

TRIPARTITE AGREEMENT (TPA)

FOR PROCUREMENT OF [...] MW SOLAR POWER FROM

UNDER RESCO MODEL

Between

[Name of the Beneficiary]

And

[Name of the Intermediary]

And

[Name of Solar Power Generator (SPG)]

On

[DD MMM YYYY]

This Tripartite Agreement is made on the [Date] day of [Month] of [Year] at Bhubaneswar, Odisha

Between

[Name of the Solar Power Generator], [a/an] [Developer (sole proprietor/ firm/ company)] incorporated under [The Indian Companies Act, 2013], having its registered office at [registered office address] (hereinafter referred to as “Solar Power Generator or SPG”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **First Part**;

And

[Name of the Beneficiary [mention department name]], having office address at [Insert address of the registered office of Procurer] (hereinafter referred to as “Beneficiary/ Procurer”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the **Second Part**;

And

OREDA Ltd., a government agency under the Society Act 2013, having its registered office at [Insert address of the registered office of Intermediary] (hereinafter referred to as “Intermediary” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the Third Part;

The SPG, **Beneficiary/ Procurer** and Intermediary are individually referred to as a ‘Party’ and collectively (any two Parties and all Parties) referred to as ‘Parties’.

WHEREAS:

- A. Odisha Renewable Energy Development Agency (OREDA) had completed a selection process for the procurement of energy generated from the grid-connected solar Project based on the terms and conditions contained in the RFP No. [Insert RFP number] dated [DD MMM YYYY] and its Amendment (if any) along with the Draft Tripartite Agreement, and any other documents published or referred by OREDA related to the selection of SPG.
- B. [Insert Name of the Bidding Company] has been selected in the Competitive bidding process, {in case Bidding Company is executing the Project through SPV} has constituted a Special Purpose Vehicle ... [Insert Name of the SPV] (hereinafter referred to as ‘SPG’), for development, generation and supply of electricity from the [Insert Project capacity] MW solar Project established by SPG at [Address of the site] within Odisha, and for supply of such electricity to the Beneficiary/ Procurer as per this Tripartite Agreement;
- C. OREDA has issued the Letter of Award no. [LoA no.] dated [DD MMM YYYY] in favour of the [Insert name of the Bidding Company] for the development and establishment of [Insert Project capacity] MW solar Project at [Address of the site] within Odisha, as per the terms and conditions contained in the RFP.
- D. SPG is engaged in the business of design, supply, erection, testing, commissioning, operating and maintenance of power plants, including grid connected rooftop solar power projects.
- E. [In case of rooftop solar at specified buildings], SPG has agreed to install and operate a solar photovoltaic power plant of [...] kW capacity (the “Project”) at the Premises after due inspection of the Premises as defined hereinafter and supply the entire Solar Power of the Project to Buying Entity on the terms and conditions contained in this Agreement;
- F. The Beneficiary/ Procurer has agreed to purchase the entire Solar Power of the Project on the terms and conditions contained in this Agreement.
- G. The SPG has furnished the Performance Security in the form of a Bank Guarantee in the sum of INR [Insert amount] (Indian Rupees [in words]) only in favor of OREDA as per the format Annexure 3 (Bank Guarantee), prescribed by OREDA.
- H. The SPG has fulfilled the terms and conditions for signing this Tripartite Agreement as a definitive agreement for establishing the Project;

- I. The Parties have agreed to execute this Tripartite Agreement, and for generation and supply of electricity by the SPG to the Beneficiary/ Procurer.

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

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1. ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

"Act" or "Electricity Act, 2003"	shall mean the Electricity Act, 2003 and include any modifications, amendments, and substitution from time to time;
"Actual Monthly Production"	means the amount of energy recorded by the Main Metering System during each calendar month of the Term, pursuant to Section 5.2;
"Affiliate"	means with respect to any specified Person, any other Person, directly or indirectly controlling, controlled by or under common control with such specified Person;
"Agreement" or "Tripartite Agreement" or "TPA"	shall mean this Tripartite agreement for power purchase including its recitals and schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	shall mean Odisha Electricity Regulatory Commission (OERC);
"Appropriate Discom"	shall mean the Discom having the Sub-station is located within its jurisdiction and the name of the various Discoms in Odisha are given below: <ul style="list-style-type: none"> • Tata Power Central Odisha Distribution Limited (TPCODL) • Tata Power Western Odisha Distribution Limited (TPWODL) • Tata Power Southern Odisha Distribution Limited (TPSODL) • Tata Power Northern Odisha Distribution Limited (TPNODL)
"Beneficiary/ Beneficiary Department/ Procurer"	Shall have the meaning of the procurer of solar energy generated from solar PV plants with whom the SPG signs the Tripartite Agreement
"Bill"	shall mean either a Monthly Bill/ Supplementary Bill raised by the SPG;
"Bill Dispute Notice"	shall mean the notice issued by Beneficiary raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the SPG;
"Business Day"	shall mean with respect to SPG and Beneficiary, a day other than Sunday or a statutory holiday, on which the banks remain open for business in the State;
"Capacity Utilization Factor" or "CUF"	shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time; However, for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity; For illustration, CUF shall be calculated based on the annual energy injected and metered at the Delivery Point. In any Contract Year, if 'X' kWh of energy has been metered out at the Delivery Point for 'Y' MW Project's Contracted Capacity, CUF= (X kWh/ (Y kW*8,766)) *100%;
"Change in Law"	shall have the meaning ascribed thereto in Article 11 of this Agreement;
"Commercial Operation Date (COD)"	shall mean the date mentioned in the commissioning certificate as issued upon successful achievement of commercial operation date (as per provisions of this TPA) of the Project;

“Commissioning Committee”	shall consist of representations from Principal Chief Electrical Inspector (as applicable), Beneficiary, Appropriate Discom (as applicable), OREDA, SPG, and SPG’s representative, as required;
“Competent Court of Law”	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
“Consents, Clearances and Permits”	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of energy;
“Consultation Period”	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of an SPG Preliminary Default Notice or Beneficiary Preliminary Default Notice as provided in Article 12 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 twelve (12) months beginning on April 1 and ending on March 31 provided that: <ul style="list-style-type: none"> i. in the financial year in which the COD would occur, the Contract Year shall end on the date immediately before the COD and a new Contract Year shall commence once again from the COD and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and ii. provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement
"Contracted/ TPA Capacity"	shall mean [Insert capacity] kW contracted by OREDA for supply of energy from the Project by the SPG to Beneficiary at the Delivery Point
“Contracted Energy”	shall have the meaning ascribed thereto in Article 4.3.1 of this Agreement;
“Deemed Generation”	shall mean energy (in kWh) deemed to have been generated per day average from the Project in the same month of previous Year or, if the period of consideration is within the First Operational Year then it shall be calculated as per the average per day generation at the minimum CUF of 15.3% ; wherein the affected period shall be between 6 am to 6 pm; In no case the Deemed Generation for the Month or part thereof shall be considered more than 90% total energy consumed by the consumer (solar energy + supply from DISCOM) in that Month or part thereof of the previous Year.
“Delivery Point”	shall mean the point where the solar system is interconnected and synchronized with the grid within the Beneficiary/ Procurer’s electrical network at appropriate voltage levels, at a location mutually agreed by the parties. Metering shall be done at this interconnection point where the power is injected into the Beneficiary’s electrical network through a Solar Generation Meter. For interconnection with grid and net-metering, the SPG shall abide by the relevant and applicable regulations, Grid Code notified by the State Commission and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time, or orders passed thereunder by the Appropriate Commission or CEA.

“Dispute”	shall mean any dispute or difference of any kind between Beneficiary and the SPG, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 15 of this Agreement;
"Due Date"	shall mean the thirtieth (30 th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hard copy and duly acknowledged by Beneficiary or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by Beneficiary;
“Effective Date”	shall have the meaning ascribed thereto in Article 2.1.1 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;
“Event of Default”	shall mean the events as defined in Article 12 of this Agreement;
“Expiry Date”	Shall mean the date occurring twenty-five (25) years from the Commercial Operation Date subject to that the supply of power shall be limited for a period of twenty-five (25) years from the COD unless extended by the Parties as per this Agreement;
“Financing Agreements”	shall mean the agreements pursuant to which the SPG has sought financing for the Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of Beneficiary or Intermediary;
“Financing Party”	means, as applicable (i) any Person (or its agent) from whom the SPD (or an Affiliate of the SPD) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide financing to the SPD (or an Affiliate of the SPD) with respect to the System;
"Force Majeure" or "Force Majeure Event”	shall have the meaning ascribed thereto in Article 10 of this Agreement;
“Governmental Approval”	means any approval, consent, franchise, permit, certificate, resolution, concession, license or authorization issued by or on behalf of any applicable Governmental Authority for the purpose of setting up of the Project and / or for sale and purchase of Solar Power of the Project pursuant to this Agreement;
“Governmental Authority”	means any central, state, regional, district, town, city or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government;
“Indian Governmental Instrumentality”	shall mean the Government of India, Governments of Odisha and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the above state Government or both, any political subdivision of any of them including any court or Appropriate Commission or tribunal or judicial or quasi-judicial body in India;
“Insolvency Event”	means with respect to a Party, that either: i. such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due;

	<p>(C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary proceeding under any insolvency or bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or</p> <p>ii. It is clarified that a dissolution or liquidation will not be an Insolvency Event if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization, and the resulting company retains creditworthiness similar to the dissolved or liquidated entity and expressly assumes all obligations of the dissolved and liquidated entity under this Agreement and is in a position to perform them;</p>
"Insurances"	shall mean the insurance cover to be obtained and maintained by the SPG in accordance with Article 7 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on SPG's side of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other associated equipment, transformers(if applicable), relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 6, the Metering System required for supply of power as per the terms of this Agreement;
"Indian Rupees ", "INR"	shall mean Indian rupees, the lawful currency of India;
"Joint Meter Reading" or "JMR" or "EBC energy export statement"	shall mean the monthly joint meter reading (SPG together with Beneficiary) of the Solar Generation Meter(s)
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 9.3.3 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
"Letter of Credit"	shall have the meaning ascribed thereto in Article 9.4 of this Agreement;
"Letter of Award" or "LoA"	shall mean Letter of Award issued by OREDA to the SPG for the project;
"MNRE"	shall mean the Ministry of New and Renewable Energy, Government of India;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Monthly Bill"	shall have the meaning ascribed thereto in Article 9.2 of this Agreement;
"Normative Project Cost"	shall mean the 85% of the Benchmark Cost;

"OR-PSF"	shall mean OREDA RESCO Payment Security Fund
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Security Facilitation Fee"	Shall have the meaning ascribed thereto in Article 9.4.10 of this Agreement
"Payment Security Mechanism"	shall have the meaning ascribed thereto in Article 9.4 of this Agreement;
"Project"	means grid interactive rooftop solar PV project for which Solar Power Generator (SPG) has been given responsibility to design, engineering, supply, finance, erection, commissioning and comprehensive operation and maintenance and sale of solar power for a period of 25 Operational Years;
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 12 of this Agreement;
"Project Capacity/ TPA Capacity"	shall mean the maximum actual AC capacity of the Project at the point of injection on which the Power Purchase Agreement has been signed.
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Project, b) the requirements of Indian Law; and the physical conditions at the site of the Project;
"Rebate"	shall have the same meaning as ascribed thereto in Article 9.3.4 of this Agreement;
"Scheduled Commissioning Date" or "SCD/SCOD" of the Project	shall mean [Insert date that is six (06) Months from the Effective Date] ;
"Solar Generation Meter"	shall mean meters of appropriate class & accuracy which are integral part of the rooftop solar system at the delivery point to measure the solar energy generated by the rooftop solar system in the beneficiary premises. All meter readings for the purpose of billing as per the TPA shall be captured from respective solar generation meters.
"Supplementary Bill"	shall have the meaning ascribed thereto in Article 9.7.1 of this Agreement;
"System" or "Project"	includes the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, and all other material comprising the Installation Work;
"Tariff"	shall have the same meaning as provided for in Article 8 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 9 and the relevant Supplementary Bills;

"Term/ Term of Agreement"	shall have the same meaning as provided for in Article 2.2.1 of this Agreement;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 12 of this Agreement;
Waste Management	Also insert a specific clause on PV waste disposal and management at the end of the life of the project

1.2. **Interpretation**

- a) Unless otherwise stated, all references made in this Agreement to "Sections", "Clauses" and "Schedules" shall refer respectively to Sections, Clauses and Schedules of this Agreement. The Schedules to this Agreement form an integral part of this Agreement and shall have effect as though they were expressly set out in the body of this Agreement.
- b) In this Agreement, unless the context otherwise requires
 - i) words imparting singular connotation shall include plural and vice versa;
 - ii) the words "include", "includes", and "including" mean include, includes and including "without limitation" and
 - iii) the words "hereof", "hereto", "herein" and "hereunder" and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement.

2. **ARTICLE 1: TERM OF AGREEMENT**

2.1. ***Effective Date***

- 2.1.1. This Agreement shall come into effect from the date of signing of this Agreement and such date shall be referred to as the Effective Date.

2.2. ***Term of Agreement***

- 2.2.1. Subject to Article 2.3 and Article 2.4 of this Agreement, this Agreement shall be valid for a 'Term' from the Effective Date until the Expiry Date. This Agreement may be extended for a further period prior to the Expiry Date, on mutually agreed terms and conditions. After the Term, the ownership of the System shall be transferred to the Beneficiary/ Procurer free of cost, unless extended further mutually.

2.3. ***Early Termination***

- 2.3.1. This Agreement shall terminate before the Expiry Date if either the Beneficiary or SPG terminates the Agreement, pursuant to Article 12 of this Agreement.

2.4. ***Survival***

- 2.4.1. The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 10(Force Majeure), Article 12 (Events of Default and Termination), Article 13 (Liability and Indemnification), Article 15 (Governing Law and Dispute Resolution), Article 16 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

3. **CONDITIONS SUBSEQUENT**

3.1. CONDITION SUBSEQUENT of the Beneficiary

- 3.1.1. Provide seal and sign undertakings / acknowledgements / letters / applications and any documentary evidence that supports the SPG in completing its condition subsequent
- 3.1.2. In case of Rooftop Solar PV at the Beneficiary's premise, provide unrestricted access to SPG and his contractors for construction & related activities under this TPA.

3.2. CONDITION SUBSEQUENT of the Solar Power Generator (SPG)

- 3.2.1. Submit Project design and drawings to the Beneficiary and Nodal Agency (OREDA) within thirty (30) Days from the Effective Date.
- 3.2.2. SPG shall be accountable for submission of below mentioned details to Intermediary, copying the Beneficiary, to apply for the completion of the project:
- i. Project layout/drawing, Single line diagram duly signed and authorized by the Inspecting Authority appointed by the Intermediary (OREDA);
 - ii. Bill of Material (BoM) along with requisite test reports and relevant certifications
- 3.2.3. SPG shall have sent a written notice, within thirty (30) Days from the Effective Date, to Beneficiary and the Intermediary (OREDA) indicating the major Milestones to achieve the SCOD (Scheduled Commissioning Date). SPG must mention the progress of Net-Metering application, without failing, in the progress report.
- 3.2.4. Successful COD of the Project within **six (06) Months** from the Effective Date of TPA unless there is an extension provided as per Article 4.4 and there are delays attributable to the reasons listed therein.
- 3.2.5. The SPG agrees and undertakes to make Financing Agreements for its Project, shall provide necessary documents to OREDA in this regard within three (3) Months from the Effective Date.

4. CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1. SPG's Obligations

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

4.1.1.1. SPG will cause the Project to be designed, manufactured, supplied, engineered, erected, tested and commissioned, operated & maintained and constructed substantially in accordance with RFP No. [.....] dated [DD MMM YYYY] of OREDA. SPD shall provide to the Buying Entity a bill of materials listing the major equipment constituting the System. Such bill of materials shall be provided within thirty (30) days of the Commercial Operation Date.

4.1.1.2. In case of Rooftop solar at Beneficiary premises, SPG shall have access as reasonably permitted by the Beneficiary/ Procurer to perform the Installation Work at the Premises in a manner that minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical.

4.1.1.3. The SPG shall be solely responsible and make arrangements for execution of Financing Agreements and associated infrastructure for development of the Project and for connectivity with the grid for confirming the evacuation of power by the Scheduled Commissioning Date, and all clearances related thereto;

4.1.1.4. Obtaining all Consents, Clearances and Permits as required and maintaining all documents throughout the Term of this Agreement relating to the solar pv system;

4.1.1.5. Designing, engineering, supply, finance, installation and Commissioning of Project as per standard design and specifications and connecting up to existing Mains/ACDB and interfacing internal electrical loads of Project with licensee's network/electrical loads with O&M for period of twenty five (25) Operational Years for Sale of Solar Power to the Beneficiary. SPG would have to take approval for the interfacing the Project with Grid/Electrical Loads of every location from DISCOM/ CEIG, applicable. O&M for twenty-five (25) Operational Year shall be required for each of the Project.

SPG shall be responsible for all the works related to Commissioning and O&M for twenty-five (25) Operational Years of Project. In no case, Beneficiary or Nodal Agency shall be responsible to pay or bear an increase in tariff for any work related to Project except for the cases (i) where TPA requires additional payment towards additional work related to Commissioning of Project but not in the scope of SPG (ii) in case of Change in Law events

4.1.1.6. In no case, Beneficiary or Intermediary shall be responsible to pay or bear an increase in tariff for any work related to Project except for the cases

- i) where TPA requires additional payment towards additional work related to Commissioning of Project but not in the scope of SPG
- ii) in case of Change in Law events

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

4.1.1.8. Commencement of supply of power up to the Contracted Capacity to Beneficiary no later than the Scheduled Commissioning Date (SCOD) and continuance of the supply of power throughout the Term of the Agreement;

4.1.1.9. Connecting, synchronizing and commissioning the Project with the Interconnection Facilities at the Delivery Point. The SPG shall make adequate arrangements to connect the Project with the Interconnection Facilities at the Delivery Point as per applicable law and technical best practices.

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

4.1.2. The SPG shall be responsible for directly coordinating and dealing with GRIDCO/ Discom, Indian Governmental Instrumentality and other authorities in all respects in regards to net metering and due compliance with the applicable Law, Grid code, State Regulations.

4.1.3. The SPG will comply with the requirements under Hazardous & other Waste (Management and Transboundary Movement) Rules, 2016, as amended from time to time, as applicable. They will also ensure that all Solar PV modules and ESS components, if any, from their plant after their 'end of life' (when they become defective/ non-operational/ nonrepairable) are disposed of in accordance with the "e-waste (Management and Handling) Rules, 2011" notified by the Government and as revised and amended from time to time, subject to the system is not transferred to the Beneficiary/ Procurer as per 2.2.

4.2. **Purchase and sale of Contracted Energy**

4.2.1. Subject to the terms and conditions of this Agreement, the SPG undertakes to sell a minimum Contracted Energy [energy equivalent to target CUF of 17% - 10% of 17%] and a maximum Contracted Energy [insert energy equivalent to 90% of the total electricity consumption (solar +Discom) as per base case scenario] to the Beneficiary in a year . The Beneficiary undertakes to pay for all the energy supplied at the Delivery Point up to corresponding to the Contracted Capacity as per Article 4.3

4.3. **Right to Contracted Energy**

4.3.1. Beneficiary, in any Contract Year shall not be obliged to purchase any additional energy from the SPG beyond what is stated in article 4.2.1. If for any Contract Year, except for the first Contract Year and last Contract Year of operation, it is found that the SPG has not been able to generate minimum energy of [insert energy equivalent to target CUF of 15.3%] kWh , on account of reasons solely attributable to the SPG, the non-compliance by SPG shall make the SPG liable to pay the compensation.

For the first Contract Year and last Contract Year of operation, the above limits shall be considered on a pro-rata basis. The lower limit will, however, be relaxable by Beneficiary to the extent of grid non-availability for evacuation which is beyond the control of the SPG. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of such compensation shall be as determined as per the TPA tariff. This compensation shall not be applicable in events of Force Majeure identified under this TPA.

For any generation in excess of [insert energy equivalent to 90% of the total electricity consumption (solar +Discom) as per base case scenario] in a particular year shall not be payable by the beneficiary/ intermediary.

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

4.4. **Extensions of Time**

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

- a. any Beneficiary Event of Default; or
- b. Force Majeure Events affecting Beneficiary, or
- c. Force Majeure Events affecting the SPG,

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

4.4.2. In case of extension due to reasons specified in Article 4.4.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of three (3) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 12.7. In case neither Party terminates the Agreement under this clause, the Agreement shall stand terminated on the expiry of twelve (12) months of the continuation of the Force majeure event unless the Parties mutually agree to extend the Agreement for the further period.

- 4.4.3. If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Article 15.
- 4.4.4. As a result of such extension, the newly determined Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.
- 4.4.5. Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond the date pursuant to Article 4.5.2
- 4.4.6. Delay in achieving the COD of the Project beyond the Scheduled Commissioning Date for reasons other than those specified in Article 4.4.1 shall be an Event of Default on part of the SPG and shall be subject to the consequences specified in Article 4.5.
- 4.5. **Liquidated Damages for delay in Commissioning**
- 4.5.1. If the SPG is unable to achieve the COD of the Project by the Scheduled Commissioning Date (SCOD) other than for the reasons specified in Article 4.4.1, the SPG shall pay to Beneficiary, liquidated damages for the delay in such commissioning and making the Contracted TPA Capacity available for dispatch by the Scheduled Commissioning Date as per the following:
- Delay beyond the Scheduled Commissioning Date up to (& including) the date as on twenty (20) weeks from the Effective Date: the Intermediary (OREDA) shall have the right to impose penalty equivalent to 5% of PBG value per week from the SCOD up to twenty (20) weeks.
- 4.5.2. The maximum time period allowed for achieving the COD of the full Project Capacity with encashment of Performance Bank Guarantee shall be limited to eleven (11) Months from the Effective Date .
- 4.5.3. In case, the COD of the Project is delayed beyond eleven (11) Months from the Effective Date, it shall be considered as an SPG Event of Default and provisions of Article 12 shall apply and the Contracted Capacity shall stand reduced/ amended to the Project Capacity Commissioned within eleven (11) Months from the Effective Date and the TPA for the balance Capacity will stand terminated and shall be reduced from the Project Capacity for the SPG.
- 4.5.4. The SPG further acknowledge that the amount of the liquidated damages fixed is genuine and reasonable pre-estimate of the damages that may be suffered by Beneficiary.
- 4.6. **Acceptance/ Performance Test**
- 4.6.1. Prior to synchronization of the Project, the SPG shall be required to get the Project certified for the requisite acceptance/ performance test as may be laid down by respective authorities.
- 4.7. **Third-party Verification**
- 4.7.1. The Beneficiary & SPG shall be further required to provide entry to the site of the Project free of all encumbrances at all times during the Term of the Agreement to lender's engineer or a third party agency for inspection and verification of the works being carried out by the SPG at the site of the Project.
- 4.7.2. The third-party may verify the construction works/ operation of the Project being carried out by the SPG and if it is found that the construction works/ operation of the Project is not as per the Prudent Utility Practices, it may seek clarifications from SPG or require the works to be stopped or to comply with the instructions of such third-party.
- 4.8. **NOT USED**
- 4.9. **Project Disruptions, Off-take constraints & Deemed generation**
- 4.9.1. Roof repair and other Project disruptions (Applicable only in case solar project is installed at Beneficiary's roof/ premise):

4.9.1.1. Beneficiary shall strive not to do any roof maintenance for a period of 5 years. In the event that (i) the Beneficiary repairs the Premises' roof for any reason not directly related to damage, if any, caused by the Project, and such repair requires the partial or complete temporary disassembly or movement of Project, or (ii) any act or omission of Beneficiary or Beneficiary's employees, affiliates, agents or subcontractors (collectively, a "Beneficiary Act") results in a disruption or outage in Project's power generation, and such events are attributable to Beneficiary except Force Majeure, then, in either case, Beneficiary shall:

(a) Pay the SPG such amount of money as prudently determined and agreed by and between SPG and the Beneficiary for all work required by the SPG to disassemble or move or shifting the Project. The costing would be at mutually decided rate or latest Schedule of Rates (SOR) published by concerned DISCOM or any authorized government agency, whichever is lower for similar works; and

(b) Continue to make all payments for the solar power during such period of Project disruption at same Tariff as applicable for the period of Project disruption ("Disruption Period").

For the purpose of calculating solar power payments and lost revenue for such Disruption Period, Deemed Generation shall be considered for calculation of lost revenue or payment obligation of Beneficiary. Loss in revenue for the Disruption Period would be multiplication of TPA Tariff and difference in Deemed Generation for number of days such event occurs and Actual Generation. SPG shall inform about the disruption or outage in Project, for reasons attributable to Beneficiary in writing with date and time of such occurrence, and Beneficiary's liability shall start from the date of intimation of disruption or outage in system production, on account of Beneficiary.

4.9.1.2. If, for reasons other than the SPG's breach of its obligations under this TPA and/ or RFP, SPG is not provided with the access to the Premises as necessary to operate and maintain the Project (for rooftop solar PV at Beneficiary's premises), such time period shall be excluded from the calculation of CUF.

4.9.1.3. If any structures within the Beneficiary's premise partially or wholly shades any part of the Project after the two (12) Months of COD, the SPG may apply for Deemed Generation furnishing the calculation for loss in revenue due to such shading supported by the relevant data, which shall be approved by Beneficiary within one month of submission, failing which the SPG shall claim provisional Deemed Generation till the issue is finally settled.

Calculation for loss in revenue for the period = (Deemed Generation X number of Days such event occurs - Actual generation) X TPA Tariff

4.9.1.4. The SPG is responsible for the waterproofing of the roof disturbed/ pierced for installation of Project for the O&M period of first five (5) Operational Years. The SPG should immediately take necessary action to repair any damage to the water proofing. However, in such situations, SPG shall bear any loss or damage to Project and rectify the same within reasonable timeframe but any generation loss in such eventualities shall not be passed on to Beneficiary.

If SPG fails to do required water proofing within seven (7) Days from the day of identification of issue, Beneficiary may get the same done at prevailing market rate and SPG shall reimburse the same to Beneficiary. If the SPG fails to reimburse the expenses to the Beneficiary then such expenses shall be adjusted by the Beneficiary from the solar generation Monthly Bills of future Months or as mutually agreed.

5. **SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION**

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

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

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

- 5.1.3. The synchronization equipment and all necessary arrangements/ equipment for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the SPG at its generation facility of the Project at its own cost. The SPG shall synchronize its system with the Interconnection Facilities only after the approval of the synchronization scheme as per applicable law, grid code & regulations.
- 5.1.4. The SPG shall achieve COD of the Project within four (4) Months from the Effective Date. Declaration of COD shall only be done upon the successful visit by the Commissioning Committee.
- 5.1.5. The Parties agree that for the purpose of commencement of the supply of electricity by SPG to Beneficiary, liquidated damages for delay, etc., the Scheduled Commissioning Date as defined in this Agreement shall be the relevant date unless otherwise agreed between the parties.

6. **METERING**

6.1. **Meters**

- 6.1.1. For installation of meters, meter testing, meter calibration, meter reading and all matters incidental thereto, the SPG and Beneficiary shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Odisha Grid Code, as amended and revised from time to time.
- 6.1.2. The SPG shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of solar generation meters after the inverters & ACDB at SPG's side of the Delivery Point
- 6.1.3. SPG shall bear all costs pertaining to installation, testing, calibration of the net meter of appropriate rating and accuracy class in place of the existing consumer meter provided by the Discom.
- 6.1.4. In addition to ensure compliance of the applicable codes, the SPG shall install main and check meters at the Delivery Point, along with stand-by meter(s) as per the applicable regulations.

6.2. **Reporting of Metered Data and Parameters**

- 6.2.1. The Project will install necessary equipment for regular monitoring of required data and simultaneously for monitoring of the electric power generated from the Project.
- 6.2.2. Online arrangement would have to be made by the SPG for submission of above data regularly for the entire period of this Power Purchase Agreement to Beneficiary, OREDA and concerned agency as per applicable regulation/ directions.
- 6.2.3. Reports on the above parameters on monthly basis (or as required by regulation/ guidelines) shall be submitted by the SPG to OREDA , Beneficiary for entire period of TPA.

7. **INSURANCES**

7.1. **Insurance**

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

Application of Insurance Proceeds

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

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

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

7.2. **Effect on liability of Beneficiary**

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

8. **APPLICABLE TARIFF**

- 8.1. The SPG shall be entitled to receive the Tariff of INR xx.xx/ kWh () after deducting INR 0.10/kWh towards Payment Security Facilitation Fee (PSFF) as competitively discovered in the RfP No. [.....] dated [DD MMM YYYY], fixed for the entire Term of this Agreement, with effect from the COD, for the power sold to Beneficiary as reflected in the monthly JMR (Joint Meter Reading).

9. **BILLING AND PAYMENT**

9.1. **General**

- 9.1.1. From the commencement of supply of power, the Monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 5, in accordance with Article 8, shall be guided as per the provisions of 9.4.1. All Tariff Payments by Beneficiary shall be in Indian Rupees.
- 9.1.2. SPG shall be required to make all necessary arrangements for online meter reading and billing through AMR (Automated Meter Reading) devices submission to centralized nodal officer appointed by Beneficiary. Beneficiary may verify the billing raised through the solar generation meters installed at project site.

9.2. **Delivery and Content of Monthly Bills/ Supplementary Bills**

- 9.2.1. The SPG shall issue to both Beneficiary, and Intermediary a soft & hard copy of the signed Monthly Bill, for the immediately preceding Month based on the JMR along with all relevant documents (meter reading details, multiplying factor, duration/ meter reading dates, meter serial number, project address, TPA tariff etc.). The Monthly Bill amount shall be the product of the energy as per JMR and the Applicable TPA Tariff.

9.3. **Payment of Monthly Bills**

- 9.3.1. The Intermediary on behalf of the Beneficiary, shall pay the amount payable under the Monthly Bill by the Due Date to such account of the SPG, as shall have been previously notified by the SPG.
- 9.3.2. All payments required to be made under this Agreement shall also include any deduction or set off for:
- i. deductions required by the Law; and
 - ii. Amount claimed by Beneficiary, if any, from the SPG, will be adjusted from the monthly energy payment.

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

9.3.3. **Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by Intermediary (on account of unavailability of fund in advance amount from the Beneficiary OR due to unavailability of fund in the OR-PSF fund), beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable to the SPG at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by the SPG through the Supplementary Bill to the Beneficiary and mark to Intermediary. Intermediary shall make the Late Payment Surcharge on behalf of the Beneficiary in next month, unless the same is disputed by the beneficiary.

9.3.4. **Rebate**

For payment of any Bill on or before Due Date, the following Rebate shall be deducted by the Intermediary, on behalf of the Beneficiary, for the monthly payment made to the SPG in the following manner and the SPG shall not raise any objections to the payments made under this article.

- a. A Rebate of two percent (2%) shall be deducted on the payments made within a period of seven working days of the submission of Bill along with required supporting documents.
- b. Any payments made within the Due Date shall be allowed a rebate of one percent (1%).
- c. No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess, etc. and on Supplementary Bill.

9.4. **Payment Security Mechanism- OREDA Payment Security Fund & Letter of Credit**

9.4.1. Payment Process Flow:

- i) SPG shall submit its monthly invoice, to the Beneficiary/ Procurer along with a copy of invoice to the Intermediary against the solar power injected at Delivery point
- ii) The Intermediary shall get confirmation of the undisputed amount from the concerned Beneficiary/ Procurer and accordingly make payment to SPG within the due date. The advance money paid by Beneficiary to the Intermediary shall be used for this purpose.
- iii) In case Beneficiary/ Procurer fails to pay the Intermediary in advance, payment to SPG shall be made from OR-PSF and the same shall be recovered from Beneficiary to replenish the OR-PSF.

9.4.2. The Beneficiary/ Procurer shall authorize the Intermediary to make any payment to the SPG, on its behalf, against the monthly invoice raised for the supply of RE power.

9.4.3. Payment security fund named OREDA RESCO Payment Security Fund (OR-PSF) is created and maintained by the Intermediary with initial corpus of Rs. 5 Cr. Intermediary shall make the payment to SPG from OR-PSF. Any additional interest earned on OR-PSF, and any late payment surcharges earned shall form the part OR-PSF only.

9.4.4. The Beneficiary/ Procurer shall transfer a lump sum amount to the Intermediary in advance, calculated at the discovered tariff for 3-6 months of RE power supply. The Beneficiary/ Procurer shall replenish the Intermediary's account before the start of next cycle of 3-6 months. OR

9.4.5. If the Beneficiary/ Procurer does not agree to pay the advance to the Intermediary, in that case, the Beneficiary/ Procurer shall provide SPG a Letter of Credit (LC) as per the following:

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

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

- a. for the first Contract Year, equal to the estimated three hundred percent (**300%**) of the average monthly billing;
- b. for each subsequent Contract Year, equal to the three hundred percent (**300%**) of the average of the monthly billing of the previous Contract Year.

- 9.4.8. Provided that the SPG shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill and shall not make more than one drawl in a Month. SPG shall draw upon such Letter of Credit only in case of failure of the payment by the Intermediary by Due date.

Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 9.4.7 due to any reason whatsoever, Beneficiary shall restore such shortfall within fifteen (15) days.

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

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

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

- 9.4.9. If the Intermediary fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, due to unavailability of fund in OR-PSF, then, subject to Article & 9.5.2 the SPG may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from Beneficiary, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 9.4.8 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

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

- 9.4.10. Applicability of Payment Security Facilitation Fee (PSFF): The Intermediary shall charge @Rs.0.10/- per unit towards PSFF and make the payment to the SPG after deducting the PSFF from the total billed amount. This PSFF is towards OREDA's timely payment to the SPG from OR-PSF.

9.5. ***Disputed Bill***

- 9.5.1. If Beneficiary does not dispute a Monthly Bill or a Supplementary Bill raised by the SPG within fifteen (15) days of receiving such Bill shall be taken as conclusive.
- 9.5.2. If Beneficiary disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, the intermediary shall pay undisputed amount of the invoice amount and beneficiary shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:
- i. the details of the disputed amount;
 - ii. its estimate of what the correct amount should be; and
 - iii. all written material in support of its claim.
- 9.5.3. If the SPG agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 9.5.2, the SPG shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party, including the date on which such payment has been received a refund.
- 9.5.4. If the SPG does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 9.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the Beneficiary and Intermediary 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.

- 9.5.5. Upon receipt of the Bill Disagreement Notice by the Beneficiary under Article 9.5.4, authorized representative(s) or a director of the Board of Directors/ member of the Board of Beneficiary and SPG shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- 9.5.6. If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 9.5.4, the matter shall be referred to Dispute resolution in accordance with Article 15.
- 9.5.7. For the avoidance of doubt, it is clarified that despite a Dispute regarding an invoice, Intermediary shall, without prejudice to Beneficiary's right to Dispute, be under an obligation to make payment of the undisputed amount of the invoice amount in the Monthly Bill.

96. ***Quarterly and Annual Reconciliation***

- 9.6.1. The Parties acknowledge that all payments made against the Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation and annual reconciliation at the end of each Contract Year within 30 days to take into account the, Tariff adjustment payments, Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.
- 9.6.2. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the SPG, Intermediary and Beneficiary shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the SPG shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 15.

9.7. ***Payment of Supplementary Bill***

- 9.7.1. SPG may raise a ("Supplementary Bill") for payment on account of:
- i. NA; or
 - ii. Change in Law as provided in Article 11

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

- 9.7.2. Intermediary, on behalf of Beneficiary shall remit all amounts due under a Supplementary Bill raised by the SPG to the SPG's Designated Account by the Due Date. No late payment surcharge will be applicable other than that on the monthly energy payment and associated debit and credit note.

10. **FORCE MAJEURE**

10.1. ***Definitions***

- 10.1.1. In this Article, the following terms Affected Party, and Force Majeure, and shall have the following meanings.

10.2. ***Affected Party***

- 10.2.1. An affected Party means Beneficiary or the SPG whose performance has been affected by an event of Force Majeure.

10.3. ***Force Majeure***

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

- a. Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if and only if it is declared/ notified by the competent state / central authority/ agency (as applicable);
- b. any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action if and only if it is declared/notified by the competent state/ central authority/ agency (as applicable); or
- c. radioactive contamination or ionizing 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 Project by the Affected Party or those employed or engaged by the Affected Party.

10.4. **Force Majeure Exclusions**

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

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

10.5. **Notification of Force Majeure Event**

10.5.1. The Affected Party shall give notice to the other Party (Beneficiary to SPG or SPG to Beneficiary, as the case may be) of any event of Force Majeure as soon as reasonably practicable, but not later than fifteen (15) 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.

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

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

10.6. **Duty to Perform and Duty to Mitigate**

10.6.1. To the extent not prevented by a Force Majeure Event pursuant to Article 10.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

10.7. **Available Relief for a Force Majeure Event**

10.7.1. Subject to this Article 10:

- a. no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- b. every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations;
- c. For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
- d. Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

11. **CHANGE IN LAW**

11.1. **Definitions**

In this Article the term "Change in Law" means the occurrence of any of the following events after the Bid Submission Date resulting into any additional recurring/ non-recurring expenditure by the SPG or any income to the SPG , including:

- i. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- ii. 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;
- iii. the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- iv. change in any Consents, approvals or licenses available or obtained for the Project, otherwise than for default of the SPG, which results in any change in any cost of or revenue from the business of selling electricity by the SPG to Beneficiary under the terms of this TPA;
- v. a change in the terms and conditions prescribed for obtaining any Consents or the inclusion of any new terms or conditions for obtaining such Consents; except due to any default of the SPG;
- vi. change in the Rules, Regulations, Orders or any document issued or released by the CERC/ CEA/ OERC/ or any other Government Authority;
- vii. any change in taxes, duties and cess or introduction of any taxes, duties and cess made applicable for generation and sale/ supply of power by SPG as per the terms of this TPA but shall not include: (i) any change in any withholding tax on income or dividends distributed to the shareholders of the SPG, or (ii) change in the rates of existing taxes applicable to the SPG or (iv) change in income taxes applicable for the SPG

However, Change in Law shall not include

- i. any change in taxes on corporate income or
- ii. any change in any withholding tax on income or dividends distributed to the shareholders of the SPG, or
- iii. any change on account of regulatory measures by the Appropriate Commission.

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

In the event of any decrease in the recurring/ nonrecurring expenditure by the SPG or any income to the SPG on account of any of the events as indicated above, the Nodal Agency (OREDA) shall communicate the revised tariff to both the SPG & Beneficiary.

11.2. **Relief for Change in Law**

11.2.1. The aggrieved Party shall be required to approach the Intermediary (OREDA) for seeking approval of Change in Law.

In a case where the impact due to Change in Law is not directly affecting the capital or operational cost of the project:

- i. Any additional charges for consuming the power from the Solar Power Plant or ejection into the grid, shall be directly borne by the Power Procurer.
- ii. It is the responsibility of the SPG to intimate any change in the billing methodology and take consent for the same from the Intermediary in a timely manner.

11.2.2. In case of change in Normative Capital Cost due to Impact of Change in Law, revised Tariff shall be communicated by the Intermediary to the Beneficiary and the SPG within thirty (30) Days from the COD of the Project.

11.2.3. In case of change in Operational Cost due to Impact of Change in Law, revised Tariff shall be communicated by the Intermediary to the Beneficiary and the SPG within thirty (30) Days from the date of receipt of request from the Beneficiary or the SPG.

11.2.4. SPG shall be liable to bear the impact of Change in Law in case the impact on Normative Capital Cost due to such Change in Law coming into force or applicable after the SCOD. It is to clarify that, above statement is not considering the impact of Change in Law on Operational Cost.

12. **EVENTS OF DEFAULT AND TERMINATION**

12.1. **SPG Event of Default**

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

- i. the failure to commence supply of power to Beneficiary up to the Contracted Capacity, by the end of the period specified in Article , or failure to continue supply of Contracted Capacity to Beneficiary after Commercial Operation Date throughout the term of this Agreement, or
if
 - a) the SPG assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project in contravention of the provisions of this Agreement; or
 - b) the SPG transfers or novates any of its rights and/ or obligations under this Agreement, in a manner contrary to the provisions of this Agreement; except where such transfer
 - is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
 - is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;

- ii. if (a) the SPG becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding-up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the SPG, or (c) the SPG goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the SPG will not be a SPG Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the SPG and expressly assumes all obligations of the SPG under this Agreement and is in a position to perform them; or
- iii. the SPG repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from Beneficiary in this regard; or
- iv. except where due to any Beneficiary's failure to comply with its material obligations, the SPG is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPG within thirty (30) days of receipt of first notice in this regard given by Beneficiary; or
- v. occurrence of any other event which is specified in this Agreement to be a material breach/default of the SPG; or
- vi. An Insolvency Event shall have occurred with respect to the SPG

12.2. **Beneficiary Event of Default**

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

- i. Intermediary fails to pay, due to unavailability of advance money from the Beneficiary or non-repayment to OR-PSF (in case where Intermediary had already paid to SPG from OR-PSF, in shortage of advance amount from the Beneficiary) (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 9.5, for a period of ninety (90) days after the Due Date and the SPG is unable to recover the amount outstanding to the SPG through the Letter of Credit,
- ii. Beneficiary repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the SPG in this regard; or
- iii. except where due to any SPG's failure to comply with its obligations, Beneficiary is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by Beneficiary within sixty (60) days of receipt of notice in this regard from the SPG to Beneficiary ; or
 - Beneficiary becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding-up proceedings and such proceedings remain uncontested for a period of sixty (60) days, or
 - any winding up or bankruptcy or insolvency order is passed against Beneficiary , or
 - Beneficiary 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 Beneficiary Event of Default, where such dissolution or liquidation of Beneficiary or Beneficiary is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to Beneficiary and expressly assumes all obligations of Beneficiary and is in a position to perform them; or;
- iv. Occurrence of any other event which is specified in this Agreement to be a material breach or default of Beneficiary. OR
- v. An Insolvency Event shall have occurred with respect to Beneficiary.

12.3. **Intermediary Event of Default**

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

- i) Intermediary becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding-up proceedings and such proceedings remain uncontested for a period of sixty (60) days, or
- ii) any winding up or bankruptcy or insolvency order is passed against Intermediary, or
- iii) Intermediary 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 Intermediary Event of Default, where such dissolution or liquidation of Intermediary or Intermediary is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to Intermediary and expressly assumes all obligations of Intermediary and is in a position to perform them; or;
- iv) An Insolvency Event shall have occurred with respect to Intermediary.

12.4. **Procedure for cases of SPG Event of Default**

12.4.1. Upon the occurrence and continuation of any SPG Event of Default under Article 12.1, Beneficiary shall have the right to deliver to the SPG, with a copy to the Intermediary and to the representative of the lenders to the SPG with whom the SPG has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (Beneficiary Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

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

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

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

12.4.5. Subject to the terms of this Agreement, upon occurrence of a SPG Event of Default under this Agreement, the lenders in concurrence with the Beneficiary, may exercise their rights, if any, under Financing Agreements, to seek substitution of the SPG by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the SPG and performing the obligations of the SPG. However, in the event the lenders are unable to substitute the defaulting SPG within the stipulated period, Beneficiary may terminate the TPA and may acquire the Project assets for an amount equivalent to 90% of the debt due or less as mutually agreed, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.

Provided that any substitution under this Agreement can only be made with the prior consent of Beneficiary including the condition that the selectee meets the eligibility requirements of Request for Selection (RFP) issued by OREDA and accepts the terms and conditions of this Agreement.

- 12.4.6. The lenders in concurrence with Beneficiary may seek to exercise the right of substitution under Article 12.4.5 by an amendment or novation of the TPA in favour of the selectee. The SPG shall cooperate with Beneficiary to carry out such substitution and shall have the duty and obligation to continue to operate the Project in accordance with this TPA till such time as the is finalized. In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh TPA with a new entity, an amount of Rs. 1 Lakh per MW +18% GST per transaction as facilitation fee (non-refundable) shall be deposited by the SPG to Beneficiary .
- 12.4.7. In the event the lenders are unable to substitute the defaulting SPG within the stipulated period, Beneficiary may terminate the TPA and may acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.

12.5. Procedure for cases of Beneficiary Event of Default

- 12.5.1. Upon the occurrence and continuation of any Beneficiary Event of Default specified in Article 12.2.1, the SPG shall have the right to deliver to Beneficiary copying to the Intermediary, an SPG Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 12.5.2. Following the issue of an SPG Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 12.5.3. During the Consultation Period, both the Parties shall continue to perform their respective obligations under this Agreement.
- 12.5.4. After a period of two hundred ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Beneficiary Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Beneficiary under intimation to SPG shall, subject to the prior consent of the SPG, novate its part of the TPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the SPG, or if no offer of novation is made by Beneficiary within the stipulated period, then the SPG may terminate the TPA and at its discretion require Beneficiary to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and 150% (one hundred and fifty per cent) of the adjusted equity or, (ii) pay to the SPG, damages, equivalent to 6 (six) months, or balance TPA Term whichever is less, of charges for its contracted capacity, with the Project assets being retained by the SPG.

Provided further that at the end of three (3) months period from the period mentioned in this Article 12.5.4, this Agreement may be terminated by the SPG.

12.6. Procedure for cases of Intermediary Event of Default

- 12.6.1. Upon the occurrence and continuation of any Intermediary Event of Default specified in Article 12.2.1, the SPG shall have the right to deliver to Intermediary copying to Beneficiary, an SPG Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.
- 12.6.2. Following the issue of an SPG Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 12.6.3. During the Consultation Period, all the Parties shall continue to perform their respective obligations under this Agreement.
- 12.6.4. Subject to the terms of this Agreement, upon occurrence of an Intermediary Event of Default under this Agreement, the Beneficiary in concurrence with the SPG, may exercise their rights, if any, under this Agreement, to seek substitution of the Intermediary for the residual period of the Agreement, for the purpose of making all future payments to the SPG directly. In such case, OR-PSF shall be managed by Department of Odisha, Govt of Odisha or any department/ govt agency as authorized by Department of Energy, Govt of Odisha.

12.7. Termination due to Force Majeure

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

13. LIABILITY AND INDEMNIFICATION

13.1. Indemnity

13.1.1. The SPG shall indemnify, defend and hold Beneficiary and Intermediary harmless against:

- a. any and all third-party claims against Beneficiary and Intermediary for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the SPG of any of its obligations under this Agreement; and
- b. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Beneficiary or Intermediary from third party claims arising by reason of a breach by the SPG of any of its obligations under this Agreement, (provided that this Article 13 shall not apply to such breaches by the SPG, for which specific remedies have been provided for under this Agreement).

13.1.2. Beneficiary shall indemnify, defend and hold the SPG and Intermediary harmless against:

- a. any and all third-party claims against the SPG and Intermediary, 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 Beneficiary of any of their obligations under this Agreement; and
- b. any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the SPG or Intermediary from third party claims arising by reason of a breach by Beneficiary of any of its obligations.

13.2. Procedure for claiming Indemnity

13.2.1. Third-party claims

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 13.1.1(a) or 13.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 13.1.1(a) or 13.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such a 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 15.3.2 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 13.1.1(a) or 13.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified Party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

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

13.3. **Indemnifiable Losses**

13.3.1. Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 13.1.1(b) or 13.1.2(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 13.3, such event shall constitute a payment default under Article 12.

13.4. **Limitation of Liability**

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

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

13.5. **Duty to Mitigate**

13.5.1. The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 13.

14. **ASSIGNMENTS AND CHARGES**

14.1. **Assignments**

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

Provided that, BENEFCIARY shall permit assignment of any of SPG's rights and obligations under this Agreement in favour of the lenders to the SPG, if required under the Financing Agreements. Provided that, such consent shall not be withheld if BENEFCIARY seeks to transfer to any transferee all of its rights and obligations under this Agreement.

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

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

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

14.2. **Permitted Charges**

14.2.1. SPG shall not create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement, other than as set forth in Article 14.1 and the Guidelines.

15. **GOVERNING LAW AND DISPUTE RESOLUTION**

15.1. **Governing Law**

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

15.2. **Amicable Settlement and Dispute Resolution**

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:
 - a. a description of the Dispute;
 - b. the grounds for such Dispute; and
 - c. all written material in support of its claim.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 16.2.1(i), furnish:
 - a. counter-claim and 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 15
 - a. if the other Party does not furnish any counterclaim or defense under Article 15
 - b. or thirty (30) days from the date of furnishing counterclaims or defense 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 15.21.
 - c. the Dispute shall be referred for dispute resolution in accordance with Article 15.3

15.3. **Dispute Resolution**

15.3.1. **Dispute Resolution by the Appropriate Commission**

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

15.3.2. **Dispute Resolution through Arbitration**

- i. If the Dispute arising as per Article 15.2.1 is not amicably resolved & such dispute is not covered in Article 15.3.1(i), such Dispute shall be resolved by arbitration under the provisions of the Electricity Act, 2003 (as amended from time to time) as under: Proceedings as well as appointment of the arbitrator(s) shall be carried out by the Appropriate Commissions under the Electricity Act 2003 as amended from time to time. As stipulated by the said Electricity Act 2003, the said arbitration will take place as per the provisions of the Arbitration and Conciliation Act 1996 as amended from time to time.
- ii. The place of arbitration shall be at Bhubaneswar. 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 TPA for any reason whatsoever.
- v. The award shall be of majority decision.
- vi. BENEFCIARY shall be entitled to co-opt the lenders (if any) as a supporting party in such arbitration proceedings.

15.4. **Parties to Perform Obligations**

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

16. MISCELLANEOUS PROVISIONS

16.1. **Amendment**

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

16.2. **Third-party Beneficiaries**

16.2.1. 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.

16.3. **Waiver**

16.3.1. 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 authorized representative of such Party.

16.3.2. 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.

16.4. **Confidentiality**

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

- a. to their professional advisors;
- b. to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- c. disclosures required under Law, without the prior written consent of the other Party.

16.5. **Severability**

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

16.6. **Notices**

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

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

Address: [●]

Attention: [●]

Email: [●]

Fax. No.: [●]

Telephone No.: [●]

16.6.3. If to Beneficiary, 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: [[Address of Beneficiary](#)]

Attention: [[Designation of Beneficiary Nodal Officer](#)]

Email: : [[Email-id of Beneficiary Nodal Officer](#)]

Fax. No.: [Fax no. of Beneficiary Nodal Officer]
Telephone No.: [Tel. no. of Beneficiary Nodal Officer]

- 16.6.4. If to Intermediary, 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: [Address of Intermediary]
Attention: [Designation of Intermediary Nodal Officer]
Email: : [Email-id of Intermediary Nodal Officer]
Fax. No.: [Fax no. of Intermediary Nodal Officer]
Telephone No.: [Tel. no. of Intermediary Nodal Officer]

- 16.6.5. 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 acknowledgment 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.

- 16.6.6. 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.

16.7. Language

- 16.7.1. 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.

- 16.7.2. 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.

16.8. Restriction of Shareholders / Owners' Liability

- 16.8.1. 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 relevant act in India.

16.9. Restriction of Shareholders / Owners' Liability

- 16.9.1. 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 relevant act in India.

16.10. Taxes and Duties

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

- 16.10.2. Beneficiary and Intermediary shall be indemnified and held harmless by the SPG against any claims that may be made against Beneficiary in relation to the matters set out in Article 16.9.1

- 16.10.3. Beneficiary or Intermediary shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the SPG by Beneficiary on behalf of SPG.

16.11. Independent Entity

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

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

16.12. Compliance with Law

16.12.1. 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 thereunder, 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.

16.13. Breach of Obligations

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

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

For and on behalf of BENEFICIARY	For and on behalf of [Intermediary]	For and on behalf of [SPG]
Name:	Name:	Name:
Designation:	Designation:	Designation:
Address:	Address:	Address:
Signature with seal:	Signature with seal:	Signature with seal:

Witness:	Witness:	Witness:
1.	1.	1.
2.	2.	2.

Annexure 1: Details of Project

1. Description of the Premises: _____

Premises Overview	
Segment	
Type of Roof (if applicable)	
Hours of Operation	
Security	

2. Description of the System: _____

The key features of the System are as follows:

S.No.	Parameter	Value
1	System Size	___kWp
2	Expected Annual Energy Generation	
3	Module Type	
4	Inverter Type & Rating	
5	Electrical Parameter for interconnection	
6	Mounting type	
7	Surface Azimuth Angle	
8	Tilt Angle	
9	Wind Resistance	

SPD shall provide an online monitoring system to the Beneficiary, that will enable easy access to Solar Power information.

Annexure 2: Schedule for minimum Contracted Energy generation for the Project

The year-wise schedule for minimum Contracted Energy generation for the Project is mentioned below:

<u>Contract Year</u>	<u>Minimum Contracted Energy (kWh)@15.3% CUF</u>
<u>1</u>	
<u>2</u>	
<u>3</u>	
<u>4</u>	
<u>5</u>	
<u>6</u>	
<u>7</u>	
<u>8</u>	
<u>9</u>	
<u>10</u>	
<u>11</u>	
<u>12</u>	
<u>13</u>	
<u>14</u>	
<u>15</u>	
<u>16</u>	
<u>17</u>	
<u>18</u>	
<u>19</u>	
<u>20</u>	
<u>21</u>	
<u>22</u>	
<u>23</u>	
<u>24</u>	
<u>25</u>	

Annexure 3: Performance Bank Guarantee format

Format for Performance Security

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

In consideration of the M/s [Insert name of the Successful Bidder] (hereinafter referred to as 'Solar Project Generator or SPG') submitting the response to RFP No. [RFP] dated [DD MMM YYYY] issued by Odisha Renewable Energy Development Agency (OREDA) inter alia for selection of the Project having the capacity of [Capacity] kWp, at [Insert name of the SPP location] for supply of energy therefrom on long term basis to [Name of Procurer] (hereinafter referred to as "BENEFICIARY ") and OREDA considering such response to the RFP (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees), OREDA issuing an intimation Letter of Award no. [intimation no.] dated [DD MMM YYYY] to [name of SPG] as per terms of RFP and the same having been accepted by the SPG resulting in a Tripartite Agreement (TPA) to be entered into with OREDA and BENEFICIARY , for purchase of Delivered Energy from the SPG. As per the terms of the RFP, the [insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to OREDA at [OREDA's address] forthwith on demand in writing from OREDA or any Officer authorized by it in this behalf, any amount up to and not exceeding INR [Amount] (Indian Rupees [in words]) only, on behalf of the SPG.

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

Our liability under this Bank Guarantee is restricted to INR [Amount] (Indian Rupees [in words]) only. Our Bank Guarantee shall remain in force until [insert expiry date in DD MMM YYYY] OREDA shall be entitled to invoke this Bank Guarantee till [insert claim date in DD MMM YYYY].

The Guarantor Bank hereby agrees and acknowledges that OREDA shall have the right to invoke this Bank Guarantee in part or in full, as it may deem fit at its branch at Bhubaneswar.

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

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by the SPG and/ or any other person. The Guarantor Bank shall neither require OREDA to justify the invocation of this Bank Guarantee, nor shall the Guarantor Bank have any recourse against OREDA in respect of any payment made hereunder.

This Bank Guarantee shall be interpreted in accordance with the laws of India and the courts at Bhubaneswar shall have exclusive jurisdiction.

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

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

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

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

Signature:

Name: [Name]

Power of Attorney No.: [PoA no.]

For

[Insert name of the Bank]

Email ID of the Bank: [Email id]

Banker's Stamp and Full Address: [Address]

Dated this [DD] day of [MMM], [YYYY]

Witness

1.

Signature

Name and Address

2.

Signature

Name and Address

Note:

1. The stamp paper shall be in the name of the executing bank and of appropriate value of stamp paper.
2. The Performance Security shall be executed by any of the nationalized or scheduled bank in India.