

DATED

POWER DELIVERY AGREEMENT

DEVELOPER

AND

CAPTIVE USER

This Power Delivery Agreement (the “**PDA**”) is made at New Delhi on this [●] day of [●] 2022 (the “**Effective Date**”)

BY AND BETWEEN

[**DEVELOPER**], a Special Purpose Vehicle (“**SPV**”) or a company incorporated under the Companies Act, 2013, having CIN _____ and its registered office at _____ (hereinafter referred to as the “**Developer**” or “**SPV**” which expression shall include its successors and assigns);

[**CAPTIVE USER**], a company incorporated under Indian laws and having CIN _____ and its registered office at _____ (hereinafter referred to as the “**Captive User**” or “**Investor**” which expression shall include its successors and assigns); and

The Developer and the Captive User are each individually referred to as a “**Party**” and collectively as the “**Parties**”.

WHEREAS

- A. The **Captive user** is a company engaged in the business of [●] and requires electricity for its captive needs and has selected [●] (the “**Developer**”) to set up a captive Renewable Energy project (the “**Project**”) to meet its electricity requirements.
- B. The Developer has agreed to collaborate with the Captive User to set-up the Renewable Energy project (the “**Project**”) for delivery of Contracted Capacity on Round the Clock (“**RTC**”) basis to the Captive User, under the provisions of the Captive Rules, on long term basis as per the terms of the Transaction Documents. The Project shall be established as per the configurations agreed in terms of Schedule-1, with the rated capacity of each of wind and solar sources not less than thirty-three (33%) of the total Project Capacity. The Developer shall be responsible for Operation and Maintenance of the Project during the entire Term of this PDA.

- C. The Captive User agrees to own minimum 26% equity shares of the SPV with voting rights and procure Renewable Energy from the Project up to the Contracted Capacity at a pre-determined rates as per Clause 9 and other terms of this PDA.
- D. The Parties have agreed to record their understanding with respect to the aforementioned sourcing of Renewable Energy and their respective rights and obligations in respect of the same by way of this PDA.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including notification issued by the Appropriate Government / Appropriate Authority, as amended or re-enacted from time to time.

Term	Definition
“Act” or “Electricity Act, 2003”	Shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
“Scheduled Generation”	Shall mean the capacity accepted by the Captive User to be off-taken, in relation to any Time-Block or period against capacity/ power offered by the Developer;
“Affected Party”	Shall means the Captive User or the Developer whose performance has been affected by an event of Force Majeure;
“Affiliate”	Shall mean and include, in respect of a Person (“Specific Person”), any Person existing as of the Effective Date or at any time in the future: <ul style="list-style-type: none"> i. that directly or indirectly, through one or more intermediate Persons, Controls, is Controlled by, or is under the common Control of, the Specific Person; or ii. in case of a Specific Person who is a natural person, any relative (as such expression is defined in the Companies Act, 2013) of such Specific Person and any Person that directly or indirectly, through one or more intermediate Persons, is Controlled by such natural Specific Person or his/her relatives;
“Agreement” or “Power Delivery Agreement” or “PDA”	Shall mean this Power Delivery Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
“Annual Guaranteed Generation”	Shall have the meaning ascribed thereto in Clause 4 of this Agreement;

Term	Definition
“Applicable Cost of Captive Sourcing of Power” or “ACCSP”	Shall have the same meaning as provided for in Clause 9 of this Agreement;
“Appropriate Authority”	Shall mean the same as “Governmental Authority”.
“Available Capacity”	Shall mean the capacity/ power up to the Contracted Capacity, offered by the Developer from the Project or its units thereof to deliver to the Captive User under this Agreement at the Delivery Point in relation to any Time-Block of the day or period;
“Bill”	Shall mean the Monthly Bill or the Supplementary Bill as the case may be;
“Bill Dispute Notice”	Shall mean the notice issued by the Captive User raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
“Billing Period”	Means the period commencing the 1 st day of a calendar month and ending on the last day of that calendar month at 11.59 pm;
“Business Day”	Shall mean with respect to the Developer and the Captive User, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Delhi;
“Capacity Shortfall”	Shall mean the shortfall of the Delivered Energy compared to the Contracted Capacity in any given year.
“Capacity Utilization Factor” or “CUF”	<p>Shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 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;</p> <p>In any Contract Year, if ‘X’ MWh of energy has been metered out at the Delivery Point for ‘Y’ MW Project Capacity, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8760)) \times 100\%$;</p>
“Captive Rules”	Shall mean the relevant provisions of Applicable Law including the Electricity Act 2003 and the rules and regulations thereunder and the Electricity Rules 2005 specifying the terms and conditions for consumption of power under a captive power arrangement and any other requirement under Applicable Laws governing captive power projects and/or consumption of power under captive power arrangement, including but not limited to the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations 2009, along with its amendments, Central Electricity Regulatory Commission (Sharing of ISTS transmission charges and losses) Regulations, 2020, Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (“Grid Code”), etc. specifying provisions pertaining to captive power projects, captive power generation, the terms and conditions for consumption of

Term	Definition
	power under a captive power arrangement and any other requirement under Applicable Laws pertaining to the same;
“Captive User” or “Investor”	Shall have the meaning ascribed to it under preamble of this Agreement.
“Captive User Designated Account”	Shall have the meaning ascribed to it under Clause 10.1.2 of this Agreement.
“Captive User Securities”	Shall have meaning ascribed to it in the Investment Agreement;
“CERC”	Shall mean the Central Electricity Regulatory Commission of India, constituted under Sub – Section (1) of Section 76 of the Electricity Act, 2003, or its successors;
“Central Transmission Utility” or “CTU”	Shall mean the Government Company notified by the Central Government under Sub-Section (1) of Section 38 of the Electricity Act, 2003;
“Change in Law”	Shall have the meaning ascribed thereto in Clause 12 of this Agreement;
“Claim”	Shall mean claim, proceedings, arising from judgments, cause of action, action, demand, damages, liabilities, investigation or suit (including by way of contribution or indemnity) at law or in equity in relation to performance of the obligations under this Agreement;
“Commissioning”	Shall mean the completion and the successful demonstration by the Developer that the Project can deliver the Contracted Capacity as per the Commissioning procedures defined under this Agreement;
“Commercial Operation Date (COD)”	shall mean the date on which the Project achieves readiness for delivering the Contracted Capacity either upon receipt of the certificate by the chief electrical inspector of the Government or Commissioning Certificate by the competent authority, whichever is earlier;
“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;
“Conditions Precedent”	Shall have the meaning ascribed to it under Clause 3 of 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 sourcing of power;
“Contracted Capacity”	Shall mean [] MW capacity for delivery by the Developer to the Captive User at the Delivery Point from the Project or its units as per the terms of this Agreement;
“Contract Performance Guarantee” or	Shall have the meaning ascribed to it under Clause 3.3 of this Agreement.

Term	Definition
“CPG”	
“Contract Year”	<p>Shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 (twelve) months beginning on April 1 and ending on March 31 provided that:</p> <p>in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of 12 (twelve) months commencing April 1 and ending on March 31, and provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;</p>
“Control”	<p>Shall mean together with its grammatical variations, when used with respect to any Person, shall mean and include: (a) the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of more than 50% (fifty per-cent) of the vote carrying securities, by contract or otherwise howsoever; or (b) the ability to direct the casting of more than 50% (fifty per-cent) of the votes exercisable at general meetings of a Person on all, or substantially all, matters; or (c) the right to appoint or remove a majority of the directors of a Person;</p>
“Day”	<p>Shall mean a day, if not a Business Day, the immediately succeeding Business Day;</p>
“Day-Ahead Schedule”	<p>Shall have the same meaning as ascribed under the Central Electricity Regulatory Commission (The Indian Electricity Grid Code) Regulations, 2010 as amended from time to time;</p>
“Debt Due”	<p>Shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the relevant date:</p> <ol style="list-style-type: none"> the principal amount of the debt provided by the Lenders under the applicable financing agreements for financing the total project cost (the ‘Principal’); accrued interest, financing fees and charges payable under the financing agreements on, or in respect of, the debt referred to in sub-clause (i) above until the relevant date.
“Deemed Generation”	<p>Shall mean the energy that the Project was capable of generating but could not generate or is prevented to generate for reasons not attributable to the Developer, including and not limited for reasons of transmission constraint or Force Majeure;</p>
“Delay Liquidated Damages”	<p>Shall have the meaning ascribed to it under Clause 4.6.3 of this Agreement.</p>
“Delivered Energy”	<p>Shall mean the energy actually delivered by the Developer at the Delivery Point.</p>
“Delivery Point”	<p>Shall mean a single point or multiple points at the voltage level of 220 kV or above of the ISTS substation(s) wherein Interconnection</p>

Term	Definition
	Facilities terminates.
“Developer”	Shall have the meaning ascribed to it under preamble of this Agreement.
“Developer Disputed Amount”	Shall have the meaning assigned to it under Clause 10.6.1 of this Agreement.
“Developer Initial Obligations”	Shall mean the conditions listed under Clause 3.1.1 of this Agreement.
“Developer Obligations”	Shall mean the conditions listed under Clause 4.2 of this Agreement.
“Developer’s Holdco”	Shall mean [●] (HHH);
“Developer Termination Compensation”	Shall have the meaning assigned to it under Clause 13.3.5 (a) of this Agreement.
“Dispute”	Shall mean any dispute or difference of any kind between the Captive User and the Developer, 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 Clause 16 of this Agreement;
“Dispute Notice”	Shall have the meaning assigned to under Clause 16.2.1 of this Agreement.
“Drawl Point”/ “Receiving Sub-Station”	Shall mean the point at the voltage level of 220 kV or above of the ISTS Sub-station(s) at the Captive User consumption end;
“DSM”	Shall mean the deviation settlement mechanism as provided for under the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2022.
“Due Date”	Shall mean the 30th (thirtieth) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is cleared by the Energy Auditor, as the case may be, and the intimation of the such clearance is received by the Captive User or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the Captive User;
“Effective Date”	Shall have the meaning ascribed thereto in Clause 2.1 of this Agreement;
“Energy Accounts”	Shall mean the Regional Energy Accounts (“ REA ”)/State Energy Accounts (“ SEA ”) as specified in the Grid Code issued by the relevant SLDC or RLDC for each Month (as per their prescribed methodology), including the revisions and amendments thereof. In absence of REA/SEA, the order of preference to consider Energy Accounts shall be: a) Scheduled Generation in 96 (ninety-six) Time Blocks furnished to RLDC/ SLDC

Term	Definition
	b) Generation of Renewable Energy of corresponding month of previous year; c) Joint meter reading.
“Energy Auditor”	Shall mean designated auditor jointly appointed by the Parties for the purpose of verification of Monthly Bills and Supplementary Bills, who shall jointly and equally bear all expenses in relation to appointment and operation(s) of such auditor;
“Event of Default”	Shall mean the events as defined in Clause 13 of this Agreement;
“Equity Contribution”	Shall mean the amount of investment agreed to be made by the Captive User in the Project against which the Captive User Securities of the SPV are to be issued to by the Developer to the Captive User in accordance with the terms and conditions of the Transaction Documents;
“Excess Energy”	Shall have the meaning ascribed to it under Clause 4.4.10 of this Agreement.
“Expiry Date”	Shall mean the date occurring as on 25 (twenty-five) years from the COD of the entire Contracted Capacity unless extended by the Parties as per this Agreement;
“Extended SCD”	Shall have the meaning ascribed to it under Clause 4.6.1 of this Agreement.
“Fair Market Value”	Shall mean the fair market value of the equity of the SPV at the time of issuance/transfer of such Equity to the Captive User as determined by an independent valuer nominated by the Captive User;
“Financial Closure”	Shall mean arrangement of necessary funds by the Developer either by way of commitment of funds from internal resources of its Parents or through Lenders by way of sanction of loan facility or mix of both;
“FM Notice”	Shall have the meaning assigned to it under Clause 11.4.1 of this Agreement.
“Force Majeure” or “Force Majeure Event”	Shall have the meaning ascribed thereto in Clause 11 of this Agreement;
“Force Majeure Notice”	Shall mean the notice intimating Force Majeure under Clause 11 of this Agreement;
“Governmental Authority”	Shall mean any central, state, regional, district, town, city, or municipal government, whether domestic or foreign, or any quasi-government authority, ministry, governmental department, government authority, commission, board, agency, bureau, distribution licensee, transmission licensee or other administrative, regulatory or judicial body of any such government or any court or tribunal;
"Grid"	Shall have the meaning assigned to it under Section 2(32) of the Electricity Act, 2003.
“Grid Code” / “IEGC” or “State Grid Code”	Shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned

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	State Commission, referred under Clause (h) of Sub- section (1) of Section 86 of the Electricity Act 2003, as applicable;
“Indemnifying Party”	Shall have the meaning ascribed to it under Clause 14.1 of this Agreement.
“Indemnified Parties”	Shall have the meaning ascribed to it under Clause 14.1 of this Agreement.
“Indian Governmental Instrumentality”	Shall mean the Government of India, and relevant state governments, where the Project or its units, the Delivery Point, the Drawl Point and the Captive User are located, any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the above state Government(s) or both, any political sub-division of any of them; including any court or commission(s) or tribunal or judicial or quasi-judicial body in India;
“Insurances”	Shall mean the insurance cover to be obtained and maintained by the Developer in accordance with Clause 8 of this Agreement;
“Interconnection Facilities”	Shall mean the power transmission line and other facilities connecting the Project with Delivery Point;
“Investment Agreement”	Shall mean the Agreement proposed to be executed among Parent of the Developer, the Developer and the Captive User for recording the terms of the proposed investment by the Captive User in the Project for the captive power arrangement contemplated in this Agreement;
“ISTS”	Shall mean the Inter-State Transmission System as defined under the Electricity Act, 2003;
“ISTS Waiver Date”	Shall mean the last date, as notified by the Appropriate Authority, for commissioning of Renewable Energy Projects to avail waiver of ISTS transmission Charges on the supply of power from the Project throughout the Term of this Agreement. (This date at present is June 30, 2025 , as per the extant orders of the Ministry of Power);
“Late Payment Surcharge”	Shall have the meaning ascribed thereto in Clause 10.3 of this Agreement;
“Law” Or “Applicable Law”	Shall mean, with respect to any Person, any constitutional provision, law, statute, rule, regulation, legislations, rulings, policy, notifications, circulars, ordinance, treaty, bye-laws, directives, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Consents, Clearances and Permits, Indian Governmental Instrumentality and Governmental Authority having jurisdiction over such Person or its business or assets or any transaction(s) entered into by such Person, enforceable at law or in equity, including the interpretation and administration thereof by such Indian Governmental Instrumentality and Governmental Authority in effect as on the date of execution of this Agreement;
“Letter of Credit” or “L/C”	Shall have the meaning ascribed thereto in Clause 10.5 of this Agreement;

Term	Definition
“Lenders”	Shall mean all lenders including banks, financial institutions and any other Persons who have granted financing facilities to the Developer for the purposes of financing the Project;
“Losses”	Shall mean all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, clean-up and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation);
“Makeup Energy”	Shall have the meaning ascribes to it under Clause 4.4.8
“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” or “Monthly Invoice”	Shall mean the invoice raised by the Developer on the Captive User for the Billing Period in accordance with the terms of Clause 10 this Agreement;
“Natural Force Majeure Event”	Shall have the meaning assigned to it under Clause 11.2.1 of this Agreement.
“Non-Natural Force Majeure Event”	Shall have the meaning assigned to it under Clause 11.2.1 of this Agreement.
“Net Proceeds”	Shall mean the gross amount realized from the sale of energy adjusted against any taxes, incentives/ penalties under DSM, open access charges and any other incidental cost on account of such sale
“Open Access”	Shall mean the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Authority;
“Party” and “Parties”	Shall have the meaning ascribed thereto in the recital to this Agreement;
“Payment Security Mechanism”	Shall have the meaning ascribed thereto in Clause 10.5 of this Agreement;
“Performance Bank Guarantee” or “PBG”	Shall mean the performance bank guarantee to be submitted by the Developer to the Captive User in accordance with this Agreement;
“Preliminary Default Notice”	Shall have the meaning ascribed thereto in Clause 13 of this Agreement;
“Project”	Shall mean the combination of wind and solar based power generation facilities or units with or without storage, including all auxiliaries such as water supply, treatment and storage facilities; bay/s for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the

Term	Definition
	efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of delivering of power as per this Agreement;
“Project Capacity”	Shall mean the capacity of Renewable Energy from various sources including solar, wind and storage as per Schedule 1;
“Part Commissioning”	Subject to the compliance of conditions / procedure as detailed under Schedule 3 of this Agreement, Part Commissioning shall mean the Contracted Capacity (in MW) to be commissioned as per provisions of this Agreement. The minimum capacity for acceptance of first part commissioning at one project site shall be at least 50 MW, without prejudice to the imposition of penalty, in terms of this Agreement on the part which is not commissioned;
“Prudent Utility Practice”	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 operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Project and the requirement under Applicable Law and the physical conditions at the site of the Project;
“RBI”	Shall mean the Reserve Bank of India;
“Rebate”	Shall have the same meaning as ascribed thereto in Clause 10.4 of this Agreement;
“Renewable Energy” or “RE”	Shall mean energy from solar or wind-based generation or a hybrid of wind, solar and hydro based generation with or without Storage infrastructure;
“RLDC”	Shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
“Round the Clock” basis / “RTC” basis	Shall mean the Renewable Energy sourced to achieve a minimum commitment of [75 or more] percent of the Contracted Capacity (corresponding to a consistent load of [] MW of the Captive User) on annual basis at the Delivery Point;
“Rupees”, “Rs.” or “₹”	Shall mean Indian Rupees, the lawful currency of India;
“Scheduled Commissioning Date” or “SCD” of the Project	Shall mean, subject to other terms of this Agreement, the date expiring on the completion of 24 months from the infusion of initial 10% Equity Contribution by the Captive User or as mutually agreed and extended by the Parties.
“SERC”	Shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Subsection (1) of Section 83 of the Electricity Act 2003;

Term	Definition
“SLDC”	Shall mean the center established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
“SLDC Charges”	Shall mean the charges levied by the SLDC of the state wherein the Project is located;
“Solar Power”	Shall mean power generated from the solar photovoltaic power project;
“Special Purpose Vehicle” or “SPV”	Shall have the meaning ascribed to it under preamble of this Agreement.
“State Transmission Utility” or “STU”	Shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
“Storage”	Shall mean energy storage system utilizing methods and technologies like, solid state batteries, flow batteries, pumped storage hydropower, compressed air, or any other technology, to store various forms of energy and deliver the stored energy in the form of electricity;
“Supplementary Bill”	Shall mean the bill that is delivered by the Developer after the issuance of the Monthly Bill under Clauses 10.2.1 and 10.2.2 of this Agreement adjusting for any changes on account of (a) any adjustment required in Energy Accounts; or (b) Change in Law compensation; or (c) any other claim under the Agreement till 11 th of the said month in which the Monthly Bill has been sent
“Term”	Shall have the meaning ascribed thereto in Clause 2.1.2 of this Agreement;
“Termination Notice”	Shall mean the notice given by either Parties for termination of this Agreement in accordance with Clause 13 of this Agreement;
“Termination Compensation”	Shall mean any compensation payable to the Party pursuant to termination under Clause 11 of this Agreement.
“Transaction Documents”	Shall mean this Agreement, the Investment Agreement, and ancillary agreement(s) if any executed in relation to this Agreement or the Investment Agreement and their respective amendment(s);”
“Time Block”	Shall mean intervals of 15 minutes or as defined by the Appropriate commission or Appropriate Authority under Applicable Law;
“Unscheduled Capacity”	Shall have the meaning ascribed to it under Clause 4.4.5 of this Agreement.
“Week”	Shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

1.2 Interpretation

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

- 1.2.1. “Agreement” shall be construed as including a reference to its schedules and/or appendices and/or annexures;

- 1.2.2. An “Clause”, a “Recital”, a “Schedule” and a “paragraph / clause” shall be construed as a reference to a Clause, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3. A “crore” means a reference to ten million (10,000,000) and a “lakh” means a reference to one tenth of a million (1,00,000);
- 1.2.4. An “encumbrance” shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5. “Indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent.
- 1.2.6. A “Person” shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7. “Rupee”, “Rupees”, “Rs” or new rupee symbol “₹” shall denote Indian Rupees, the lawful currency of India;
- 1.2.8. The "Winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, Winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9. Words importing the singular shall include the plural and vice versa;
- 1.2.10. This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11. A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12. A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13. Different parts of this Agreement are to be taken as mutually explanatory and

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

- 1.2.14. The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15. All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days or three hundred and sixty six (366) days in case of leap year;
- 1.2.16. The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17. The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18. In the event where in this Agreement does not cover or specifically prescribe for processes and procedures to be followed with respect to any event, the Parties shall mutually decide and endeavour to take necessary steps and course of action as is usually taken under the prudent industrial practices;
- 1.2.19. The Project shall entail its generation facilities or units either at one location or at multiple locations aggregating to such capacity which can deliver Renewable Energy corresponding to Contracted Capacity at agreed CUF in each Contract Year together with respective interconnection facility connecting them to their respective Delivery Points.
- 1.2.20. Delivery of Contracted Capacity in MW shall also mean the injection of Renewable Energy in MWh corresponding to Contracted Capacity at 100% CUF on instantaneous basis subject to total Renewable Energy in MWh delivered in any Contract Year is satisfying the agreed CUF.

2: TERM OF AGREEMENT

2.1 Effective Date and Expiry Date

- 2.1.1 This Agreement shall come into effect from the date of signing of this Agreement by the Parties i.e. [●] day of [●] 2022 and such date shall be the Effective Date for the purpose of this Agreement.
- 2.1.2 This Agreement shall be valid until the Expiry Date (“**Term**”). This Agreement may be extended upon agreement between the Parties at least one hundred eighty (180) days in advance.
- 2.1.3 This Agreement shall terminate before the Expiry Date if either the Captive User or the Developer terminates the Agreement, in terms to Clause 13 of this Agreement.
- 2.1.4 The Developer is free to operate its Project beyond the Expiry Date if other conditions like land lease / right to use of land (as applicable), permits, approvals and clearances etc. allow. In such case unless otherwise agreed by the Captive User, the Captive User shall not be obligated to procure power beyond the Expiry Date.

2.2 Survival

- 2.2.1 Notwithstanding anything to the contrary in this Agreement, 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 or indemnification 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 Clause 3.4 (Representation and Warranties), Clause 11 (Force Majeure), Clause 12 (Change in Law) to the extent any compensation is due and payable, Clause 13 (Events of Default and Termination), Clause 14 (Liability and Indemnification), Clause 16 (Governing Law and Dispute Resolution), , Clause 18 (Miscellaneous Provisions), and other Clauses 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 PRECEDENT, CONDITIONS SUBSEQUENT

3.1 Developer Initial Obligations

- 3.1.1 The Developer shall endeavor to procure within 12 months from the date of execution of this Agreement: (i) ISTS connectivity, long term Open Access by Central Transmission Utility or any other Appropriate Authority and General Network Access (GNA) for delivery of Renewable Energy at the Delivery Point; and (ii) ratification of waiver of ISTS charges by the CERC/Appropriate Authority. While the application for obtaining connectivity / Open Access shall be made by the Developer at the behest of the Captive User, however, all costs for obtaining and maintaining the bulk consumer connectivity shall be borne by the Captive User. All costs of obtaining and maintaining the long-term Open Access shall be borne by the Developer. The Captive User undertakes to extend all support and facilitation as required to obtain the connectivity and Open Access and ratification of waiver of ISTS charges by the Appropriate Authority.
- 3.1.2 The Parties hereby agree to review the progress on condition(s) as mentioned in Clause 3.1.1 above, at regular interval of six months. Based on such evaluation, the Parties may mutually agree to revise the Project related timelines including the SCD.
- 3.1.3 In the event the condition mentioned in Clause 3.1.1 (i) is achieved but the ratification of waiver of the ISTS charges as mentioned in Clause 3.1.1 (ii) cannot be procured, then Parties shall mutually evaluate the economic impact of non-availability of waiver of the ISTS charges and evaluate the possibility of revision of the ACCSP, including sharing the ISTS charges. In the event the Parties fail to agree on any revision in the ACCSP or sharing of the ISTS charges, the Captive user shall have the right to terminate this Agreement in terms of Clause 3.1.5 of this Agreement, after giving a prior written notice of seven (7) days. The termination shall come into effect only upon expiry of such notice.
- 3.1.4 In case of inability of the Developer to fulfil the conditions specified in Clause 3.1.1 due to any Force Majeure Event, the time period for fulfilment of the Condition Precedent as mentioned in Clause 3.1.1, shall be extended for the period of such Force Majeure Event (as may be applicable under Clause 11 of this Agreement), provided that a) such extension does not cross the ISTS Waiver Date without the prior written consent of the Captive User; and b) any increase in the time period for completion of conditions precedent under this Clause 3.1.4 shall also lead to an equal extension in the SCD; and c) if any extension in the SCD under this Clause 3.1.4 results in the SCD falling beyond the ISTS Waiver Date, the Parties shall mutually evaluate the economic impact of non-availability of waiver of the ISTS charges and evaluate the possibility of revision of the ACCSP, including sharing the ISTS charges, if applicable, so as to put the Captive User in the same economic position that it would have enjoyed if the waiver of ISTS charges had been obtained.
- 3.1.5 In the event the Developer fails to fulfil the Developer Initial Obligations under Clause 3.1.1 within the timelines specified therein, then without prejudice to the other rights and remedies available to the Captive User, the Captive User shall be entitled to terminate this Agreement with immediate effect by issuing a termination notice to the Developer. In the event of

termination of this Agreement for the reasons mentioned in this Clause 3.1.3, the Developer shall ensure the acquisition of the Captive User Securities for an amount equivalent to the Equity Contribution invested by the Captive User, in the manner as agreed in the Transaction Documents. In the event the Captive User Securities are not acquired for a consideration equal to the Equity Contribution by the Captive User the Captive User shall be entitled to enforce the PBG to the extent of its Equity Contribution.

3.2 **Satisfaction of conditions subsequent by the Developer**

3.2.1 Subject to Clause 3.1.1 of this Agreement, the Developer agrees and undertakes to duly perform and complete all the following activities / milestones within 12 months from the date of execution of this Agreement, unless such completion is affected by any Force Majeure Event, or if any of the activities is specifically waived in writing by the Captive User:

Sr	Milestones	Due Date
1	Acquisition/ Leasing/ Securing of Land including its unencumbered possession	
2	Financial Closure	
3	Award of EPC contract	
4	Commence of work at sites	
5	Obtaining all statutory approvals and clearances including the ones related to Connectivity and Open Access	
6	Completion of erection work at site	
7	Establishing Physical Connectivity with CTU	
8	Commissioning	
9	COD	

3.3 **Performance Bank Guarantee and Contract Performance Guarantee**

Within 60 days of the Effective Date, the Developer shall furnish to the Captive User a Performance Bank Guarantee in the form as provided under **Schedule 5** of this Agreement (“**PBG**”), having validity from the date of submission of PBG until the expiry of six (6) months from the SCD at the rate of **Rs. 1 Cr/MW** Contracted Capacity. After the SCD, the PBG shall be renewed as **Contract Performance Guarantee** in the form as provided under **Schedule 5** of this Agreement (“**CPG**”) for the remainder of the Term of this Agreement.

3.4 **Representations and warranties of the Developer**

The Developer hereby represents and warrants to the Captive User that:

- 3.4.1 it is duly organized and validly existing and in good standing in the jurisdiction of its incorporation;
- 3.4.2 it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

- 3.4.3 it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;
- 3.4.4 the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms;
- 3.4.5 there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein;
- 3.4.6 neither the execution and delivery of this Agreement by the Developer, nor compliance by the Developer with any of the terms and provisions of this Agreement will result in a breach of or constitute a default under any agreement relating to the management or affairs of the Developer or any indenture or loan or credit agreement or any other agreement, lease, or instrument or such other arrangement, understanding, decree or order which the Developer is a party to or bound by, the breach or default of which could reasonably be expected to have an adverse effect on the ability of the Developer to perform its obligations hereunder; and
- 3.4.7 the execution, delivery, and performance of its obligations hereunder will not violate any provision of any Applicable Laws; and
- 3.4.8 the Developer shall ensure that the Project is designed and executed in such a manner that the Contracted Capacity shall always represent 51% or more of the total power generated by the Project, in compliance with the Captive Rules.

4: EQUITY CONTRIBUTION, OBLIGATIONS, CONTRACTED CAPACITY, ANNUAL GUARANTEED GENERATION

4.1 Equity Contribution from the Captive User

- 4.1.1 The Captive User shall infuse and maintain equity in the Project for the entire Term in accordance with the Captive Rules read with the terms and conditions of the Investment Agreement, in order to ensure captive status for the Project. The amount of Equity Contribution required from the Captive User shall be mutually agreed between the Parties and captured in the Investment Agreement in such a manner so as to ensure compliance with the Captive Rules. In the event of failure of the Captive User to infuse its Equity Contribution in breach of its funding obligations under the Investment Agreement, the Developer shall have right to terminate this Agreement.
- 4.1.2 The Captive User shall infuse ten percent (10%) of the amount of the Equity Contribution upon signing of the Agreement and the Investment Agreement. The remaining ninety percent (90%) of the Equity Contribution shall be infused post COD of the project.
- 4.1.3 The Captive User shall allow the Developer to pledge its shareholding in the Project in favour of the Lenders of the Project, if required by the lenders for Financial Closure of the Project. For this purpose, the Captive User shall obtain all requisite internal approvals to enable said pledge from its Lenders.
- 4.1.4 In the event there are any changes in the Captive Rules that require any review of capital infusion or investment by the Captive User in the SPV, then subject to the written approval of the Captive User, the Parties shall undertake all appropriate actions as may be required to ensure compliance with such amended Captive Rules.

4.2 Obligation of the Developer

- 4.2.1 The Developer shall be solely responsible for securing land and creating required infrastructure for development of the Project either at one location or at multiple locations, obtaining all necessary clearances and approvals from Governmental Authorities, and the connectivity of the Project with the CTU at the Delivery Point(s) for evacuation of Renewable Energy by the SCD.
- 4.2.2 The Developer shall be solely responsible for obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. The Captive User shall provide necessary support, as sought by Developer in this regard.
- 4.2.3 The Developer shall be solely responsible for 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.
- 4.2.4 The Developer shall be solely responsible for the commencement of delivering the Renewable Energy corresponding to Contracted Capacity to the Captive User no later than the SCD and continue delivering Renewable Energy from the Project throughout the Term of

the Agreement.

- 4.2.5 The Developer shall be solely responsible for making adequate arrangements for connecting the Project through the Interconnection Facilities at the Delivery Point to enable flow of Renewable Energy from the Project.
- 4.2.6 The Developer shall be solely responsible for securing and maintaining the long-term Open Access and executing transmission service agreement with CTU/STU as the case may be, for evacuation of Renewable Energy corresponding to Contracted Capacity from the Project and delivering it at the Delivery Point throughout the term of the Agreement.
- 4.2.7 The Developer being Regional Entity shall be responsible for directly coordinating and dealing with the Captive User, SLDC and/or RLDC as the case may be, Regional Power Committees, and any other Appropriate Authority in all respects in regard to declaration of Available Capacity, scheduling and dispatch of Renewable Energy and due compliance with the Applicable Law.
- 4.2.8 The Developer shall ensure that the Project being implemented under this Agreement shall fulfil the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof.
- 4.2.9 As part of scheduling of Renewable Energy from the Project, the Developer shall submit required details in respect of Available Capacity and subsequent revisions, if any, to SLDC and/ or RLDC as the case may be, on daily basis, to secure the transmission corridor for flow
- 4.2.10 The Developer should provide all reasonable assistance to the Captive user in ratification/ verification/certification of the procurement of Renewable Energy as captive procurement under this Agreement, whenever required.

4.3 **Obligation(s) of the Captive User**

- 4.3.1 The Captive User agrees to off-take Renewable Energy corresponding to Contracted Capacity generated by the Project during the Term of this Agreement.
- 4.3.2 The Captive User shall provide appropriate payment security securing the payment of 1 month's Monthly Bill amount and shall maintain the same at all times in accordance with the terms of this Agreement for the entire Term of this Agreement.
- 4.3.3 The Captive User shall pay all amounts due and payable to the Developer under this Agreement as per the terms of this Agreement on or before the Due Date, failing which it shall pay Late Payment Surcharge on outstanding amounts in accordance with this Agreement.
- 4.3.4 The Captive User shall comply with all Applicable Laws (including the Captive Rules) and terms and conditions of this Agreement and provide all reasonable assistance to enable the Developer to perform its obligations under this Agreement including but not limited to obtaining any clearances or approvals from any Government Instrumentality and securing financing from Lenders.

4.3.5 The Captive User shall, at all times, be in compliance with all the rules, regulations and requirements stipulated by the Appropriate Authority and/or any Indian Governmental Instrumentality or Governmental Authority, as the case may be, for the purpose of fulfilling the requirements under Captive Rules, including without limitation, in respect of payment of all bills raised by the Appropriate Authority within the stipulated timelines, and shall ensure that there is no step/action taken by the Appropriate Authority and/or any Indian Governmental Instrumentality towards disconnection of electricity at the Captive User's Facility due to any default not attributable to the Developer.

4.3.6 The Captive User shall have the right to forgo or surrender any part of the Contracted Capacity due to any operational constraints at its facilities by giving 1-day advance intimation to the Developer.

4.4 Contracted Capacity and Annual Guaranteed Generation

4.4.1 The Developer agrees to deliver at the Delivery Point and the Captive User agrees to offtake at the Drawl Point the Renewable Energy from the Project corresponding to the Contracted Capacity as per terms of this Agreement. The Captive User at its option can offtake Renewable Energy beyond Contracted Capacity at the terms and conditions detailed hereinbelow.

4.4.2 For every Contract Year, the Developer shall deliver Renewable Energy corresponding to the Contracted Capacity at the Delivery Point at minimum CUF of [●] % which shall form the basis of computing Annual Guaranteed Generation (the “**Annual Guaranteed Generation**”). Annual Guaranteed Generation (in kWh) under this Agreement shall not be less than *Contracted Capacity (in MW) x 8760 x CUF (in %) less curtailment in capacity due to Grid unavailability or Grid constraints beyond the control of the Developer.*

4.4.3 Any declaration of Available Capacity made by the Developer on a 24-hour notice (including any revisions declared by the Developer and accepted by the Captive User in relation to any Time-Block or period), up to the Contracted Capacity and any excess capacity beyond Contracted Capacity, if accepted by the Captive User, shall be scheduled for dispatch and shall form part of Annual Guaranteed Generation. Any advance communication received from the Captive User expressly declining to off-take any part of Available Capacity shall be considered to be a documentary proof of the **Deemed Generation** and accordingly accounted for as part of Annual Guaranteed Generation.

4.4.4 If the Captive Consumer sends advance intimation to the Developer as per Clause 4.3.6, ACCSP towards the Renewable Power corresponding to such forgone or surrendered capacity shall not be payable by the Captive User to the Developer. The Developer with prior consent of the Captive User shall be free to sell such Renewable Energy in the power exchange and any and all Net Proceeds from such sale of Renewable Energy (beyond the ACCSP attributable to such Renewable Power) shall be remitted to the Captive User in the manner as may be stipulated by the Captive User. Such Renewable Energy shall not form part of Scheduled Generation but shall form part of Annual Guaranteed Generation.

- 4.4.5 During any Contract Year and in relation to any Time-Block or any period, the Captive User shall have the right to instruct the Developer to sell any quantum of Renewable Energy out of Contracted Capacity that is not likely to be scheduled by the Captive User for any reason other than specified in Clause 4.3.6 (hereinafter referred to as the “**Unscheduled Capacity**”) either to any third party or on any power exchange after giving reasonable notice to the Developer to do so. ACCSP towards the Renewable Power corresponding to such Unscheduled Capacity shall be payable by the Captive User to the Developer and shall form part of Annual Guaranteed Generation.
- 4.4.6 In the event the Captive User does not instruct the Developer about the Unscheduled Capacity within a reasonable time as per the prevalent industry practice, the Developer shall be entitled to sell such Unscheduled Capacity at its own terms to any third party or on any power exchange preferably under shortest duration contracts, if the same is practically possible under the prevalent market conditions and Applicable Law.
- 4.4.7 The Parties agree that if the Net Proceeds from the sale of Unscheduled Capacity by the Developer under Clauses 4.4.5 or 4.4.6 are higher than the ACCSP payable by the Captive User attributable to such Unscheduled Capacity, then the Developer shall transfer such excess Net Proceeds to the Captive User in a form and manner as may be specified by the Captive User.
- 4.4.8 In case the Developer contemplates any Capacity Shortfall, the Developer, by adopting the prevalent industry practice and on best efforts basis, shall endeavor to makeup such Capacity Shortfall by offering to deliver **Makeup Energy** to the Captive User from any alternate source of renewable energy supply at Drawl Point. However, the Captive User may reject such offer of Makeup Energy by the Developer, in case the offered Makeup Energy, in relation to any Time-block, is beyond the Renewable Energy corresponding to Contracted Capacity. In case of acceptance of such offer, the Captive User shall pay 75 percent of ACCPS for such Makeup Energy which shall then form part of Annual Guaranteed Generation.
- 4.4.9 In case of failure of the Developer to fulfil its Annual Guaranteed Generation set out in Clause 4 of this Agreement, subject for reasons other than those set out in Clause 11 and 12 of this Agreement, it shall pay compensation to the Captive User equivalent to the difference of Annual Average Market Clearing Price of Day Ahead Market landed at Drawl Point, plus ₹ 2/ unit) and ACCSP to the Captive User during annual reconciliation at the end of each Contract Year. The Parties unequivocally agree that the said compensation mechanism is a genuine pre-estimate of losses to be incurred by the Captive User.
- 4.4.10 Any Renewable Energy generated in excess of the Contracted Capacity as mentioned in Clause 4.5.1, which shall be the **Excess Generation**, may be procured by the Captive User to the extent that such Excess Generation is beyond the Contracted Capacity and is declared either on Day Ahead basis and/or 45 Days ahead. If the Developer perceives that there is a likelihood of any Excess Generation, the Developer shall offer such Excess Generation preferably 45 days prior to the date on which such Excess Generation is scheduled to be injected. The Captive User shall have the first right of refusal over such Excess Generation and shall pay 75 percent of ACCSP if it accepts to off-take such Excess Generation and such

quantum shall be added to the Annual Guaranteed Generation for the relevant contract year.

- 4.4.11 On the other hand, if such Excess Generation beyond the Contracted Capacity is not accepted or rejected by the Captive User within 45 days from being offered as per the terms of Clause 4.4.10, then the Developer shall proceed to sell such power to any third party or on power exchange or in the open market. The Parties agree that a portion of the Net Proceeds from the sale of such Excess Generation proportionate to the fully diluted equity shareholding in the SPV shall be remitted to the Captive User by the Developer in a manner as may be stipulated by the Captive User. However, in case, at any point of time, if the peak of capacity reached is higher than the Contracted Capacity and causes disturbances in the system at the point where power is injected, the Developer shall forgo the Excess Generation and reduce the output to the extent of Contracted Capacity.
- 4.4.12 If for any Contract Year, except for the Contract Year ending on 31st March immediately after the COD of the Project, it is found that the Developer has not been able to deliver Renewable Energy at Delivery Point, the same shall be treated as a shortfall in Annual Guaranteed Generation, and that in such a scenario, the Developer shall be liable to pay a compensation to the Captive User. It is clarified that the shortfall in Annual Guaranteed Generation will be calculated based on the total Annual Guaranteed Generation only. The amount of such compensation shall be calculated as per clause 4.4.9 of this Agreement. The Parties unequivocally agree that the said compensation mechanism is a genuine pre-estimate of losses to be incurred by the Captive User. This compensation shall not be applicable in events of Force Majeure Events affecting the delivery of power by the Developer.
- 4.4.13 In the event the Available Capacity of the Project is reduced on account of scheduled maintenance, unscheduled maintenance or Force Majeure, the Developer, shall promptly give an advance notice to the concerned RLDC or SLDC and the Captive User in line with the applicable Grid Code and regulations.
- 4.4.14 The Developer shall be free to re-power their plants during the Term, without demanding any contribution from the Captive user and without affecting the captive status of the Project as per the Captive Rules. However, 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 Developer shall forego the excess generation and reduce the output to the extent of Contracted Capacity and shall also pay the penalty/charges (if applicable) as per applicable regulations / requirements / guidelines of CERC / SERC / RLDC/ SLDC or any other Appropriate Authority.
- 4.4.15 In an event subsequent to SCD, the Parties agree to expand/augment/reconfigure the current Project Capacity, subject to mutual agreement, such costs of expansion/augmentation/reconfiguration may be shared between the Parties in the ratio of their equity shareholding, subject to the prior written approval of the Captive User.
- 4.4.16 Revenue earned by the Developer from injection of infirm power to the Grid, prior to COD, shall be shared with Captive User in a 74:26 ratio or the ratio of their extant fully diluted shareholding in the SPV, whichever is higher for the Captive User.

- 4.4.17 The annual reconciliation of the Contracted Capacity, Annual Guaranteed Generation, Excess Generation, shall be in terms of Clause 10 of this Agreement.

4.5 Extensions of Time

- 4.5.1 In the event that the Developer is prevented from performing its obligations under Clause 4.2 by the SCD due to:

- 3.4.9 any Captive User Event of Default; or
- 3.4.10 Force Majeure Events affecting the Captive User or
- 3.4.11 Force Majeure Events affecting the Developer,

the SCD and the Expiry Date shall be deferred, for a reasonable period but not less than [●] days on 'day for day' basis, to permit the Developer or the Captive User through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Developer or the Captive User, or till such time such Event of Default is remedied by the Captive User.

4.6 SCD and Liquidated Damages for delay in Commissioning

- 4.6.1 Subject to the provisions for extension of the SCD as a result of Force Majeure Event, the Developer shall achieve the COD of the Contracted Capacity of the Project by the SCD. In the event of any delay in achieving the COD of any part of the Contracted Capacity by the SCD, the Parties shall mutually extend the SCD up to a period not beyond the ISTS Waiver Date ("**Extended SCD**") subject to mutual agreement as mentioned in Clause 3.1 of this Agreement. In the event the COD of the Contracted Capacity is not achieved by the Extended SCD, the Contracted Capacity shall, at the discretion of the Captive User, stand reduced to such capacity that has achieved the COD on the date of the expiry of the Extended SCD for the purpose of this Agreement.
- 4.6.2 As a consequence to Clause 4.6.1, the Developer shall ensure the acquisition of the Captive Securities proportionate to the shortfall in capacity at a price that is equal to the price paid by the Captive User for the acquisition of such Captive Securities under this Agreement. The Developer shall submit the revised Project Capacity and Annual Guaranteed Generation available computed based on revised Contracted Capacity at the above referred CUF on annual basis.
- 4.6.3 In the event of delay of the Developer in achieving any of the milestones as mentioned in Clause 3 for reasons other than those mentioned in Clause 4.6.1 and Clause 4.6.2, the Developer shall be liable to pay liquidated damages to the Captive User for the delay ("**Delay Liquidated Damages**") and the Captive User shall be entitled to invoke the Performance Bank Guarantee for recovery of the same.
- 4.6.4 The Delay Liquidated Damages shall be computed as per the following formulae:

Delay Liquidated Damages = amount of the (Performance Bank Guarantee) x (Capacity

failed to achieve each of the milestones (individually)/ Contracted Capacity) x (no of days of delay/ 180).

For example, in case of a Project of 240 MW capacity, if COD of 100 MW capacity is delayed by 18 days beyond the SCD, then the liquidated damages shall be: amount of *Performance Bank Guarantee* X (100/240) X (18/180).

- 4.6.5 The Parties unequivocally agree that the Delay Liquidated Damages are a genuine pre-estimate of losses to be suffered by the Captive User.
- 4.6.6 Notwithstanding anything to the contrary in this Agreement, no Delay Liquidated Damages shall be payable by the Developer if such delay in SCD has been due to the reasons mentioned in Clause 4.6.1, 4.6.2 or on account of orders of any judicial forum / government instrumentality.

4.7 Acceptance/ Performance Test

Prior to synchronization of the Project, the Developer shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or an agency identified by the central government to carry out testing and certification for the Project.

4.8 Third Party Verification

- 4.8.1 The Developer shall provide unfettered entry and access to the Captive User or any third party authorized by the Captive User at the site of the Project at all times during the Term of the Agreement for inspection and verification of the works being carried out by the Developer
- 4.8.2 The third party authorized by the Captive User may seek any record related to construction works/operation of the Project being carried out by the Developer which shall be promptly furnished by the Developer and if it is found that the construction works/operation of the Project is not as per the Prudent Utility Practices, the Captive User may seek clarifications/ corrections from the Developer.

4.9 Breach of Obligations

The Parties herein agree that during the subsistence of this Agreement, subject to the Captive User being in compliance of its obligations and undertakings under this Agreement, the Developer would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity, which is the subject matter of this Agreement, except as otherwise provided under this Agreement. It is the specific understanding between the Parties that such limitation will apply throughout the Term of this Agreement.

5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

5.1 Synchronization, Commissioning and Commercial Operation

- 5.1.1 The Developer shall give the concerned RLDC/SLDC and the Captive User at least sixty (60) days' advanced preliminary written notice and at least thirty (30) days' advanced final written notice of the date on which it intends to synchronize the Project to the Grid.
- 5.1.2 Subject to 5.1.1, the Project shall be synchronized by the Developer to the Grid when it meets all the connection conditions prescribed in applicable Grid Code then in effect.
- 5.1.3 The synchronization equipment and all necessary arrangements / equipment including remote terminal unit / RTU for scheduling of power generated from the Project and transmission of data to the Appropriate Authority concerned with the Grid operations as per applicable regulation shall be installed by the Developer at its generation facilities of the Project at its own cost. The Developer shall synchronize its system with the Grid only after the approval of synchronization scheme is granted by the head of the concerned substation/Grid and checking/verification is made by the Appropriate authorities concerned with the Grid operations.
- 5.1.4 The Developer shall immediately after each synchronization/ tripping of generator, inform the sub-station of the Grid to which the Project is electrically connected in accordance with applicable Grid Code under intimation to the Captive User. In addition, the Developer shall inject in-firm power to Grid from time to time to carry out operational/ functional test prior to commencement of commercial operation. For avoidance of doubt, it is clarified that synchronization / connectivity of the Project with the Grid shall not to be considered as Commissioning of the Project.
- 5.1.5 In the event any liability arises out of the grant of GNA to the Captive User before the COD, such liability shall be solely at the cost of the Developer and the Developer shall indemnify the Captive User against any and all such liability.
- 5.1.6 The Developer shall commission the Project as per the procedure detailed in Schedule 3 (**Commissioning Procedure**) within the SCD as per this Agreement. Declaration of COD shall only be made subject to the demonstration of the compliances as per Schedule 3.
- 5.1.7 The Developer is permitted for Part Commissioning of the Project, however, subject to an affirmation that all equipment corresponding to the part capacity have been installed and commissioned and corresponding Renewable Energy has started flowing into the Grid.
- 5.1.8 The Parties agree that for the purpose of timely commencement of the delivery of Renewable Energy by Developer to the Captive User, liquidated damages for delay etc., the Scheduled Commissioning Date or extended Scheduled Commissioning Date as defined in this Agreement shall be the relevant date.

6: FORECASTING, SCHEDULING AND DESPATCH

6.1 Forecasting, Scheduling and Despatch

- 6.1.1 The Developer shall comply with the provisions of the Applicable Law regarding the availability, forecasting, scheduling and despatch notified by Appropriate Authority from time to time including, in particular, with the provisions of the Grid Code in relation to Availability / Forecasting and the matters incidental thereto. The applicable fee(s) and charge(s) shall be payable by the Developer to the load despatch centre as approved by the Appropriate commission / Appropriate Authority from time to time.
- 6.1.2 The Developer shall provide day-ahead forecast (based on its own forecast or on the forecast of RLDC) for scheduling Renewable Energy generated from the Project. Such declaration made by the Developer on a Day-Ahead basis and the revisions made during the day for any Time-block shall be the Available Capacity of the Project. However, only the declared availability on day-ahead basis and the revisions which are accepted by the Captive User during the day for any Time-block shall be considered for calculation of the Annual Guaranteed Generation. The Parties agree to adopt the following practice and procedure for forecasting, scheduling and despatch of power, which may, if necessary, be revised and/ or modified, by mutual agreement:

Step 1: By 1000 hours every day, the Developer shall advise the concerned RLDC / SLDC about Project's capacity foreseen for scheduling and dispatch the next day i.e., from 0000 hours to 2400 hours of the following day.

Step 2: By 1100 hours every day, the Captive User shall provide its acceptance to the forecast submitted by the Developer which shall be referred to as Scheduled Generation. Upon acceptance by the Captive User, the Developer shall proceed to take necessary steps with RLDC to schedule such Scheduled Generation for the Captive User. In the event the Captive User fails to provide its acceptance by 1100 hours, the Scheduled Generation shall be considered as 'zero', allowing the Developer to schedule the Available Capacity to any third party.

Provided that the manner in which the Captive User may instruct for diversion of the Available Capacity to any third party and procurement of any Excess Generation shall be in terms of 4 of this Agreement. Any communication to be made by the Captive User regarding rejection of the Available Capacity shall be in writing and with cogent reasoning.

Step 3: *Scenario 1: Upward revision up to Contracted Capacity*

In case, in relation to any Time-block, after Step 2 (i.e., when the power on a Day Ahead is already Scheduled as per the acceptance of the Captive User), the Developer perceives that there may be any upward revision in the Available Capacity (where the Available Capacity was less than Contracted Capacity and with revision the Available Capacity still remains less than Contracted Capacity or equal to the Contracted Capacity), the Developer shall, as far as practically possible, intimate such revision to the Captive User, who may within reasonable time, communicate its acceptance / rejection for off-taking such revised capacity. In case the acceptance is received, the Developer shall schedule such quantum to the Captive User as per the

Applicable Law and the same shall be considered as part of Scheduled Generation and Annual Guaranteed Generation to the extent of accepted upward revision. However, in case the acceptance / rejection is not communicated by the Captive User to the Developer, within a reasonable time period, the Developer shall be free to sell such revised quantum to a third party / open market / exchange, as per prevailing market regulation and Applicable Law and this power shall be considered as Excess Generation and the same shall be dealt as per the 4.

Scenario 2: Upward revision beyond Contracted Capacity

In case, in relation to any Time-Block, after Step 2 (i.e., when the power on a Day Ahead is already Scheduled as per the acceptance of the Captive User), the Developer perceives that there may be any upward revision in the Available Capacity, beyond the Contracted Capacity, the Developer shall intimate, as soon as practicably possible, regarding the revision to the Captive User. If practicably possible, the Captive User may accept to off-take such revised capacity and shall be obligated to pay 75 per cent of the ACCSP as agreed in this Agreement. In case, the Captive User rejects to off-take or the Developer does not receive timely intimation from the Captive User, the Developer shall be free to sell such power to third party/open market and this power shall be considered as Excess Generation and the same shall be dealt as per the 4.

Scenario 3: Downward revision

In case, in relation to any time-block, after Step 2 (i.e., when the power on a Day Ahead is already Scheduled as per the acceptance of the Captive User), the Developer perceives that there may be any downward revision in the Available Capacity, the Developer shall take necessary steps to intimate such revision to the Appropriate Authority and the Captive User. The Developer shall, as far as practically possible, intimate such revision to the Captive User, who may within reasonable time, to provide the Captive User reasonable time to make alternate arrangement, as permissible under Applicable Law. Any communication to be made by the Developer for downward revisions of the Available Capacity shall be in writing and with cogent reasoning and should reach the Captive User within reasonable time.

Scenario 4: Downward revision at the request of the Captive User

In case, in relation to any Time-Block, after Step 2 (i.e., when the power on a Day Ahead is already Scheduled as per the acceptance of the Captive User), the Developer receives instructions for downward revisions from the Captive User, the Developer shall take necessary steps to intimate such revision to the Appropriate Authority, subject to the Developer receiving such instructions within reasonable time from the Captive User. Any communication to be made by the Captive User for downward revisions of the Available Capacity shall be in writing and with cogent reasoning and should reach the Developer within reasonable time.

- 6.1.3 Provided that at the end of each Contract Year, the Parties agree to reconcile the Net Proceeds on account of sale of Renewable Energy from the Project to third party or open market/ exchange, which shall consider the incentive/ penalties (proportionate to the power sold by the Developer beyond the Contracted Capacity to either third party or through open market), taxes, open access charges and any incidental cost thereto. Upon such reconciliation, the Net Proceeds shall be

shared between the Developer and the Captive User in the ratio of their extant fully diluted shareholding in the SPV.

It is however made explicitly clear that the applicable incentives/ penalties on account of DSM up to the Delivery Point shall be to the account of the Developer.

- 6.1.4 Subject to 6.1.3 of this Agreement, each Party shall be responsible for deviations made by it from the Scheduled Generation and for any resultant liabilities on account of charges for deviation as per the applicable regulations.
- 6.1.5 The Parties agree to a mechanism for payment under various scheduling / sourcing scenario, provided in 10 of this Agreement and are subject to annual reconciliation.

7: INTERCONNECTION, DELIVERY POINT, METERING

7.1 Interconnection Facilities, Connectivity and Delivery Point

- 7.1.1 The Developer shall be required to obtain all relevant information from the STU/ CTU/ Appropriate Authority with regards to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate its Project or generation facilities and their Interconnection Facilities to enable injection of Renewable Energy at the Delivery Point.
- 7.1.2 Subject to 3.1.1 of this Agreement, the responsibility of getting connectivity of the Project or generation facilities with the substation of CTU up to the Delivery Point, shall solely lie with the Developer. The maintenance of connectivity and transmission system up to the Delivery Point as per the Applicable Law shall be the sole responsibility of the Developer. All costs and charges including but not limited to the wheeling charges and losses up to and including at the Delivery Point associated with this arrangement shall also be borne by the Developer.
- 7.1.3 The arrangement of connectivity of the Project up to the Delivery Point shall be made by the Developer through dedicated transmission line(s) which shall form part of Interconnection Facilities. The entire cost of Interconnection Facilities including cost of construction of dedicated transmission line(s), any other charges, losses etc. from the Project up to the Delivery Point shall be borne by the Developer. It is to be noted that the Developer is free to choose multiple points of injection for delivery of Renewable Energy through the ISTS network as per Applicable Law.

7.2 Installation of Meters and other equipment

- 7.2.1 The Developer shall install meters at the Delivery Point(s) and other necessary equipment and apparatus at the Project site(s) for continuous monitoring of ambient air temperature, wind resource data (including wind speed), solar resource data and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the Project.
- 7.2.2 The Developer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time or any other Applicable Law for installation of meters, meter testing, meter calibration and meter reading and all matters incidental thereto,
- 7.2.3 The Developer shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at the Delivery Point(s).
- 7.2.4 In addition to ensuring compliance of the applicable codes, the Developer shall install main and check meters at the Delivery Point(s), along with stand-by meter(s) as per the applicable Law.

7.3 Recording of Metered Data and Parameters

- 7.3.1 Metering shall be done at this interconnection point where the Renewable Energy is injected at the Delivery Point(s).
- 7.3.2 The Developer shall promptly submit information, as and when required by the Captive User, for regular monitoring of health and operating status of the Project.

8: INSURANCES

8.1 Insurance

- 8.1.1 The Developer shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of Agreement, 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 and under the Applicable Laws.

9: APPLICABLE COST OF CAPTIVE SOURCING OF POWER AND COMMISSIONING

9.1 Applicable Cost of Captive Sourcing of Power

9.1.1 The Developer shall be entitled to receive the ACCSP agreed between the Parties in INR per kWh as per Schedule 4, fixed for the entire Term of this Agreement with effect from the SCD, for the Renewable Energy corresponding to **Scheduled Generation, Unscheduled Capacity and Excess Generation** for the relevant Month based on manner in which the same has been provisioned under Clause 10.3 of this Agreement, which shall be binding on both the Parties.

9.1.2 Subject to the terms of this Agreement all charges and losses related to transmission of Renewable Energy from the Project or its segments/ units up to Delivery Point(s) including but not limited to open access, transmission, wheeling, Unscheduled Interchange, scheduling, reactive power, RLDC/ SLDC charges etc. as notified by the Appropriate Authority shall be borne by the Developer, however the same beyond the Delivery Point shall be borne by the Captive User.

9.2 Part Commissioning prior to SCD

9.2.1 The Developer may, with the written approval of the Captive User, partly commission the capacity of the Project which shall not be less than 50 MW prior to SCD. The Developer shall offer such capacity to the Captive User, who upon accepting such capacity shall be obligated to offtake the same at 75% of the agreed ACCSP till the SCD, beyond which the ACCSP shall be paid in full.

9.2.2 Subject to Clause 9.2.1, any capacity being offered to the Captive User prior to SCD shall be offered with an advance notice of sixty days. The Captive User shall convey its acceptance/rejection of such offer, fifteen days therefrom. Failure of the Captive User to respond within 60 days shall entitle the Developer, to sell such power till SCD, to a third party. Any revenue earned by the Developer from a third party towards such capacity shall be retained by the Developer.

9.3 Early Commissioning/ Commissioning of the entire Contracted Capacity before the SCD

9.3.1 If the Developer proposes to commission the entire Contracted Capacity prior to the SCD, it shall seek the consent of the Captive User for the same by sending a written notice to that effect, at least 60 days prior to the proposed date by which the Developer intends to commission the entire Contracted Capacity. Upon receipt of the notice, the Captive User may either consent to such early commissioning or reject the same in writing. If the Captive User consents to such early commissioning of the entire Contracted Capacity, the Developer shall go ahead and commission the entire Contracted Capacity. The Term of this Agreement shall commence from the COD achieved immediately after such accepted early commissioning date.

- 9.3.2 If the Captive User does not exercise the option to purchase the energy offered by the Developer under Clause 9.3.1 above, the Captive User shall intimate the same to the Developer in writing post which, the Developer shall be entitled to sell such power to any third party until the SCD. In the event the Captive User does not provide the above intimation in writing forty-five (45) days prior to the intended date of early commissioning, the Captive User shall be deemed to have rejected the offer of the Developer upon which, the Developer shall be entitled to sell the power to any third party in accordance with this Clause, provided that the Developer shall ensure the availability of the Contracted Capacity for the Captive User from the SCD as per the terms of this Agreement. The proceeds from such sale of power to any third party or power exchange shall retained by the Developer. In such an event, the entire Contracted Capacity shall be deemed to have been commissioned on the SCD for the purposes of the Agreement and accordingly, the Term of the Agreement shall start from the SCD.

10: BILLING AND PAYMENT

10.1 General

- 10.1.1 The Captive User shall make payments of Monthly Bill and Supplementary Bill towards the delivery of Renewable Energy by the Developer corresponding to Scheduled Generation, Unscheduled Capacity and Excess Generation for the relevant Month based on Energy Accounts audited by Energy Auditor.
- 10.1.2 The Developer shall open a bank account, which shall be the Developer's Designated Account for all payments to be made by the Captive User to the Developer and notify the Captive User of the details of such account at least ninety (90) Days before the delivery of the first Monthly Bill. The Captive User shall also designate a bank account ("**Captive User Designated Account**") for payments to be made by the Developer to the Captive User, if any, and notify the Developer of the details of such account ninety (90) Days before the SCD. The Captive User and the Developer shall instruct their respective bankers to make all payments under this Agreement to the Developer's Designated Account or the Captive User's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

10.2 Billing Mechanism

- 10.2.1 The Developer shall deliver to the Captive User a signed **Monthly Bill** of the Month on 5th day of the succeeding month based on the Energy Accounts, duly audited by the Energy Auditor, of the Month along with all relevant documents justifying the amounts payable under the Monthly Bill and the Captive User shall pay such amounts subject to the deductions required under the Law and adjustments as per provisions of this Agreement by the Due Date.
- 10.2.2 The Monthly Bill shall take into consideration the following:
- a) Scheduled Generation corresponding to Contracted Capacity chargeable at ACCPS
 - b) Unscheduled Capacity chargeable at ACCPS
 - c) Excess Generation chargeable at 75% of ACCPS
 - d) Makeup Generation chargeable at 75% of ACCPS
 - e) REA received from RLDC or any other Appropriate Authority
- 10.2.3 Once the Monthly Bill is issued in terms of Clause 10.2.1 and 10.2.2 of this Agreement, the Developer may deliver a signed **Supplementary Bill**, on account of (a) Any adjustment required in Energy Accounts (b) Change in Law compensation (c) any other claim under the Agreement till 11th of the said month in which the Monthly Bill has been sent.

10.3 Late Payment Surcharge

In the event of delay in payment of a Monthly Bill by the Captive User beyond Due Date, a Late Payment Surcharge shall be payable by the Captive User to the Developer on the outstanding amount, computed at marginal cost of funds-based lending rate for one year of

the State Bank of India, as applicable on the 1st of April of the financial year in which the period lies, plus one percent (100 bps). The Late Payment Surcharge shall be claimed by the Developer through the Supplementary Bill. If the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different financial years.

10.4 Rebate

- 10.4.1 In the event of payment of any Bill made within a period of 7 (seven) days from the receipt of verification/ clearance of Bill by Energy Auditor by the Captive User a Rebate of 0.75% on the Bill amount shall be applicable.
- 10.4.2 In the event of payment of any Bill made within a window of 8th Day to 14th Day after the receipt of verification/ clearance of Bill by Energy Auditor by the Captive User a Rebate of 0.50% on the Bill amount shall be applicable.
- 10.4.3 In the event of payment of any Bill made within a window of 15th Day to 21st Day after the receipt of verification/ clearance of Bill by Energy Auditor by the Captive User a Rebate of 0.25% on the Bill amount shall be applicable.

10.5 Payment Security Mechanism – Letter of Credit

- 10.5.1 The Captive User shall provide to the Developer, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly irrevocable standby letter of credit (**“Letter of Credit”**) for an amount equivalent to 110% of the average monthly billing as estimated by the Captive User, opened and maintained which may be drawn upon by the Developer upon failure of the Captive User to make the payment of Monthly Bill/ Supplementary Bill within 30 days beyond the Due Date by presenting to the scheduled bank issuing the said standby letter of credit, the following documents:
 - i) A copy of the Monthly Bill or Supplementary Bill, with duly verified/ certified Energy Account by Energy Auditor which has remained unpaid to the Developer; and
 - ii) A certificate from the Developer to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid for 30 days beyond the Due Date.
- 10.5.2 All costs relating to opening, maintenance of the Letter of Credit and any charges incidental to encashment of the Letter of Credit shall be borne by the Captive User.

10.6 Disputed Bill

- 10.6.1 All Monthly Bills and Supplementary Bills shall be raised upon the Captive User and the same shall be submitted to the Energy Auditor on the same date who shall verify the same within seven (7) days. Once a Monthly Bill and Supplementary Bill have been verified and cleared by the Energy Auditor without any observation requiring and deduction or

adjustment, the Captive User shall, release entire amount of Monthly Bill and Supplementary Bill by the Due Date.

10.6.2 Subject to 10.6.1, in relation to any amount that is not verified and cleared by the Energy Auditor (“**Developer Disputed Amount**”), the Developer or Captive User has the option to exercise its right for proceeding for Dispute Resolution as agreed in this Agreement.

10.6.3 Subject to 10.6.1, in relation to any dispute with respect to amount invoiced in the Monthly Bill and Supplementary Bill, the Captive User shall raise the same with the Developer by issuing the Bill Dispute Notice to the Developer within 15 days of the receipt of the Bill. The Bill Dispute Notice shall set out the following information:

- (a) the details of the disputed amount;
- (b) its estimate of what the correct amount should be; and
- (c) all written material in support of its claim.

10.7 Monthly, Quarterly and Annual Reconciliation

10.7.1 Parties agree that there shall be quarterly and annual reconciliation of Energy Accounts, amounts invoiced under Monthly Bills and Supplementary Bills raised by the Developer, deduction, adjustments and penalties leviable on the Developer by the Captive User and sharing of Net Proceeds from sale of Renewable Power from the Project to any third party or on power exchange as per the applicable terms of this Agreement.

10.7.2 Parties further agree that as soon as the reconciliation has been carried out, the Developer and the Captive User shall jointly sign such reconciliation statement and within fifteen (15) days of signing of a reconciliation statement, the Developer shall make appropriate adjustments in the next Monthly Bill.

11: FORCE MAJEURE

11.1 Definition of Force Majeure

A “**Force Majeure**” or “**For Majeure Event**” would mean any event or one or more acts, events or circumstances or a combination of acts, events or circumstances including those stated below, or the consequence(s) thereof, that wholly or partly prevents or unavoidably delays the performance by the Party (the “**Affected Party**”) of its obligations under the relevant 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.

11.2 Categorization of Force Majeure Events

11.2.1 Natural Force Majeure Event

A Natural Force Majeure Event shall mean:

- 11.2.1.1 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, lockdown, pandemic, endemic, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if it is declared / notified by the competent state government / central government (as applicable), or verified to the satisfaction of Procurer;
- 11.2.1.2 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;
- 11.2.1.3 the discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land; or
- 11.2.1.4 any event or circumstances of a nature analogous to any of the events as specified under Clause 11.2.1.1, 11.2.1.2 and 11.2.1.3.

11.2.2 Non-Natural Force Majeure Event

A Non-Natural Force Majeure Event shall mean:

- 11.2.2.1 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;
- 11.2.2.2 nation/state-wide strike, lockout, lockdown, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include

strike or labour unrest limited to the Affected Party or its contractors;

- 11.2.2.3 nationalisation or any compulsory acquisition by any Indian Governmental Authority in national interest or expropriation of any material Project assets or rights of the Developer, as a result of which the Developer or its shareholders are deprived (wholly or partly) of their rights or entitlements under the Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Consent, Clearance and Permits by the Developer or by its contractors.
- 11.2.2.4 action/inaction of a Government Authority having material adverse effect (including Change in Law to the extent not covered under Clause 12 of this Agreement), only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 12 of this Agreement; any unlawful or unauthorised or without jurisdiction revocation of any Consent, Clearance and Permits of the Developer or to be obtained by the Parties to perform their respective obligations under the Agreement and/or the Transaction Documents; provided that such delay, modification or revocation did not result from the Developer's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Consent, Clearance and Permits, as the case may be.
- 11.2.2.5 Any direction / order by Appropriate Authority designated for scheduling, dispatch of power under open access restricting either Party to perform their obligation like Grid constraint, curtailment of power etc.

11.3 Force Majeure Exclusions

- 11.3.1 It is hereby clarified that the following events shall not be considered to be within the scope of Force Majeure for the purposes of this Agreement:
 - 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.

11.4 Notification of Force Majeure Event

- 11.4.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than 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 (the “**FM Notice**”) and the other Party shall take a decision on the Affected Party’s claim within 15 days of the receipt of the intimation. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.
- 11.4.2 Provided that such notice shall be a pre-condition to the Affected Party’s entitlement to claim relief under the 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 weekly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.
- 11.4.3 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 the Agreement, as soon as practicable after becoming aware of each of these cessations.

11.5 Performance Excused

- 11.5.1 The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the Agreement as a consequence of the Force Majeure Event, period shall be excused from the performance of obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.
- 11.5.2 For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the generator shall be entitled for a day-to-day extension of the period provided for Scheduled Commissioning Period or the Agreement period, as the case may be.
- 11.5.3 Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.
- 11.5.4 Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

11.6 No Liability for Other Losses

Save as otherwise provided in this Agreement, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event.

11.7 Resumption of Performance

During the period that a Force Majeure Event is subsisting, the Affected Party shall, in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under the Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

11.8 Duty to Perform and Duty to Mitigate

To the extent not prevented by a Force Majeure Event, the Affected Party shall continue to perform its obligations pursuant to this Agreement, in line with provisions of 11.5. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.9 Available Relief for a Force Majeure Event

Subject to this Clause 11:

- 11.9.1 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;
- 11.9.2 Every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to the obligations including but not limited to those specified under Clause 4.
- 11.9.3 For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure Event under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
- 11.9.4 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.

11.10 Termination Due to Force Majeure Event

- 11.10.1 If, prior to the completion of the 180 (one hundred and eighty) Days (or any extended period) upon occurrence of a Force Majeure Event commencing from the date of issuance of the Force

Majeure Notice, the Parties are of the reasonable view that a Force Majeure Event is likely to continue beyond such 180 (one hundred and eighty) Day period or any extended period agreed in pursuance of Clause 11.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected unit then the Parties may mutually decide to terminate the Agreement and the termination shall take effect from the date on which such decision is taken.

11.10.2 Without prejudice to the provisions of Clause 11.10.1.(a) above, either Party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the Agreement in its sole discretion by issuing a notice to this effect.

11.10.3 On termination of the Agreement pursuant to Clause 11.10.1(b):

- a) No Termination Compensation shall be payable to the Developer;
- b) The Developer shall be eligible for undisputed payments under outstanding Monthly Bill(s) before the occurrence of Force Majeure Event.
- c) The Project Assets will be liquidated, and proceeds will be distributed in proportion to the extant equity shareholding of the Parties in the SPV.

12: CHANGE IN LAW

12.1 Definitions

- 12.1.1 In this Clause 12, the term **“Change in Law”** shall refer to the occurrence of the following events after the Effective Date resulting into any additional recurring/ non-recurring expenditure by the Developer or any income or reduction in costs to the Developer: (i) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal in India of any law including rules, regulations and Captive Rules framed pursuant to such law; or (ii) change in the interpretation or application of any law by any Indian Governmental Instrumentality or Governmental Instrumentality having the jurisdiction to interpret or apply such law or any Competent Court of Law; or (iii) the requirement to obtain a new consent, permit or license or a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms and conditions for obtaining such Consents, Clearances and Permits; or (iv) any modification to the prevailing conditions prescribed for obtaining a Consent, Clearance and Permit, not owing to any default of the Developer; or (v) any change in the Captive Rules that would require further expenditure or investment to be made by the Captive User. 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 Developer.
- 12.1.2 If there is any Change in Law affecting the Project, the Developer shall notify the Captive User within a period of 15 days in writing describing in reasonable detail the events constituting Change in Law and the impact it has or would have on the Developer’s financials or revenues from the Project which will consequently lead to an impact on the ACCSP, and the ACCSP may be increased only with the written consent of the Captive User. Notwithstanding anything stated in the Agreement, in the event the Change in Law causes an adverse financial impact on the Captive User in relation to this Agreement, then the Captive User shall be entitled to a) terminate this Agreement without any further liability; and b) The Captive User shall have the right to require the Developer to ensure the acquisition of the Captive User Securities for a price that shall not be lower than the Equity Contribution of the Captive User, failing which the Captive User shall be entitled to encash the CPG to the extent of its Equity Contribution.
- 12.1.3 In the event the Change in Law affects the captive status of the Project, the Parties shall jointly endeavour to restructure the existing arrangement under this Agreement and/or the Investment Agreement in order to comply with such Change in Law and to retain the captive status of the Project on the basis of the existing commercial understanding between the Parties. If the Parties fail to restructure the existing arrangement as required under Section 12.1.3 above within 45 (forty-five) days of the occurrence of the Change in Law event, the Captive User shall have the right to terminate this Agreement. Upon such termination, a) no Termination Compensation shall be payable by any Party; and b) the Developer shall ensure the acquisition of the Captive User Securities for a price not lower than the Equity Contribution, failing which the Captive User shall be entitled to encash the CPG to the extent of its Equity Contribution.

12.2 Relief for Change in Law

Subject to Clause 12.2.4, any increase or decrease in the Project related costs as a result of the Change in Law under Clause 12.1 shall be borne/shared by the Parties in the following manner:

Pre-Commissioning

- 12.2.1 Any increase or decrease in Project cost and/or expenses attributable to Change in Law prior to the commissioning of the Project shall be borne/shared by the Parties in the following manner: Every net increase/decrease of Rs.1 Lakh per MW in the Project cost, shall led to a corresponding increase/decrease of an amount ₹ [●] per kWh in ACCSP in accordance with **Schedule 4** by way of a compensation amount.

Post-Commissioning / During Operating Period

- 12.2.2 Subject to Clause 12.2.4, any increase or decrease in Project cost and/or expenses attributable to Change in Law post to the commissioning of the Project shall be borne/shared by the Parties in the following manner: the Parties shall mutually discuss and agree on the financial impact of the Change in Law on the Project related costs, expenses, saving and/or revenues for the remainder of the Term. Subsequently, the Parties shall mutually discuss and agree on an increase or decrease of the ACCSP applicable for the remainder of the Term (start from 30 days after the occurrence of the Change in Law event) so as to nullify any positive or adverse impact on the Project from the Change in Law event.

In the event the Parties fail to agree on a revised ACCSP under Clause 12.2.2 of this Agreement within 30 days from the Change in Law notice under Clause 12.3.1, then either Party may initiate the dispute resolution process under Clause 16. In such a case, any requirement of any amicable discussion of the Dispute under Clause 16 shall be deemed to have been satisfied.

- 12.2.3 The adjustments arising out of Clauses 12.2.1 and 12.2.2 shall be calculated and shall come into effect automatically after 30 days of the Change in Law event.
- 12.2.4 In the event the Change in Law affects the existing Captive Rules, the Captive User shall be entitled to, at its discretion a) retain the captive status of the Project on the basis of the existing commercial understanding between the Parties, by way of undertaking suitable measures, including infusing appropriate equity and/or allowing any new user member to infuse appropriate equity to be in compliance with the applicable Law; or b) terminate this Agreement without incurring any further liability (including Termination Compensation) in the form as provided under Clause 13.5 of this Agreement. In case, on account of any Change in Law, if the Captive User is required to hold 100% equity in the SPV, the Captive User shall have the first right to take over the Project.

12.3 Notification of Change in Law

- 12.3.1 In terms of Clause 12.1.1, 12.2.1 and 12.2.3, in case of any increase or decrease in project cost due to Change in Law and any Party wishes to claim a Change in Law under this Clause, it shall give notice to the other Party of such Change in Law as soon as reasonably practicable (but no later than 30 days from the date of occurrence of such Change in Law).
- 12.3.2 Any notice service pursuant to this Clause 12.3.1 and 12.1.2, shall provide, amongst other things, precise details of the Change in Law and its effect on the project cost, supported by documentary evidence including Certificate from Independent Auditor to this effect so as to establish one to one correlation and its impact on the project cost.
- 12.3.3 Once the documentary proof is submitted, the other Party shall within a period of not more than thirty days, provide its response recognizing the occurrence of an event as a Change in Law under this Agreement. In case, the other Party refuses to recognize the occurrence of an event as Change in Law under this Agreement, the Parties agree to invoke the Dispute Resolution mechanism immediately after date of receipt of such refusal.
- 12.3.4 Any amount payable to the aggrieved Party under this Clause, as calculated in terms of Clause 12.2.1 and 12.2.1 shall be raised by way of Supplementary Bill and be paid in accordance with Clause 10 of this Agreement.

13: EVENTS OF DEFAULT AND TERMINATION

13.1 Developer Event of Default

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 the Captive User of its obligations under this Agreement, shall constitute a Developer Event of Default:

- (a) The Developer 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 required by the financial lenders of the Project.
- (b) If (a) the Developer 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 Developer, or (c) the Developer 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 Developer will not be a Developer 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 Developer and expressly assumes all obligations of the Developer under this Agreement and is in a position to perform them; or
- (c) The Developer commits a breach of any of the terms of this Agreement and fails to rectify the same within 30 days of the issuance of a notice from the Captive User intimating the Developer of such default or breach.
- (d) The Developer: 1) fails to supply scheduled power for continuous 3 months; or 2) if Delivered Energy falls below 80% of the Annual Guaranteed Generation

13.2 Captive User Event of Default

The following shall constitute a Captive User Event of Default:

- (a) The Captive User fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Clause 10.5, for a period of ninety (90) days after the Due Date and the Developer is unable to recover the amount outstanding to the Developer through the Letter of Credit;
- (b) If any of the following events occur to the Captive User:
 - i) The Captive User 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 the Captive User, or
- iii) the Captive User 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 Captive User Event of Default, where such dissolution or liquidation of the buyer or the Captive User 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 the Captive User and expressly assumes all obligations of the Captive User and is in a position to perform them; or;
- iv) Failure of the Captive User to infuse equity in breach of its funding obligations under the Investment Agreement, or any other willful action of the Captive User that results in the Project losing its Captive Status.

13.3 Procedure for cases of Developer Event of Default

- 13.3.1 Upon the occurrence and continuation of the Developer Event of Default specified in Clause 13.1, the Captive User shall have the right to deliver to the Developer, a Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue of such notice.
- 13.3.2 Following the issue of a Preliminary Default Notice, the Parties shall initiate a consultation period of thirty (30) days in which the Parties shall endeavor to reach an amicable settlement (in writing) to deal with the Developer Event of Default.
- 13.3.3 On expiry of the 30 days consultation period, the Captive User may terminate this Agreement by giving a written Termination Notice of fifteen (15) days to the Developer if no amicable settlement reaches as per Clause 13.3.2.
- 13.3.4 Except in case of bankruptcy or insolvency or any similar proceedings, during subsistence of a Developer's Event of Default, the Developer shall remain obligated to deliver Renewable Energy to the Captive User until the termination of this Agreement.
- 13.3.5 Subject to the terms of this Agreement, upon occurrence of a Developer Event of Default under this Agreement, the Captive User shall be entitled to execute either of the following options:
 - (a) The Captive User shall be entitled to claim the following amounts as genuine, pre-estimated liquidated damages from the Developer (the "**Developer Termination Compensation**"):

No.	Year from COD, in case of	Developer Termination

	no default	Compensation
1	5 th Anniversary of the COD	[●]
2	10 th Anniversary of the COD	[●]

- (b) The Captive User shall be entitled to acquire the entire shareholding of the SPV (other than the Captive User Securities) at fair market value as determined by a chartered account or other professional as may be nominated by the Captive User, provided that the Captive User shall be entitled to adjust the Developer Termination Compensation against the amounts payable for the acquisition of the non-Captive User shareholding in the SPV.

13.4 Procedure for cases of Captive User Event of Default

- 13.4.1 Upon the occurrence and continuation of the Captive User Event of Default specified in Clause 13.2, the Developer shall have the right to deliver to the Captive User, a Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue of such notice.
- 13.4.3 The Parties shall enter into a consultation process for a period of 60 days in which they shall endeavour to reach an amicable settlement to the Captive User Event of Default, which would be acceptable by both the Parties. However, upon the expiry of the 60 day consultation period, if no amicable settlement has been achieved by the Parties, the Developer may terminate this Agreement by giving a written Termination Notice of fifteen (15) days to the Captive User.
- 13.4.5 Upon the termination of the Agreement due to a Captive User Event of Default, the Developer shall exercise any one of the options below:
- (a) the Developer may require the Captive User to purchase the entire equity shareholding of the SPV (other than the Captive User Securities) for a price which shall be the fair market value of such shareholding as determined by a chartered account of other professional nominated with the mutual consent of the Parties; or
- OR
- (b) an amount equivalent to the ACCSP as would be payable for the Contracted Capacity for the next 12 months after the occurrence of the Captive User or Default, or till such time as the Captive User is able to get a third party to step into its shoes as a Captive User for the purposes of this Agreement and the Investment Agreement, whichever is earlier.

13.5 Termination without further liability to the Captive User

- 13.5.1 Notwithstanding anything stated under this Agreement, the Captive User shall be entitled to terminate this Agreement at any time during the Term without incurring any further liability (including Termination Compensation) in the following cases:

- (i) The Captive User has to shut down the unit for which the Contracted Capacity under this Agreement was intended; or
- (ii) ACCSP payable for the Delivered Energy under this Agreement becomes equal to or higher than the cost of procuring energy from the open market and other RE sources for a period exceeding 1 year; or
- (iii) If there is any change in the Captive Rules that would require the Captive User to infuse more capital or equity into the SPV and the Captive User refuses to infuse further capital into the SPV.

13.5.2 In the event of termination of this Agreement under Clause 13.5, the Developer shall ensure that the Captive User Securities are acquired for a price not lower than the Equity Participation by the Captive User, failing which the Captive User shall be entitled to enforce the CPG to the extent of its Equity Participation.

14: LIABILITY AND INDEMNIFICATION

14.1 Indemnity

Each Party (“**Indemnifying Party**”) shall indemnify, defend and hold harmless the other Party (“**Indemnified Party**”) against any and all demands, judgments and direct costs and expense, including in respect of any property damage, bodily injuries or death suffered by third parties resulting from breach of its obligations, fraud, negligence or willful default or any statutory non-compliance of the Indemnifying Party except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Indemnified Party.

14.2 Limitation of Liability

Except as herein explicitly stated, no Party shall have any liability for any indirect, incidental and consequential damages. Notwithstanding anything to the contrary in this Agreement, the overall liability of the Developer under this Agreement in relation to this Clause, shall be limited to one hundred per cent (100%) of the amount of equity contribution of the Developer.

14.3 Procedure for claiming Indemnity

Where the Indemnified Party is entitled to indemnification from the Indemnifying Party, the Indemnified Party shall promptly notify the Indemnifying Party of such claim in respect of which it intends to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

- i) the Parties choose to refer the dispute in accordance with Clause 16; 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.

Notwithstanding anything to the contrary contained herein, the maximum amount payable by the Captive User as damages and/or indemnity, under this Agreement or any other related document shall not exceed the amount of equity investment by it.

15: ASSIGNMENTS AND CHARGES

- 15.1** 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 either Party without the prior written consent of the other Party except to the Project lenders or lender's representative as security for the financial debt of the SPV.

16: GOVERNING LAW AND DISPUTE RESOLUTION

16.1 Governing Law

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 Delhi.

16.2 Amicable Settlement and Dispute Resolution

- 16.2.1 If any dispute, controversy or claim between the Parties arise out of or in connection with this Agreement, including the breach, termination or invalidity thereof (a “**Dispute**”), the Parties shall use all reasonable endeavors to negotiate with a view to resolving the Dispute amicably. If a Party gives the other Party notice that a Dispute has arisen (a “**Dispute Notice**”) and the Parties are unable to resolve the Dispute amicably within 30 (thirty) days of service of the Dispute Notice (or such longer period as the Parties may mutually agree), then the Dispute shall be referred to arbitration in accordance with the terms of this Clause.
- 16.2.2 The Parties agree to submit all Disputes to arbitration by 3 (three) arbitrators: 1 (one) each nominated by the Developer and the Captive User, and the third chosen by the 2 (two) arbitrators so nominated by the Parties. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 as amended from time to time or any statutory re-enactment thereof, as may be in force then.
- 16.2.3 The arbitrators shall be persons of professional repute who are not directly or indirectly connected with any of the Parties to this Agreement. They shall have prior experience as arbitrators.
- 16.2.4 The place, seat and venue of the arbitration proceedings shall be at New Delhi, India. The language to be used in the arbitration proceedings shall be English.
- 16.2.5 The fees and expenses of the arbitrators and incidental costs such as venue booking, administrative expenses etc. shall be shared equally by the Parties unless the award provides otherwise. Any other costs and expenses shall be borne by the respective Parties. However, the arbitral tribunal shall be at liberty to award such costs to the successful Party in the arbitration proceedings.
- 16.2.6 During the period of submission of arbitration and thereafter until the granting of the award, the Parties shall, except in the event of termination, continue to perform all their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

16.3 Parties to Perform Obligations

Notwithstanding the existence of any Dispute and difference referred to the arbitration and save as the arbitrator 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.

17: ELECTRICITY AND ENVIRONMENT ATTRIBUTES

The Captive User is procuring the Renewable Energy under this Agreement for fulfilment of their renewable purchase obligation, and to partly achieve the target of Net Zero emission of green-house gases besides meeting its electricity requirement. Therefore, the Captive User shall be the sole beneficiary of both electricity and environment attributes (including Energy Storage System (ESS) component charged with RE sources) or proceeds of carbon credit from approved clean development mechanism or any other approved mechanism. Any carbon credits proceeds & costs shall be shared equally between the Captive User and the Developer.

18: MISCELLANEOUS PROVISIONS

18.1 Amendment

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

18.2 Third Party Beneficiaries

Subject to provisions contained herein 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.

18.3 Waiver

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

18.3.2 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.

18.4 Confidentiality

18.4.1 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.

18.5 Severability

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.

18.6 Notices

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

18.6.2 If to the Developer, 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. :

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

Address :
Attention :
Email :
Fax. No. :
Telephone No. :

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

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

18.7 Language

18.7.1 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.

18.7.2 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.

18.8 Restriction of Shareholders / Owners' Liability

Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 2013.

18.9 Taxes and Duties

- 18.9.1 The Developer shall bear and promptly pay all statutory taxes, duties, levies, and cess, assessed/levied on the Developer, contractors or their employees that are required to be paid by the Developer as per the Law in relation to the execution of the Agreement and for sourcing power as per the terms of this Agreement.
- 18.9.2 The Captive User shall be indemnified and held harmless by the Developer against any claims that may be made against the Captive User in relation to the matters set out in Clause 14.
- 18.9.3 The Captive User shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Developer by the Captive User on behalf of the Developer.

18.10 Independent Entity

- 18.10.1 The Developer shall be an independent entity performing its obligations pursuant to the Agreement.
- 18.10.2 Subject to the provisions of the Agreement, the Developer shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Developer or contractors engaged by the Developer in connection with the performance of the Agreement shall be under the complete control of the Developer and shall not be deemed to be employees, representatives, contractors of the Captive User and nothing contained in the Agreement or in any agreement or contract awarded by the Developer shall be construed to create any contractual relationship between any such employees, representatives or contractors and the Captive User.

18.11 Compliance with Law

Despite anything contained in this Agreement but without prejudice to this Clause, 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 or Applicable Law made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

18.12 Breach of Obligations

The Parties acknowledge that a breach of any of the obligations contained herein would result

in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting Party in each case specified under this Agreement.

18.13 Order of priority in application

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

- i. Applicable Law, rules and regulations framed thereunder;
- ii. the Grid Code; and
- iii. the terms and conditions of this Agreement;

18.14 Obligations & Responsibilities Post Expiry Date

- 18.14.1 Unless the Captive User agrees, and the Term of this Agreement is extended as per the terms and conditions agreeable to the Captive User, this Agreement shall stand expired on Expiry Date. The Parties shall continue to exercise their rights to continue the business and ownership of the Project.
- 18.14.2 Subject to 18.14.1, upon Expiry Date, the Developer shall ensure the acquisition of the Captive User Securities for a consideration not less than the initial Equity Contribution by the Captive User. In the event the Developer fails to ensure the acquisition of the Captive User Securities as per the terms of this Clause 18.14.12, the Captive User shall be entitled to enforce the CPG to the extent of the Equity Contribution.

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

For and on behalf of

[Captive User]
Name, Designation and Address
Signature with seal

[Developer]
Name, Designation and Address
Signature with seal

Witness:

1.

2.

Witness:

1.

2.

SCHEDULE 1

PROJECT DETAILS

[To be Furnished by the Developer]

SCHEDULE 2

DETAILED OPERATING PROCEDURE

[To be Furnished by the Developer]

SCHEDULE 3

COMMISSIONING PROCEDURE

1. **Wind Solar Hybrid Power Project:** means the wind-solar hybrid power project where the rated installed Project Capacity of the components are defined in Schedule-2. The Developers shall demonstrate the rated capacities of each component separately at the input side of the sub-pooling substation.
2. **Connection:** A Project shall be deemed to be connected to the Grid when the transmission lines originating from the Project physically meet the common bus bar of the incoming feeder of CTU substation. The line may or may not be charged at this stage.
3. **Synchronization:** The hybrid project (solar, wind, and ESS equipment) shall be deemed to be synchronized to the Grid when the transmission line and the incoming feeder at the CTU Sub-station have been charged and power flows from the solar panel through inverter, transformer & into the Grid and power flows from the wind turbine to the Grid. The same shall be reflected through a meter reading at the CTU sub-station.
 - a. The Project configuration shall be allowed as submitted by the Developer to Captive User:

Sr.	Solar PV Project Capacity Committed/ Submitted/ Declared to Captive User (MW)	Minimum Rated Inverter Capacity* $\sum_{i=1}^{i=n} P_i X Q_i$ MW (MW)	Wind Turbine capacity as Committed/ Submitted/ Declared to Captive User (MW)	Rated WTG Capacity** $\sum_{i=1}^{i=n} N_i X M_i$ MW, (MW)	Maximum AC Capacity Limit at Delivery Point for Captive User (Contracted Capacity) in MW
1					

*In case the rated inverter capacity is mentioned in kVA, the IEC test certificate declaring the power factor of the Inverter/PCU at rated power has to be submitted and the power factor shall be multiplied by the kVA rating to calculate the rated capacity of the inverter in kW. For a Solar comprising 'P' no. of Inverters, each 'P_ith' Inverter having a unique rating of 'Q_i' MW, the total installed capacity shall be equal to $\sum_{i=1}^{i=n} P_i X Q_i$ MW, which shall be greater than or equal to the committed capacity of solar in the project configuration.

**For a Wind comprising 'n' no. of wind turbines, each 'N_ith' turbine having a unique rating of 'M_i' MW, the total installed capacity shall be equal to $\sum_{i=1}^{i=n} N_i X M_i$ MW, which shall be greater than or equal to the committed capacity of wind in the project configuration.

(Developers may configure the project with different turbine/Inverter capacity, subject to the above upper limit of injection at the Delivery point.)

Higher DC capacity arrays and wind capacity can also be allowed, subject to the condition that the AC capacity limit as mentioned in (i) above for scheduling at the Delivery Point for the Captive User as per Clause 4.4 “Right to Contracted Capacity & Energy” of the PDA is complied with.

For commissioning of the Project, cumulative capacity of the inverters for solar and wind turbines & cumulative capacity of interconnected Power Transformer installed shall be considered. In case of part commissioning of the Project, it shall be required to have the DC Arrays Capacity, capacity of inverters & interconnected Power Transformer capacity be installed not less than the proposed part commissioning capacity.

If generation at any time block found exceeded the maximum permissible AC capacity at the Delivery point for the Captive User, the Excess Generation during that period may not be considered under PDA.

4. **Commissioning Capacity:** The Project will be considered as commissioned if all equipment as per rated Project Capacity has been installed and energy has flown into Grid, in line with the Commissioning procedures. Commissioning Capacity will be declared on contracted capacity with respect to the capacity of individual summation of Solar inverter capacities and summation of wind turbines installed as per the declared Project configuration. The commissioning capacity formulae is given hereunder;

I. Summation of installed capacities of Solar + Wind (A)* = $\sum_{i=1}^n P_i \times Q_i$ MW + $\sum_{i=1}^n M_i$ MW

**A shall be satisfied solar-wind hybrid project condition
 $i=1$ 'P' no. of Inverters, each 'Pith' Inverter having a unique rating of 'Qi' MW
 'n' no. of wind turbines, each 'Nith' turbine having a unique rating of 'Mi' MW*

II. Declared project capacities (B)= Declared solar capacity + Declared wind capacity

III. Commissioning Capacity =A x (Contracted Capacity/B)

5. **Project Commissioning:** The Project should satisfy the wind solar hybrid power project conditions and the Project will be considered as commissioned if all equipment as per rated Project Capacity has been installed and energy has flown into Grid, the commissioning capacity shall be calculated as per this Agreement. For the sake of clarity, the project would be declared commissioned if entire wind, solar & battery capacity is made operational as per the commissioning guide lines. The date of Commissioning of the Project shall be indicated in the Commissioning Certificate issued for the Project. Commissioning certificates shall be issued by the State Nodal Agency or the Captive User after successful commissioning.
6. **Part Commissioning:** The minimum capacity for acceptance of first part commissioning at one

project site shall be as per below. The proposed solar and wind capacities shall be installed by the Developer before final commissioning. For the sake of clarity, the project would be declared part commissioned if wind, solar & battery capacity is made operational in the same proportion as required for project commissioned for full capacity.

COMMISSIONING PROCEDURE

1. The Developer shall give to CTU/PGCIL, State Nodal Agency (SNA), Concerned RLDC and the Captive User at least thirty (30) days' final written notice of the date on which it intends to synchronize the Project to the Grid system. The Developer shall be solely responsible for any delay or non-receipt of the notice by the concerned agencies, which may in turn affect the commissioning schedule of the Project.
2. The Developer shall ensure that all the equipment Solar panels, Inverters, transformers Wind Turbine Generators (WTGs) have been installed and completed in all aspects and the Project is synchronized to the Grid for it to be declared as being commissioned. Such certificate shall be provided by the Developer with Authorized Signatory of Company.
3. Part Commissioning of Project would be considered subject to the condition specified in this Annexure.
4. Early Commissioning of a Project prior to the SCD is allowed. In order to facilitate this, The Developer shall inform the concerned agencies and the Captive User well in advance regarding the date it intends to synchronize the Power Project to the Grid System.
5. Prior to being declared as being commissioned, the Project shall be inspected by the CEIG/CEA (as applicable) and all the approval for all the equipment of solar, wind hybrid project including transmission lines to be ensured. The approval such as the CEA under Section 68 and Section 164 of the Electricity Act, shall be obtained by the Developer prior to be declared as fit for synchronization of the Project.
6. The approval of CEA under Section 177 Technical standard for connectivity to the Grid regulations, 2007 on 21.02.2007 & amendment of these regulations notified on 15.10.2013 and 06.02.2019 and any of its amendment from time to time to be obtained by the Developer.
7. In line with CERC Order No. 1/14/2015-Reg.Aff. (FSDS-Proced.)/CERC dated 03.03.2017, the Developer shall provide data telemetry with combination of solar component and for wind at the WTG level to the concerned RLDC. Line of confirmation received from RLDC/CTU with regards to above is required.
8. The Commissioning of the Project shall be declared only upon synchronization of minimum cumulative capacity required to declare part commissioning of the Project under the RfS.
9. The Developer shall provide the SCADA login details to the Captive User for online real time data analysis and monitoring of the Project. SCADA work shall be completed in all respects so as the WMS data, SMU data, Inverter, WTGs data, ABT / MFM meter data at Substation end should be available. So that the Captive User shall validate the data. If the SCADA is not IOT based, then the required data shall be provided by the Developer to the Captive User like WMS irradiation, each Inverter generation data, each WTG generation data, substation MFM data, etc.,
 - a) All the equipment installed at site along with (AC and DC as applicable) SLD SMU installed details (if applicable) along with string connected details to be provided to the Captive User.
 - b) By use of SCADA, the Captive User may analysis the generation data per string, inverter against the WMS irradiation data. Also, each WTGs data shall be monitored to verify the overall generation at MFM/ABT data.

- c) For central inverters each inverter shall charge with concerned RLDC. Line of confirmation received from RLDC with regards to each inverter (with S.no) charging is required.
 - d) For String inverters each IDT level (solar block) shall charge with concerned RLDC. line of confirmation received from RLDC with regards to each IDT / solar block (S.no of IDT) is required.
 - e) Each WTG shall charge with concerned RLDC. Line of confirmation received from RLDC/CTU with regards to each WTG of charging is required.
10. No personnel shall be deputed from the Captive User for physical verification/ witnessing of the commissioning.
11. Finally, Project may be declared commissioned subject to the Developer fulfilling the points listed below and the Commissioning Certificate, in line with Annexure-II, shall be issued by the Captive User.

Documents to be submitted to the Captive User Prior to Commissioning

Based on the above procedure, the following documents shall be submitted to the Captive User subsequent to commissioning of the Project:

- a) Synchronization certificate as per Schedule-I of Commissioning Procedure.
- b) Board Resolution for the nomination of the Developer's representative pertaining to commissioning.
- c) Clearance from Financial Closure Committee, if any. The Developer shall submit the documentary evidence of possession / right to use of 100% of the land identified for the Project till revised Scheduled Commissioning Date of the Project. However, in case of part-commissioning of the project, land corresponding to the part capacity being commissioned shall be required to be demonstrated by the Developer prior to declaration of commissioning of the said part capacity.
- d) Affidavit from the authorized signatory of the Developer, stating that the solar PV modules, inverters, inverter transformer, Power transformer, WTG, panels, substation equipment, transmissions lines are installed in the said Project have been procured from a manufacturer listed MNRE (if any). Also, the WTGs have been procured from a manufacturer listed in the RLMM by MNRE, as on the date of Financial Closure date of the respective Project or date of commissioning as the case may be.
- e) Plant Layout along with the SLD, clearly mentioning the details of solar PV modules, inverters, inverter transformer, Power transformer, WTG along with all equipment size, capacity, serial numbers, their locations, feeder details, transmission line details 230/220/33kV Pooling Sub Station and Grid Substation.

- f) Reading of all the inverters (instantaneous and total generation) along with its serial number of a particular date.
- g) CEIG/CEA Certification of all equipment along with serial number (Sr No.) of all equipment like solar panel capacity, inverters, Transformers, panels, WTGs etc.,
- h) CEIG/CEA approval for all Transmission Line(s) feeder (s), substations and CTU bays etc.,
- i) Copy of Transmission Service Agreement along with Permission for LTA/MTOA and connectivity.
- j) Snap shots of the plant from various angles, including but not limited to, solar panels, Inverters, transformers, panels, WTGs, switchyards\switchgears, Power Transformers, substation bays, CTU bays and SCADA.(screenshots with time stamped WMS data and Energy generation data), metering (Main, Check and Standby Meters as applicable) at delivery point etc.)
- k) Relevant documents from SLDC/ RLDC acknowledging successful data communication between plant end and SLDC/RLDC. RLDC Registration certificate and Charging code/Permission for charging the generating station issued by respective RLDC/SLDC etc.
- l) Letter from State Nodal Agency (SNA) as applicable to the state policy/ policies regarding approval of WTGs Locations and solar plot shall be provided.
- m) Confirmation of compliance to all requirements of Grid by concerned RLDC.
- n) Joint meter reading duly signed by representative of the Developer and PGCIL.
- o) An undertaking /synchronization certificate stating that the information provided for commissioning of the Project are complete in all respects and true by the Developer to be provided.
- p) Based on the analysis by the Captive User with data available on SCADA, the Captive User may physically verify the project post commissioning, if required,

Physical verification, if required, will be as stated in 1(P) above or based on the above documents, the project shall be acknowledged as having been commissioned and Commissioning Certificate shall be issued by the Captive User. COD Certificate will be issued by the Captive User to enable scheduling of the Project at the earliest. However, the Captive User will have full right to revoke the commissioning certificate if any discrepancy is found in the data provided by the Developer.

Note:

- a) The Developers may initiate synchronization of individual inverters with the Grid, as per their project completion schedule, under intimation to RLDC, SLDC, the Captive User, SNA etc., The Commissioning of the Project shall be declared only upon synchronization of minimum cumulative capacity required to declare part commissioning of the Project

under the RfS.

- b) The Developers may initiate synchronization of individual WTG with the Grid, as per their project completion schedule, under intimation to RLDC, SLDC, the Captive User, SNA etc., The Commissioning of the Project shall be declared only upon synchronization of minimum cumulative capacity required to declare part commissioning of the Project under the RfS.
- c) It is re-iterated that the date of project commissioning shall be as per the dates indicated on the Commissioning Certificate issued by the Captive User. Energy accounting of the Project shall commence from the date based on the declaration of COD of the project in line with the provisions of the RfS and PDAPDA.
- d) The Developer would be required to plan commissioning at least ten days ahead of the last permissible date for commissioning in accordance with MNRE guidelines/RfS. If not done so, whole responsibility for not meeting the deadline for commissioning rests solely with the Developer.
- e) Subsequent to commissioning, the Developer shall provide the SCADA login details to the Captive User for online real time data monitoring of the Project. The Developer may be required to push the required plant related data to the Captive User designated server in xml/json formats or any other format as required.13, 19

Synchronization Declaration*(To be issued by the Developer)*

It is certified that ____ MW (Capacity) of Hybrid Power Project of M/s____ situated at Village_____ Tehsil/Taluka _____, District_____, State_____ has been synchronized with the national Grid on_____(Date) and has commenced the delivery/ injection of power into the Grid from the said Project from_____ onwards.

The Hybrid P o w e r P roject consists of_____ MW (capacity) of Solar, _____ MW (capacity) of Wind and _____MWh (capacity) of ESS.

Details of the generation facilities of the Project are as follows:

Sr.	Description	Details
A	Contracted Capacity	
1	Hybrid project configuration	
2	Solar capacity	
3	Wind capacity	
4	ESS Capacity	
B	Proposed Capacity for Commissioning (MW)	
1	Solar capacity	
2	Wind capacity	
3	ESS Capacity	
C	Capacity already Commissioned (MW)	
1	Solar capacity	
2	Wind capacity	
3	ESS Capacity	
D	Technology Used	
1	(Mono/Multi Crystalline / thin film / Others; please specify along with capacity of each type)	
2	Type of Tilt (Fixed Tilt/Seasonal Tilt/Tracking)	
3	Rating of each module (Wp)	
4	Number of modules installed of each type (along with Serial Nos. of all the modules installed)	
5		
6	Make of Module(s) installed of each type (including name of the Supplier and country of origin)	
7		
8	Number of PCUs / Inverters installed (along with Serial Nos. of all the PCUs/Inverters installed)	
9		
10	Make of the PCUs / Inverters (including name of supplier and country of origin)	
11		
12	Rating of PCUs / Inverters	

E	Date of installation of full capacity (as per capacity proposed to be commissioned)	
1	PV arrays	
2	PCUs / Inverters Date wise commissioned details along with Capacity	
3	Inverter transformer and Power transformers	
4	WTG's date wise commissioned details along with capacity	
F	Capacity of the Project (MW)	

Note: Self-declaration of synchronization is required to be submitted along with copy of communication received from CTU/RLDC for charging of each element i.e., Modules, Inverters, Transformers, 220 kV and above Bay, EHV Line, Pooling Substation and 33kV Bay and WTGs (If applicable).

Name and signature of Authorized Signatory

Inverters Synchronization Declaration

Inverters

No. of Inverters: _____

Rating of each Inverter: _____MW

Cumulative Capacities of Inverter Synchronized: _____MW

Sr. No.	Inverter Details	Rated Capacity of Inverter (MW)	Date of Synchronization with Grid
Total (MW)			

Name and signature of Authorized Signatory

WTG Synchronization Declaration

No. of WTG: _____

Rating of each WTG: _____ MW

Cumulative Capacities of WTGs Synchronized: _____ MW

Sr No.	WTG Details	Rated Capacity of WTG	WTG Location	Feeder No	Date of Grid Synchronization
Total (MW)					

Name and signature of Authorized Signatory

Appendix-2

Sample Part Commissioning/ Full Commissioning Certificate of Project

(To be issued by the Captive User on its letterhead)

Ref:

Dated:

This is to certify that M/s _____(insert name of the Developer) has successfully commissioned _____(insert installed Project Capacity) MW ISTS-connected Project consisting of __MW (Insert Solar capacity) Solar capacity and _____MW Wind capacity at _____ Villages in _____ District in the State of _____, under this PDA for sourcing of Contracted Capacity of _MW at Delivery Point to the Captive User. Commercial Operation Date (COD) of ____ MW ISTS-Connected Project is to be considered from 00:00 hrs. of _____.

With the present part-commissioning of _____ MW, the cumulative capacity stands at _____ MW against the awarded capacity of _____ MW.

This certificate has been issued on the basis of submission of complete set of documents by M/s _____ on _____ and confirmation of successful data communication established with all _____ nos. of WTGs and _____ Nos. of Inverter from _____ RLDC vide email dated _____.

(_____)

Name and signature of the Authorized signatory of Captive User

SCHEDULE-4

Applicable Cost of Captive Sourcing of Power (ACCSP) & Captive User contribution

Contracted Capacity (MW)	Source wise & Location wise Rated Project Capacity* (MW)	% CUF Assured	Charges (Rs/kWh)	Equity Contribution by Captive User (Rs Crore)

**Source, Type, Location of generation facilities and their respective delivery points must be clearly indicated*

Note:

1. ACCSP in Rs/kWh is considered at Delivery Point.
2. Delivery Point is the interconnection point of Project with ISTS substation.
3. Equity Contribution by Captive User shall be treated as Project Cost minus Senior debt.
4. In case there is any cost overrun on account of reasons solely attributable to the Developer, the Developer shall be solely responsible to arrange the additional fund for completion of project without disturbing the captive structure as permissible under Applicable Law.

SCHEDULE 5

DRAFT PERFORMANCE BANK GUARANTEE

THIS PERFORMANCE BANK GUARANTEE is given on this [■] day of [■], 2022 (hereinafter called “Bank Guarantee”)

By : [■] (*specify the name of bank, head office address and issuing branch office address*) (hereinafter called “the Bank”, “the Guarantor”)

For and on behalf of : **DEVELOPER**, a Special Purpose Vehicle (“SPV”) or a company incorporated under the Companies Act, 2013, having CIN_____ and its registered office at [●] (hereinafter called “the Company”)

In favour of : M/s [■] (name), [■] (address) (hereinafter called “the Captive User”)

WHEREAS the Captive User has executed a Power Delivery Agreement dated [■] (hereinafter called “PDA”) with the Company and as per said PDA, the Company shall construct and commission the Project on or before Scheduled COD (or such other date as may be mutually agreed between the parties to the PDA in writing).

AND WHEREAS it has been required by Captive User that the Company shall furnish Captive User with a Bank Guarantee by a recognized Bank for the sum specified therein as performance security for compliance with its obligations of construction and commissioning of the Project in accordance with the PDA.

AND WHEREAS the Bank have agreed to give this Bank Guarantee for and on behalf of the Company in favour of the Captive User.

NOW THEREFORE the Guarantor undertakes and agrees to as follows:

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Captive User without any demur, reservation, caveat, protest or recourse; immediately on receipt of first written demand from the Captive User, a sum or sums (by way of one or more claims) not exceeding **Rs.[■] (Rupees [■] Only)** (“the Guaranteed Amount”) without the Captive User needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the Captive User and the Company in respect of the performance of the PDA or moneys payable by the Company to the Captive User or any matter whatsoever.
2. The Bank acknowledges that any such demand by the Captive User of the amounts payable by the Bank to the Captive User shall be final, binding and conclusive evidence in respect of the amounts payable by the Bank to the Captive User.

3. The Bank hereby waives the necessity for the Captive User from demanding the aforesaid amount or any part thereof from the Company and also waives any right that the Bank may have of first requiring the Captive User to pursue its legal remedies against the Company, before presenting any written demand to the Bank for payment under this Bank Guarantee.
4. The Bank's obligations under this Bank Guarantee shall not be reduced by reason of any partial performance of the PDA.
5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever and by whom ever imposed; and where any withholding on a payment is required by law, the Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Captive User receives the full amount due hereunder as if no such withholding had occurred.
6. The Guarantor further agree that no change or addition to or other modification of the terms of the said PDA or of the works to be performed thereunder or of any of the contract documents which may be made between Captive User and the Company shall in anyway release the Guarantor from any liability under this Bank Guarantee and the Guarantor hereby waive notice of any such change, addition or modifications in PDA.
7. This Bank Guarantee shall be governed by and construed in accordance with the laws of India and the to this Bank Guarantee hereby submit to the jurisdiction of the courts at New Delhi for the purposes of settling any disputes or differences which may arise out of or in connection with this Bank Guarantee, and for the purposes of enforcement under this Bank Guarantee.
8. Notwithstanding anything stated under this Bank Guarantee:
 - a. The Guaranteed Amount under this Bank Guarantee shall not exceed **Rs. [■] (Rupees [■] Only)**; and
 - b. The Guarantor is liable to pay the Guaranteed Amount or any part thereof under this Bank Guarantee only if the Captive User serve a written claim or demand on or before **[■]**; and
 - c. This Bank Guarantee is valid up to **[•]**.

IN WITNESS THEREOF the Parties have executed this Deed on the day and year hereinbefore mentioned.

SIGNATURE AND SEAL OF THE GUARANTOR

Name of Bank:

Full Address:

Date:

