters. The consumption recorded by main meter shall be compared with the consumption recorded by secondary backup meter on 33kV/132 KV feeder to work out transmission losses as well as to monitor the correct functioning of both meters

7.1.2 As per state metering code, the metering system shall comprise of main, check, backup and secondary backup meters. In the event of main meter or more than one meter becoming defective the order of precedence for billing shall be (a) main (b) check (c) backup (d) secondary backup.

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

7.1.4 All meters (a) main (b) check (c) backup meters at Transco / Discom Substation shall be provided by seller at the cost of seller. The secondary backup meters at Solar PV Power Plant Generating Substation shall be provided and installed by seller at the cost of seller.

7.1.5 The SPP shall bear all cost pertaining to installation, testing, calibration maintenance, renewal, and repair of all the meters referred at 7.1.4 above.

7.1.6 Energy Accounts shall be binding on both the Parties for billing and payment purposes.

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ARTICLE 8: INSURANCES

8.1 Insurance

8.1.1 The SPP shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

8.2 Application of Insurance Proceeds

8.2.1 Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

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

8.3 Effect on liability of Procurers

8.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the SPP can claim compensation, under any Insurance shall not be charged to or payable by Procurers .

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ARTICLE 9: APPLICABLE TARIFF

9.1.1 The SPP shall be entitled to receive a Tariff of Rs 9.270 /kWh for the energy supplied at the Metering Point during a Contract Year pertaining to the Contracted Capacity.

9.1.2 Procurer will be liable to pay the project developer the tariff as signed in the PPA. Out of the total per unit tariff the tariff which has been arrived from the Latest Finalized Case – I bidding for conventional power project as conducted by UPPCL will be paid from the UPPCL kitty and the balance amount will be rooted through UPNEDA to UPPCL and will be paid to the developer on monthly basis for the entire duration of the PPA.

Quoted Single tariff = (tariff arrived from Case I bidding for conventional power project + balance amount paid by UPNEDA).

9.1.3 UPPCL and SPP shall agree for extension of this agreement for further 13 years. And with the tariff for the sale of power to UPPCL for the extended period shall be the price of eleventh year Average Pooled Purchase Cost (APPC). However the budgetary support form UP State Government as incentive as per provision in the solar policy will be available only for initial 12 years of PPA and will not be available for the extended PPA of 13 years.

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ARTICLE 10: BILLING AND PAYMENT

10.1 General

10.1.1 From the commencement of supply of power by the Seller, the Procurers shall pay to the Seller the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in this Article 9 and Schedule 10. All Tariff Payments by the Procurers shall be in Indian Rupees.

10.2 Delivery and Content of Monthly Bills

10.2.1 The Seller shall issue to each Procurer a signed Monthly Bill for the immediately preceding Month not later than ten (10) days of the next Month. In case the Monthly Bill for the immediately preceding Month issued after ten (10) days of the next Month, the Due Date for payment of such Monthly Bill shall be extended by thirty (30) days.

Provided that:

a. if the date of commencement of supply of power falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or

b. if, the date of commencement of supply of power falls after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the Delivery Date until the last day of the immediately following Month.

Provided further that if a Monthly Bill is received on or before the second (2nd) day of a Month, it shall be deemed to have been received on the second (2nd) Business Day of such Month.

10.2.2 The Monthly Bill prepared as detailed in Schedule 5 of the PPA, shall include the following;

i) Provisional Bill for Solar PV power supplied in the immediately preceding Month;

(a) Adjustments against the Provisional Bill(s) based on Energy Accounts for the Solar PV power supplied in the Month(s) preceding to the previous month(s);

(b) Any other adjustments to cover changes in open access related charges and any other prior-period adjustments;

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ii) Late Payment Surcharge, if any; and

iii) Taxes, Duties, Levies etc as applicable.

10.3 Payment of Monthly Bills

10.3.1 The Procurers shall pay the amount payable under the Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified to the Procurers in accordance with Article 10.3.2 below.

10.3.2 The Seller shall open a bank account at Lucknow, Uttar Pradesh ("Seller's Designated Account") for all Tariff Payments be made by the Procurers to the Seller, and notify the Procurers of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Procurers shall also designate a bank account at Lucknow (the "Procurer's Designated Account") for payments to be made by the Seller to the Procurers, if any, and notify the Seller of the details of such account ninety (90) days before the dispatch of the first Monthly Bill. The Seller and the Procurers shall instruct their respective bankers to make all payments under this Agreement to the Procurers' Designated Account or the Seller's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

10.3.3 **Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by the Procurers sixty (60) days beyond its due date, a Late Payment Surcharge shall be payable by the Procurers to the Seller at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by the Seller through the next Monthly Bill.

10.3.4 **Rebate**

For payment of any Bill within due date, the following Rebate shall be paid by the Seller to the Procurers in the following manner.

a) A Rebate of 2% shall be payable to the Procurers for the payments made in full within one Business Day of receipt of the Bill by the Procurer.

b) For payment of Bill subsequently but up to the Due Date, a rebate of 1% shall be allowed for the payments made in full.

c) No Rebate shall be payable on the Bills raised on account of taxes, duties and cess etc.

10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 The Procurers shall provide to the Seller, in respect of payment of its Monthly

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Bills, an unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Procurers, which may be drawn upon by the Seller in accordance with this Article. The Procurers shall provide to the Seller draft of the Letter of Credit proposed to be provided to the Seller two (2) months before the Scheduled Commissioning Date.

10.4.2 Not later than one (1) month before the start of supply, the Procurers shall through a scheduled bank at Lucknow open a Letter of Credit in favour of the Seller, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) months and shall be reviewed every year, in the month of January and revised w.e.f. April for an amount equal to:

i) for the first Contract Year, equal to the estimated average monthly billing;

ii) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the monthly Tariff Payments of the previous Contract Year.

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

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, the Procurers shall restore such shortfall within seven (7) days.

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

10.4.6 The Procurers shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to its expiry.

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

10.4.8 If, the Procurers fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 10.4.6, the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurers, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

i) a copy of the Monthly Bill which has remained unpaid by the Procurers;

ii) a certificate from the Seller to the effect that the bill at item (i) above, or

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specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

10.4.9 **Collateral Arrangement**

As a further support for the Procurers' obligations, on or prior to the Effective Date, the Procurers and the Seller shall execute Default Escrow Agreement (referred as "Default Escrow Agreement") for the establishment and operation of the Default Escrow Account in favour of the Seller, through which the revenues of the Procurers shall be routed and used as per the terms of the Default Escrow Agreement. The Procurers and the Seller shall contemporaneously with the execution of the Default Escrow Agreement enter into the Agreement to Hypothecate Cum Deed of Hypothecation, whereby the Procurers shall agree to hypothecate, Incremental Receivables to the extent as required for the Letter of Credit as per Article 10.4.2. The Default Escrow Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation are collectively referred to as the "Collateral Arrangement".

Provided that the Procurers shall ensure that the Seller shall have first ranking charge on the Receivables in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation.

10.4.10 The Default Escrow would come into operation if,

i) The Letter of Credit is not recouped by the Procurers to its required value by the 29thday of its operation;

ii) The Seller is unable to draw on the Letter of Credit on the Due Date, if the Procurers fail to pay by the Due Date.

10.5 Third Party Sales by the Seller

10.5.1 Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of any of the following event(s), the Seller shall be entitled to regulate power supply of Solar PV power;

i) Default in making payment by the 30^{h}day from the Due Date,

ii) Non-recoupment of LC by the 30thday of its operation.

iii) Non-availability of LC for operation and for its required value by the 30thday of the Due Date.

10.5.2 The Seller shall issue the Notice for Regulation of Power Supply on the date above and shall give a notice of 7 days to start the regulation on the 8th day.

10.5.3 Regulation of Power Supply would be on pro-rata basis i.e., in the ratio of amount due and unpaid to total amount due against the relevant Monthly Bill. In

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case of shortfall in amount of LC available, the right to regulate shall be in the ratio of shortfall in LC maintained /available to the total amount of LC required.

10.5.4 In order to avoid any doubts, it is illustrated that:

i) In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, The Seller would have a right to regulate and sell Procurer's allocation of the power to third parties to the extent of 40% (i.e. 10/25x100).

ii) If LC required to be opened/ maintained by Procurers is to the extent of Rs. 25 Crore and LC opened/maintained/available is to the extent of Rs. 15 Crore only i.e. LC available is short by Rs. 10 Crore, The Seller would have a right to regulate and sell Procurers' allocation of power to third parties to the extent of 40% (i.e.. 10/25x100).

10.5.5 The Seller shall have the right to divert the Solar PV power or part thereof and sell it to any third party namely;

i) Any consumer, subject to applicable Law; or

ii) Any licensee under the Act;

The Seller shall request the concerned SLDC/UPLDC to divert such power to third party, as it may consider appropriate.

10.5.6 Provided that in case of sale to third party, the procurer shall pay for the energy so sold to third party but the seller shall pay the full amount received from the third party sale to the procurer.

10.5.7 Sales to any third party shall cease and regular supply of electricity to the Procurers shall commence and be restored within two (02) days from the date of clearing all the outstanding dues payable to the Seller for the Solar PV power under this Agreement.

10.5.8 Further, that the liability of the Procurers to make the Tariff Payments to the Seller as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available to the Procurers.

10.6 Disputed Bill

10.6.1 If the Procurers does not dispute a Monthly Bill raised by the other Party within fifteen (15) days of receiving such Bill shall be taken as conclusive.

10.6.2 If the Procurers disputes the amount payable under a Monthly Bill it shall pay 95% of the disputed amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

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i) the details of the disputed amount;

ii) its estimate of what the correct amount should be; and

iii) all written material in support of its claim.

10.6.3 If the Seller agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.6.2, the Seller shall make appropriate adjustment in the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the Procurers and up to and including the date on which such payment has been received as refund.

10.6.4 If the Seller does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:

i) reasons for its disagreement;

ii) its estimate of what the correct amount should be; and

iii) all written material in support of its counter-claim.

10.6.5 Upon receipt of the Bill Disagreement Notice by the Procurers under Article 10.6.2, authorized representative(s) of the Procurers and the Seller shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

10.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.6.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

10.6.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurers shall, without prejudice to its right to Dispute, be under an obligation to make payment, of 95% of the Disputed Amount in the Monthly Bill.

10.7 Quarterly and Annual Reconciliation

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

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10.7.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Procurers and the Seller shall jointly sign such reconciliation statement. After signing of a reconciliation statement within 15 days, the Seller shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article16.

10.8 Payment of Supplementary Bill

10.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:

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

ii) Change in Law as provided in Article 12,

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

10.8.2 Procurers shall remit all amounts due under a Supplementary Bill raised by the SPP to the SPP's Designated Account by the Due Date. Similarly, the SPP shall pay all amounts due under a Supplementary Bill raised by Procurers, if any, by the Due Date to concerned Procurers designated bank account. For such payments by Procurers, Rebate as applicable to Monthly Bills pursuant to Article 10.3.4 shall equally apply.

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

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ARTICLE 11: FORCE MAJEURE

11.1 Definitions

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

11.2 Affected Party

11.2.1 An affected Party means the Seller or the Procurers whose performance has been adversely affected by an event of Force Majeure.

11.3 Force Majeure

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

a) Act of God, including, but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or

b) Explosion, accident or breakage of transmission facilities to deliver power from the Delivery Points to the receiving substation(s); or

c) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action making the performance of obligations as specified herein as impossible; or

d) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.

e) An event of force majeure affecting the concerned STU, as the case may be, thereby affecting the evacuation of power from the Delivery Points by the Procurers;

11.4 Force Majeure Exclusions

11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the

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reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

a. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;

b. Strikes at the facilities of the Affected Party;

c. Insufficiency of finances or funds or the agreement becoming onerous to perform; and

d. Non-performance caused by, or connected with, the Affected Party's:

   i. Negligent or intentional acts, errors or omissions;

   ii. Failure to comply with an Indian Law; or

   iii. Breach of, or default under this Agreement.

11.5 Notification of Force Majeure Event

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

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

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

11.6 Duty to Perform and Duty to Mitigate

11.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 11.3,

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the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.7 Available Relief for a Force Majeure Event

11.7.1 Subject to this Article 11

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

(b) Every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations as specified under this Agreement;

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

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

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ARTICLE 12: CHANGE IN LAW

12.1 Definitions

In this Article 12, the following terms shall have the following meanings:

12.1.1 "Change in Law" means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/ non-recurring expenditure by the SPP or any income to the SPP:

- 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;
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPP;
- any change in tax or introduction of any tax made applicable for supply of power by the SPP as per the terms of this Agreement.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the SPP, or (ii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.

12.2 Relief for Change in Law

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

12.2.2 The decision of the Appropriate (State) Commission to acknowledge a Change in Law and provide relief for the same shall be final and governing on both the Parties.

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ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

13.1 SPP Event of Default

13.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a SPP Event of Default:

(i) the failure to commence supply of power to Procurers up to the Contracted Capacity, relevant to the Scheduled Commissioning Date, by the end of 18 months; or

If:

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

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

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

(ii) if (a) the SPP becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the SPP, or (c) the SPP goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the SPP will not be a SPP Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the SPP and expressly assumes all obligations of the SPP under this Agreement and is in a position to perform them; or

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

(iv) except where due to any Procurers' s failure to comply with its material

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obligations, the SPP is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPP within thirty (30) days of receipt of first notice in this regard given by Procurers.

(v) Failure to replace the Performance Bank Guarantee, as per the terms of this Agreement; or

(vi) Occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SPP.

13.2 Procurers Event of Default

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

(i) Procurers fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly/ Supplementary Bill for a period of ninety (90) days after the Due Date and the SPP is unable to recover the amount outstanding to the SPP through the Letter of Credit / Default Escrow Account for the applicable Month; or

(ii) Procurers repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the SPP in this regard; or

(iii) except where due to any SPP's failure to comply with its obligations, Procurers is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by Procurers within thirty (30) days of receipt of notice in this regard from the SPP to Procurers ; or

(iv) if

- Procurers becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
- any winding up or bankruptcy or insolvency order is passed against Procurers , or
- Procurers goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,
- Provided that it shall not constitute a Procurers Event of Default, where such dissolution or liquidation of Procurers or Procurers is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement

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and has creditworthiness similar to Procurers and expressly assumes all obligations of Procurers and is in a position to perform them; or;

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

13.3 Procedure for cases of SPP Event of Default

13.3.1 Upon the occurrence and continuation of any SPP Event of Default under Article 13.1, Procurers shall have the right to deliver to the SPP a notice stating its intention to terminate this Agreement (Procurers Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

13.3.2 Following the issue of Procurers Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

13.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the SPP Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Procurers may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the SPP.

13.4 Procedure for cases of Procurers Event of Default

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

13.4.2 Following the issue of a SPP Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

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

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13.4.4 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Procurers Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the SPP shall be free to sell the Contracted Capacity to any third party of the SPP's choice.

Provided further that at the end of three (3) months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the SPP.

13.5 Termination due to Force Majeure

13.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.7.3, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

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ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1 Indemnity

14.1.1 The SPP shall indemnify, defend and hold Procurers harmless against:

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

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurers from third party claims arising by reason of:

- breach by the SPP of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the SPP, for which specific remedies have been provided for under this Agreement), or
- any of the representations or warranties of the SPP, if any made under this Agreement, being found to be inaccurate or untrue.

14.1.2 Procurers shall indemnify, defend and hold the SPP harmless against:

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

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the SPP from third party claims arising by reason of:

- a breach by Procurers of any of its obligations under this Agreement (Provided that this Article 14 shall not apply to such breaches by Procurers , for which specific remedies have been provided for under this Agreement.) or
- any of the representations or warranties of Procurers , if any made under this Agreement, being found to be inaccurate or untrue.

14.2 Procedure for claiming Indemnity

14.2.1 **Third party claims**

a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or 14.1.2 (a) in respect of which it is entitled to be indemnified. Such notice shall

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be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

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

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

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

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

14.3 Indemnifiable Losses

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

14.4 Limitation on Liability

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

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tort (including negligence, whether of Procurers , the SPP or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

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

14.5 Duty to Mitigate

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

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ARTICLE 15: ASSIGNMENTS AND CHARGES

15.1 Assignments

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

- Provided that, such consent shall not be withheld if the Seller seeks to transfer to any affiliate all of its rights and obligations under this Agreement.
- Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.
- Provided that, [Procurer] shall permit assignment of any of SPPs rights and obligations under this Agreement in favour of the lenders to the SPPs, if required under the Financing Agreements.

15.2 Permitted Charges

15.1.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

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ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION

16.1 Governing Law

16.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes arising out of or in connection with this Agreement shall be under the jurisdiction of court in Lucknow.

16.2 Amicable Settlement and Dispute Resolution

16.2.1 Amicable Settlement

i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:

   a. a description of the Dispute;

   b. the grounds for such Dispute; and

   c. all written material in support of its claim.

ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 5.6.2, furnish:

   a. counter-claim and defenses, if any, regarding the Dispute; and

   b. all written material in support of its defenses and counter-claim.

iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 5.6.2 if the other Party does not furnish any counter claim or defence under Article 5.6.4 or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 5.6.4, the Dispute shall be referred for dispute resolution in accordance with Article 11.3.

16.3 Dispute Resolution

16.3.1 Dispute Resolution by the Appropriate Commission

16.3.1.1 Where any Dispute (i) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (ii) relates to any matter agreed to be referred to the Appropriate Commission,

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such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

16.3.1.2 The obligations of the Procurers under this Agreement towards The Seller shall not be affected in any manner by reason of inter-se disputes amongst the Procurers.

16.3.2 Dispute Resolution through Arbitration

16.3.2.1 If the Dispute arises out of or in connection with any claims not covered in Article 16.3.1, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as under:

i) The Arbitration Tribunal shall consist of three (3) arbitrators. Each party shall appoint one Arbitrator within 30 days of the receipt of request for settlement of dispute by Arbitration. The two appointed Arbitrators shall within 30 days of their appointment, appoint a third Arbitrator who shall act as presiding Arbitrator. In case the party fails to appoint an Arbitrator within 30 days from the date of receipt of request or the two appointed Arbitrator fails to agree on third Arbitrator within 30 days of their appointment, the appointment of Arbitrator, as the case may be, shall be made in accordance with the Indian Arbitration and Conciliation Act, 1996.

ii) The place of arbitration shall be Lucknow. The language of the arbitration shall be English.

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

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

v) The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.

16.4 Parties to Perform Obligations

16.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 16.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

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ARTICLE 17: MISCELLANEOUS PROVISIONS

17.1 Amendment

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

17.2 Third Party Beneficiaries

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

17.3 Waiver

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

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

17.4 Confidentiality

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

a) to their professional advisors;

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

c) disclosures required under Law.

without the prior written consent of the other Parties.

17.5 Severability

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

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Agreement.

17.6 Notices

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

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

Address : Uttar Pradesh Power Corporation Ltd., Shakti Bhawan, 14 – Ashok Marg, Lucknow – 226 001

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

Address :M/s Essel Urja Private Ltd.
Kohinoor City, 513, A-Wing, Off. L.B.S. Marg
Kurla West, Mumbai-400 070
Maharashtra,

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

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

17.7 Language

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

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

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17.8 Restriction of Shareholders / Owners' Liability

17.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement shall be restricted to the extent provided in the Indian Companies Act, 1956.

17.9 Taxes and Duties

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

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

17.9.3 The Seller shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Procurers by The Seller on behalf of Procurers or its personnel.

17.10 No Consequential or Indirect Losses

17.10.1 The liability of the Procurers and The Seller shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall the Seller or the Procurers claim from one another any indirect or consequential losses or damages.

17.11 Order of priority in application

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed there under, the order of priority as between them shall be the order in which they are placed below:

i. applicable Law, rules and regulations framed there under;

ii. the state Grid Code; and

iii. the terms and conditions of this Agreement;

17.12 Independent Entity

17.12.1 The Procurers shall be an independent entity performing its obligations pursuant to the Agreement.

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

17.13 Compliance with Law

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

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

Seller:	Procurer:
M/s Essel Urja Private Ltd. Mumbai	Uttar Pradesh Power Corporation Ltd.
Signature: Manoj Gupta	Signature:
Name: Manoj Kumar Gupta	Name: A. P. Mishra
Designation: Assistant Vice President	Designation: Managing Director
Seal:	Seal:
Witness:	Witness:
1. Name: ASHOK SHARMA	1. Name: S.P. PANDEY
Designation:	Designation: CE (PPA)
Signature: Athawy	Signature:
2. Name: Sudarshan Kumar Gupta	2. Name: S.K. SINHA
Designation:	Designation: SE PPA
Signature:	Signature:

Schedule 1: Particulars of the Project

Sr.No.	Item	Description
1.	Project Capacity	50 MW
2.	Solar PV Module Make	-
3.	Solar PV Module Model No.	-
4.	Module Rating in kW	-
5.	Technology used	-
6.	**Key accessories**	-
7.		-
8.		-
9.		-
10.		-
11.	AC/DC/AC System (Yes/No)	-
12.	Rated voltage (V)	-
13.		-
14.		-
15.		-
16.	**Units to be generated per annum (kWh) at projected CUF**	-
17.	**Auxiliary Consumption (kWh)**	-
18.	**Reactive Power requirement**	-
19.	Type of Utilisation	-
20.	**Scheduled Month /Year of Commissioning**	18 months
21.	**Capacity Utilization Factor (CUF) %**	-
22.	**Type Test Certificate**	-
23.	**Any Other Documents**	-

Remark: To be provided by Developer separately.

Seal of Company

Name of Seller: M/s Essel Urja Private Ltd.

Date:
Signature: Manoj Gupta.

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Schedule 2: Location of Plant

To be filled & duly signed by Seller

Sr. No.	Particulars	Details to be filled up by the Seller
1.	Land purchase date	To be provided separately
2.	Total area of the land in possession	-do-
3.	Name of (a) village (b) Tehsil (c) District Location/Installation	Village- Bundelkhand Tehsil Region District State
4.	Survey No.	To be provided separately
5	Whether counter-survey of the land is carried out (copy enclosed)	-do-
6.	Power Evacuation system used for transmitting the power generated from the plant to the Delivery Point	To be provided separately in consultation with DISCOM/ STU

Seal of Company

Name of Seller: M/s Essel Urja Private Ltd.

Date:

Signature: Manoj Gupta

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Schedule 3: Plant Layout

Attach Appropriate Drawings/Documents

Note- (To be provided separately)

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Schedule 4: Site Drawing

Attach Appropriate Drawings/Documents

Note- (To be provided separately)

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Schedule 5: Format for Monthly Power Bill

To be prepared as per requirements

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Schedule 6: Parameters and Technical Limits of Supply

1. **Electrical characteristics**
   - Three phase alternating current
   - Nominal declared frequency : 50.0 Hz
   - Final Voltage at Delivery Point: 132/33 kV
     (Pooling stations)

   Short circuit rating:
   As a part of the detailed design process, the Seller shall calculate the short circuit rating (minimum and maximum), and supply this information to the Procurer(s).

   Note: The tolerances & Electrical characteristics variations will be as per STU / CTU performance Standards. The electrical clearances will be as per relevant standard.

   - Basic insulation level of 132kV 33 KV
   - Transformer(s) 550 kVp
   - Bushing(s) 650 kVp
   - Equipment 650 kVp

2. **Quality of Service**
   The Seller shall be responsible for the delivery of energy conforming Performance Standards for Transmission and Bulk Supply as approved by Procurer(s) / STU / CTU.

   The maximum current and voltage waveform distortion shall be in accordance with respective STU / CTU, Engineering Recommendations, System Design and Development Committee, Limits for Harmonics in the Indian Electricity Supply System.

   Phase voltage unbalance will be limited to one percent (1%).

3. **Power Factor**
   The Generator shall maintain the Power Factor as per the prevailing SERC / CERC regulations and as may be stipulated / specified by DISCOM / STU / CTU from time to time. The Seller shall provide suitable protection devices, so that the Electric Generators could be isolated automatically when grid supply fails.

Connectivity criteria like short circuit level (for switchgear), neutral Grounding, fault clearance time, current unbalance (including negative and zero sequence currents), limit of harmonics etc. shall be as per Grid Code.

The Project Site is located at Bundelkhand Region State U.P. of India.

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Schedule 7: Technical Limits

1. The nominal steady state electrical characteristics of the system are as follows:
   a. three phase alternating current at 50 Hertz plus or minus 0.5 Hertz.
   b. nominal voltage of .....with +.....% to – .....% variation.

2. The Project shall be designed and capable of being synchronized and operated within a frequency range of 47.5 to 51.5 Hertz and voltage of.....KV
3. Operation of the Project outside the nominal voltage and frequency specified above will result in reduction of power output consistent with generator capability curves.

Remark : (To be finalised in consultation with STU/DISCOM)

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Schedule 8: Approvals

1. Consent from the STU / CTU the evacuation scheme for evacuation of the power generated by the 50 MW Solar PV Power Projects.
2. Approval of the Electrical Inspectorate, Government of respective State for commissioning of the transmission line and the Solar PV Power Plant at the Project Site.
3. Certificate of Commissioning of Solar PV Power Project issued by Concerned SLDC.
4. Permission from all other statutory and non-statutory bodies required for the Project.
5. Clearance from the Airport Authority of India, if required.
6. Clearance from the Department of Forest, Ecology and Environment, if required.

Remark: (To be provided separately)

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Schedule 9: Testing Procedures

Seller and Procurer(s) shall evolve suitable testing procedures three (3) months before the Commercial Operation Date of the Project considering relevant standards.

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Schedule 10: Copy of the Tariff Quoted by the Seller

(Copy Enclosed)

Essel Urja Private Limited

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Format 4.7: Financial Bid

Date: 15/05/2013

From:
Essel Infraprojects Limited
Kohinoor City, 513, A Wing,
Off LBS Road,
Kurla (W), Mumbai - 400070
Tel: 022 66012323, Fax: 022 66012300
email@infra.esselgroup.com

To,
Director,
Uttar Pradesh New & Renewable Energy Development Agency,
Vibhuti Khand, Gomti Nagar, Lucknow
Phone: 0522-2720652
Fax: 0522-2720779, 2720829
Email:compneda@rediffmail.com
Website: http://neda.up.nic.in

Sub: Financial Bid for Response to RfP for "Selection of Developer(s) for Procurement of 200 MW Power from Grid Connect Solar PV Power Projects through Tariff Based Competitive Bidding Process" dated 15/03/2013

Dear Madam,

We give our unconditional Financial Bid in response of this RfP and RfP Documents issued by UPNEDA:

S. No.	Description	
1.	Financial Bid for Technology	Solar
2.	Supply of Power under	Under 12 years of PPA with UPPCL
3.	Project Capacity in MW (in words and figures)	50 MW (Fifty MW)
4.	Considering Capacity Utilization Factor	19 %
5.	Single Tariff offered per kWh (Unit) of Electrical Power for 12 years	Rs 9.270 (in figures) Nine Rupees and Twenty Seven Paisa Only (in words)

- Location of the Plant : Bundelkhand Region
- Injection Point : To be provided Later

Dated the 15th day of May 2013

Thanking you,

Yours faithfully,

Anil Patel
Sr. Manager - Business Development

Essel Infraprojects Ltd.

Essel Urja Private Limited

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MD,UPPCL