



POWER PROCUREMENT AGREEMENT

For

**DEVELOPMENT OF RENEWABLE ENERGY PROJECT
FACILITIES OF HYDRO ELECTRIC POWER PLANT OF 1.5 MW
AND FLOATING SOLAR PV POWER PLANT OF 100 MW AT
MORBE DAM**

BETWEEN

Navi Mumbai Municipal Corporation (NMMC)

And

Name of Concessionaire

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POWER PROCUREMENT AGREEMENT

This power procurement agreement is entered into on this the ____ day of _____, 20__, at Navi Mumbai (this “**Agreement**”).

BETWEEN

1. _____, a statutory authority constituted in, having office of the Commissioner at _____, for the time being holding the said office and also his successors and shall also include all “Additional Municipal Commissioners, Director (Engineering Services & Projects)” and the _____, to whom the powers of _____, have been deputed under Section 56 and 56B of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as “**NMMC**” also as the “**Procurer**”, which expression shall include its successors and assigns and which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of **One Part**;

AND

2. _____, a company incorporated under the provisions of the Companies Act, 2013 represented by its _____ (Authorised Signatory), having its registered office at _____, and having its corporate office _____ (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the **Other Part**.

NMMC and the Concessionaire shall be collectively referred to as the “**Parties**” and individually as the “**Party**”.

WHEREAS:

- (A) The Morbe Dam has been constructed by Water Supply and Sanitation Department of the Government of Maharashtra on Dhavri river in the year 1999 and in year 2003, NMMC acquired Morbe Dam for its own independent & operational source of water. Morbe Dam is situated near Khalapur in Raigad district of Maharashtra and is approximately 36 kms. away from Navi Mumbai Head Office (“**Site**”). The Morbe Dam offers a potential site for Renewable Energy Project Facilities (*defined hereinafter*) comprising of the Hydro Electric Power Plant (*defined hereinafter*) and the Floating Solar Power Plant (*defined hereinafter*).
- (B) NMMC had resolved to procure electricity from a power generating station that would dedicate a contracted installed capacity of 101.5 MW comprising of 1.5 MW hydro-electric power plant (“**Hydro Electric Power Plant**”) and 100 MW floating solar power plant (“**Floating Solar Power Plant**”) for production of electricity and

supply thereof to NMMC on a design, build, finance, operate and transfer (the “**DBFOT**”) basis through open access connectivity (“**Generating Station**”) in accordance with the terms and conditions to be set forth in this Agreement and in accordance with the provisions of the Act (*defined hereinafter*).

- (C) NMMC had prescribed the technical and commercial terms and conditions, and invited bids vide notification no. _____ issued on _____ along with all corrigendum (the “**Request for Proposals**” or “**RFP**”).
- (D) After evaluation of the Bids (*defined hereinafter*), NMMC had accepted the Bid of the selected bidder and issued its letter of award corresponding no. _____ dated _____ (the “**LOA**”) to the selected bidder requiring, *inter alia*, the execution of this Agreement.
- (E) Parties have hereby agreed for a levelized tariff at Rs. ____ (Rupees _____) per kWh for the delivery of the Contracted Capacity (*defined hereinafter*) at the Delivery Point (*defined hereinafter*) for the Contract Period (*defined hereinafter*).
- (F) In pursuance of the LOA the Parties have agreed to enter into this Agreement for procurement of power on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 25) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1. In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, 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 shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;

- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to a day shall mean a reference to a calendar day;
- (k) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in Maharashtra are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**kWh**” shall mean kilowatt hour and “**MW**” shall mean mega watts;
- (r) “**lakh**” shall mean a hundred thousand (100,000) and “**crore**” shall mean ten million (10,000,000);
- (s) “**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;
- (t) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” 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, reorganisation, dissolution, arrangement, protection or relief of debtors;

- (u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-Article (u) shall not operate so as to increase liabilities or obligations of NMMC hereunder or pursuant hereto in any manner whatsoever;
- (v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, in this behalf and not otherwise;
- (w) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (x) references to Recitals, Articles, Articles, Sub-Articles, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Articles, Sub- Articles, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (y) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”);
- (z) Time shall be of the essence in the performance of the Parties of their respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and

(aa) Capitalised terms used in the Agreement, but not defined herein, shall have the meaning ascribed to such terms in the Electricity Act, 2003.

1.2.2. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to NMMC shall be provided free of cost and in 3 (three) copies, and if NMMC is required to return any such Documentation with its comments and/or approval, then NMMC shall be entitled to retain 2 (two) copies thereof.

1.2.3. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Articles Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements, articles and schedules

1.4.1. This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) This Agreement and Annexure and Schedules thereof (including addendums(s)/ corrigendum(s) issued up to date);
- (b) Correspondence between the Parties after issuance of the Letter of Award, attached to this Agreement as Schedule;
- (c) Letter of Award; and
- (d) Request for Proposal

1.4.2. Subject to the provisions of Article 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;

- (b) between the Articles of this Agreement and the Schedules, the Articles shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- (f) Between any value written in numerals and that in words, the latter shall prevail.

PART II

POWER PROCUREMENT AGREEMENT

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of this Agreement (the “**Scope of the Agreement**”) shall mean and include, during the Contract Period:

- a) develop, design, engineer, finance, procure, construct, erect operate, maintain and transfer of the Renewable Energy Project Facilities, situated at the Site described in Schedule-A and having the principal features stated therein, in accordance with the provisions of this Agreement.
- b) supply of electricity to NMMC in accordance with the provisions of this Agreement; and
- c) performance and fulfilment of all other obligations of the Concessionaire and NMMC, as the case may be in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3

GRANT OF POWER PROCUREMENT AGREEMENT

3.1 The Power Procurement Agreement

3.1.1. Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, NMMC hereby awards to the Concessionaire the procurement contract set forth herein for producing and supply of electricity for a period of 25 (twenty five) years commencing from the COD of the Hydro Electric Power Plant, and the Concessionaire hereby accepts this Agreement and agrees to implement this Agreement subject to and in accordance with the terms and conditions set forth herein.

3.1.2. Subject to and in accordance with the provisions of this Agreement, the Concessionaire shall be required to undertake the following:

- (a) Design, detailed engineering, finance, own, operate and maintain the Renewable Energy Project Facilities in accordance with this Agreement;
- (b) Ensure the Availability of the Contracted Capacity for production of electricity and supply thereof to NMMC under and in accordance with the provisions of this Agreement, save and except as expressly provided in this Agreement;
- (c) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
- (d) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (e) neither assign, transfer or sub-let or create any lien or encumbrance on this Agreement hereby granted or on the whole or any part of the Renewable Energy Project Facilities nor sell, transfer, exchange, lease or part possession thereof.

3.2 Extension of Contract Period

At any time 3 (three) months, prior to the expiry of the Contract Period specified in Article 3.1, the Parties may with mutual agreement extend the Contract Period for such further period as they may determine, save and except any extension of the Contract Period due on of Force Majeure.

3.3 Substitution of NMMC

The Parties expressly agree that NMMC may, in pursuance of any re-organisation or restructuring undertaken in pursuance of Applicable Laws, or if it is unable to discharge its liabilities and obligations under this Agreement, substitute itself by another Distribution Licensee(s) and upon such substitution, all the functions, rights and obligations of NMMC under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to the Applicable Laws. Provided, however, that prior to any substitution hereunder, the Parties shall make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder, including the rights and obligations arising out of the provisions of Article 13.

Provided further that the creditworthiness of the substituted entity shall be similar or greater as compared to NMMC and in the event of any shortfall therein, credit enhancement shall be provided by NMMC or the proposed substituted entity to bridge the gap.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1. Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 17, 19, 23 and 25, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Articles 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Article 4.1.1.
- 4.1.2. The Concessionaire may, upon providing the Performance Security to NMMC in accordance with Article 9, by notice require NMMC to satisfy any or all of the Conditions Precedent set forth in Article 4.1.3 II within the time period prescribed under Article 4.1.3 II, and the Conditions Precedent required to be satisfied by NMMC shall be deemed to have been fulfilled when NMMC satisfies all the Conditions Precedent set forth in Article 4.1.3 II.
- 4.1.3. I. The Conditions Precedent required to be satisfied by the Concessionaire within a period of 210 (two hundred and ten) days from the date of this Agreement (or such other extended period as may be provided under this Agreement) shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) provided Performance Security to NMMC;
 - (b) delivered to NMMC a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
 - (c) deposited a certified true copy of this Agreement with the RLDC and the SLDC having jurisdiction and obtained a receipt thereof, in accordance with the provisions of Article 13.1.2;
 - (d) submitted the Capacity Certificate and evidence of the Contracted Capacity of Renewable Hybrid Energy Project Facilities say unless otherwise a deviation is proposed by Concessionaire and accepted by Municipal Commissioner, NMMC on proper technical justification for the deviations;

- (e) procurement of access in the favour of NMMC to the transmission system required for transmitting electricity from the Renewable Energy Project Facilities up to the Delivery Point;
- (f) procured all the Applicable Permits related to the Project unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect or should have come into in effect;
- (g) submitted the final technology selected for implementation of the Project along with Detailed Project Report (DPR) as per Schedule C;
- (h) submitted the order copy / agreement copy with technology provider / supplier for supply of modules, equipment's for said technology;
- (i) submitted a certificate from any project / client or customer of the technology provider situated anywhere in world stating that the technology supplied by the technology provider is in successful operation for at least 1 (one) project and at least 1 (one) year before the last date of submission of Bid;
- (j) assist the NMMC for obtaining forest clearance, clearances under the Wild Life Protection Act, 1972, railway, irrigation or any other clearances (as may be required) or an in-principle approval as is required under any statutes in force for Generating Station and in respect of the land forming part of the right of way for transmission up to the Delivery Point in the name of NMMC;
- (k) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a director of the Concessionaire; and
- (l) delivered to the NMMC 3 (three) true copies of the financial package and the Financial Model, duly attested by a director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders.

Provided that upon request in writing by the Concessionaire, NMMC may, in its discretion, waive any of the Conditions Precedent set forth in this Article 4.1.3I or grant an extension of time, not exceeding 90 (ninety) days, for fulfilment thereof, as the case may be.

- II. The Conditions Precedent required to be satisfied by the NMMC within a period of 210 (two hundred and ten) days from the date of this Agreement (except as specifically provided in Article 4.1.3 II (b), which has to be satisfied by NMMC within 15 (fifteen) days from the date of this Agreement) shall be deemed to have been fulfilled when the NMMC shall have:
- (a) granted to the Concessionaire, free of any encumbrances the right of way to the Site as per provisions of the Agreement by handing over the Site to the Concessionaire. NMMC shall handover, to the Concessionaire, the right of way to the Site within 7 (seven) days of satisfaction of the Conditions Precedent required to be fulfilled by the Concessionaire;
 - (b) granted free access to the Concessionaire for *inter alia* carrying out survey, investigations, soil testing and other activities, excavation, construction of temporary access roads (*after taking required permission from the appropriate Government Instrumentality*) which does not involve creation of any permanent structure with respect to the Project;
 - (c) provide all requisite documents on its behalf and pay statutory charges, fees, actual expenses, remunerations to the Successful Bidder to procure forest clearance, clearances under the Wild Life Protection Act, 1972, railway, irrigation or any other clearances required under any statutes in force for and in respect of land forming part of the right of way of transmission up to the Delivery Point. NMMC shall reimburse to the said amounts to the Concessionaire within 30 (thirty) business days from the date of receipt or invoice of payment from the relevant Government Instrumentality;
 - (d) executed and procured the execution of the Default Escrow Agreement in accordance with the provisions of Article 12.1;
 - (e) provided necessary support and assistance along with timely delivery of documents as may be requested by the Concessionaire for fulfilling Conditions Precedent set out in Article 4.1.2 I; and
 - (f) accorded approval to the appropriate budget proposed by the Concessionaire for (i) acquiring and/or purchasing any land with respect to the Project and/or any adjoining land thereof thereof in accordance with instructions of NMMC; and (ii) any payments to be made for acquiring right of way for transmission of electricity up to the Delivery Point for the purpose of implementation of the Project.

- 4.1.4. Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the stipulated time and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5. The Parties shall notify each other in writing at least once a fortnight on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by NMMC

In the event that (i) NMMC does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Article 4.1.3 II within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire in procuring fulfilment of the Conditions Precedent specified in Article 4.1.2 or due to Force Majeure, NMMC shall pay to the Concessionaire, Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

Provided that in the event of delay by the Concessionaire in procuring fulfilment of the Conditions Precedent specified in Article 4.1.2, no Damages shall be due or payable by NMMC under this Article 4.2 until the date on which Concessionaire shall have procured fulfilment of the Conditions Precedent specified in Article 4.1.3 I.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Article 4.1.3 I within the period specified therein, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Article 4.1.2 by NMMC or due to Force Majeure, the Concessionaire shall pay to NMMC, Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Performance Security, and upon reaching such maximum limit, NMMC may, in its sole discretion, terminate this Agreement.

Provided that in the event of delay by NMMC in procuring fulfilment of the Conditions Precedent specified in Article 4.1.3 II, no Damages shall be due or payable by the Concessionaire specified in Article 4.1.3 I until the date on which NMMC shall have procured fulfilment of the Conditions Precedent specified in Article 4.1.3 II.

4.4 Deemed Termination upon delay

Without prejudice to the provisions of Articles 4.2 and 4.3, and subject to the provisions of Article 9, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, 365 (three hundred and sixty five) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived off, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by NMMC as Damages thereof. Provided that, in case this Agreement is terminated due to the non-occurrence of the Appointed Date within 365 (three hundred and sixty five) days from the date of this Agreement or such extended period, due to any delay or default by NMMC to comply with the provisions of this Agreement, then NMMC shall return the Performance Security in full to the Concessionaire within a period of 45 (forty five) business days, upon receipt of notice in this regard from the Concessionaire.

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense procure finance and undertake the development, operation and maintenance of the Renewable Energy Project Facilities and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder and also maintain all Applicable Permits under Applicable Law for the operation and maintenance of Renewable Energy Project Facilities and generation of power, in full force and effect during the Term of this Agreement.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and other Applicable Permits (including renewals as required), in the performance of its obligations under this Agreement.
- 5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.4 The Concessionaire shall operate and maintain the Renewable Energy Project Facilities in accordance with the Specifications and Standards and the maintenance requirements such that the Availability of 85% (eighty-five per cent) of the Net Dependable Capacity by the Concessionaire as per the schedule provided to the appropriate SLDC and/or RLDC in terms of the Grid Code (the “**Normative Availability**”).

Explanation:

Availability of the Renewable Energy Project Facilities to its full capacity shall, in respect of any hour, mean the capacity of the Renewable Energy Project Facilities to the extent it is offered by the Concessionaire for producing and supplying electrical energy equal to kWh per megawatt (as specified in the DPR) of Contracted Capacity over a period of 1 (one) hour, after accounting for auxiliary consumption, and transmission losses up to the Point of Grid Connection, and for any month or year, as the case may be, the hours during that month or year when the Contracted Capacity of the Renewable Energy Project Facilities is fully available for production of electricity shall be expressed as a percentage of total hours in that month or year, as the case may be, (the “**Availability**”). For the avoidance of doubt, the Parties agree that Availability shall, during the months when Appointed Date or the date of Termination occurs, be determined with reference to the number of days when the Renewable Energy Project Facilities was in operation, and shall be determined likewise for any single day of operation. The

Parties further agree that if the Contracted Capacity of the Renewable Energy Project Facilities is not Available for production of electricity to its full capacity during any hour, or part thereof, not being less than a quarter of an hour, such hour or part thereof shall, in the computation of Availability, be reduced proportionate to the Non-Availability during that hour. The Parties also agree that the determination of Availability hereunder shall be solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Concessionaire for and in respect of scheduling and Despatch of electricity under the Applicable Laws and the rules and regulations thereunder.

5.1.5 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
- (b) procure, or cause to be procured, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Renewable Energy Project Facilities;
- (c) perform and fulfil its obligations in respect of debt service for the Project;
- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (f) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement or Applicable Laws;
- (g) procure that all equipment and facilities comprising the Renewable Energy Project Facilities are operated and maintained in accordance with Good Industry Practice;
- (h) support, cooperate with and facilitate NMMC in the implementation of this Agreement;

- (i) comply with the provisions of Applicable Laws with regard to metering of supply of electricity;
- (j) comply with the directions of MERC issued from time to time under the Act;
- (k) The Concessionaire shall have to appoint agency for obtaining clearances like open access permission, grid connectivity, environment clearances, forest permission etc. through a qualified and experienced agency which may be nominated by the Corporation at its own cost.
- (l) develop an operational philosophy using state of art software for Morbe Dam to maintain the operational water level and install SCADA System in coordination with NMMC and Engineer In-charge;
- (m) It is desired that; the Concessionaire shall construct additional Floating Solar Power Plant Capacity in phased manner at Morbe Dam within a time frame of 5-7 years from signing of this agreement. The capacity of the plant may be decided by the concessionaire after carrying out the detailed feasibility which may be approved by the Corporation in consultation with Independent Engineer.
- (n) The Concessionaire shall have right to construct additional Floating Solar Power Plant more than the requirement of particular phases and earn revenue by selling excess power from such facilities. However, if NMMC demands the power with 3 (three) month's prior notice the Concessionaire shall provide the power without any claims or prejudice.
- (o) It is mandatory for the Concessionaire to provide necessary space between the adjacent groups of future floating structures of at least 50-75 MW in the master plan of Floating Solar, which will provide sufficient exposure of sunlight and air, to the water surface of the reservoir so as to avoid any effect on the aquatic life.
- (p) achieve Commercial Operation Date within (i) 18 (eighteen) months from the Appointed Date (excluding the monsoon period) for the Hydro Electric Power Plant; and (ii) 12 (twelve) months from the Appointed Date (excluding monsoon period) for the Floating Solar Power Plant;
- (q) connect the Generating Station switchyard with the interconnection facilities at the Delivery Point;
- (r) operate the Renewable Energy Project Facilities throughout the term of this Agreement free and clear of encumbrances, except those expressly permitted under this Agreement;

- (s) fulfill all obligations of the Concessionaire set forth in this Agreement; and
- (t) coordinate with the City Engineer of NMMC or its nominated representative to ensure compliance of installation of plant and equipment as per Good Industry Practices.
- (u) pay a license fee of Rs. 1 (Rupee One) per annum to NMMC for granting the license to use the Project Premises under the Indian Easement Act, 1882.

5.2 Obligations relating to Project Agreements

It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.3 Obligations relating to Change in Ownership

- 5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of NMMC.
- 5.3.2 The Concessionaire shall not undertake any Change in Ownership until 1 (one) year of the “Appointed Date”. The transfer of controlling shareholding will however be allowed after 1 (one) year of the “Appointed Date” with the permission of NMMC. Provided that, if after 1 (one) year from the “Appointed Date”, the Concessionaire intends to undertake any Change in Ownership, the Concessionaire shall submit an application to NMMC in this regard and NMMC shall within a period of 45 (forty-five) days from the receipt of such application evaluate and decide such proposal for Change in Ownership, if the new investor meets the eligibility criteria as specified in the RFP.
- 5.3.3 In the event of change in shareholding/substitution of promoters triggered any Lender, leading to signing of fresh power purchase agreement with a new entity, an amount of Rs. 50,00,000 (Rupees Fifty Lakhs) per project per transaction as facilitation fee (non-refundable) shall be deposited by the Concessionaire to NMMC. However, the new entity should be of the same or higher financial strength as the Concessionaire.

5.4 Obligations relating to operation of the Renewable Energy Project Facilities

- 5.4.1 The Concessionaire shall at all times operate the Renewable Energy Project Facilities in accordance with Applicable Laws and the provisions of the Grid Code and shall comply with such directions as the SLDC may give from time to time in accordance with the provisions of the Act.

5.4.2 The Concessionaire shall make an application in favour of NMMC and liaise with the statutory agencies to comply with agreements for interconnection of the Renewable Energy Project Facilities to the grid, sub-stations, pooling stations at the Delivery Point, as the case may be, under and in accordance with Applicable Laws.

5.5 Obligations relating to taxes

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cess and all other statutory charges payable in respect of the Renewable Energy Project Facilities, except royalty charges payable to the irrigation department (which shall be borne by NMMC).

5.6 Obligations relating to reporting requirements

All information provided by the Concessionaire to the SLDC and the RLDC as a part of its operating and reporting requirements under Applicable Laws, including the Grid Code, shall also be provided by the Concessionaire to NMMC, simultaneously.

5.7 Penalties in case of delayed commissioning

5.7.1 Commissioning / Schedule Delivery Date

The Commissioning / Commercial Operation Date of Renewable Energy Project facilities Plant shall be as follows: (i) 18 (eighteen) months from the Appointed Date excluding monsoon period for the Hydro Electric Power Plant; and (ii) 12 (twelve) months from the Appointed Date excluding monsoon period for the Floating Solar Power Plant but shall not exceed time frame of 25 (twenty-five) months except permitted delays.

5.7.2 Delay in Commissioning of the Generating Station

(a) For not achieving the Commercial Operation Date,

NMMC shall encash the Performance Security in the following manner:

- (i) Delay up to 1 (one) month –10% (ten per cent) of the total Performance Security;
- (ii) Delay of more than 1 (one) month and up to 2 (two) months – 20% (twenty per cent) of the total Performance Security in addition to the delay damages payable under (i)
- (iii) Delay of more than 2 (two) months and up to 3 (three) months – 30% (thirty per cent) of the total Performance Security in addition to the delay damages payable under (i) and (ii)

- (iv) Delay of more than 3 (three) and up to 6 (six) months – the remaining Performance Security; and
- (v) Delay in the timelines for over and above 6 (six) months will lead to create the necessary grounds for NMMC to terminate this Agreement.

5.7.3 Commercial Operation Date delayed due to any failure or delay in construction of transmission line or due to Force Majeure.

If the Commercial Operation Date is delayed due to any failure or delay in construction of transmission line or due to Force Majeure, then no penalty shall be imposed on the Concessionaire and NMMC shall not be entitled for any compensation. It is clarified that the entire cost of transmission including cost of construction of line, bay, metering and protection system along with Transmission charges, losses etc. up to the Delivery Point will be borne by the Concessionaire.

5.7.4 Net Dependable Capacity at the Delivery point is less than the Rated Capacity

On event of undertaking of the performance tests prior to the Commercial Operation Date, if the Net Dependable Capacity at the Delivery point is less than the Rated Capacity, Concessionaire shall pay to NMMC an amount of liquidated damages (“**Performance Liquidated Damages**”) of 10% (ten per cent) of agreed Generic Levellised Tariff per kWh (or part thereof) multiplied by the difference (expressed in kW) between the Rated Capacity and the Net Dependable Capacity of the facility as proven by the performance tests. The Parties acknowledge and agree that the Performance Liquidated Damages are payable only once at the Commercial Operation Date and, upon payment, the facility will be deemed to have passed the performance tests (provided that it has passed all requirements of the Performance Tests other than the ability of the facility to achieve a Net Dependable Capacity equal to the Rated Capacity). Further, it is agreed that Performance Liquidated Damages are deemed to constitute a genuine pre- estimate of loss on the part of NMMC arising from detrimental impact upon NMMC’s generation planning as a result of the facility being unable to deliver a Net Dependable Capacity equal to the Rated Capacity

5.7.5 Concessionaire shall, at all times ensure that reasonable safety precautions are taken to ensure the safety of persons and property of the Parties and of third parties when operating, maintaining or repairing the Project Premises.

5.7.6 The Concessionaire shall be responsible for disposal and/or recycling all material related to Floating Solar Power Plant, waste, affluent during the entire Contract Period and after Expiry Date of Contract Period, as required under Applicable Laws. The Concessionaire shall dispose all the material as mentioned in this Article

within 60 (sixty) days from Expiry of the Contract Period to meet its obligation under Articles 18.5, 18.7, 18.9 and 18.11.

ARTICLE 6

OBLIGATIONS OF NMMC

6.1 Obligations of NMMC

- 6.1.1. NMMC shall, at its own cost and expense, undertake, to comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2. NMMC agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide support and assistance to the Concessionaire in procuring the Applicable Permits required from any Government Instrumentality for developing, constructing, implementing, operating and maintaining the Project;
 - (b) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
 - (c) support, cooperate with and facilitate the Concessionaire in the implementation, development, construction, operation and maintenance of the Project in accordance with the provisions of this Agreement, Applicable Laws, Specification and Standards and Good Industry Practices.
- 6.1.3. All expenses including all charges, surcharges and expenses whilst making an application for open access and payment of all security deposits as prescribed under the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016, all losses including transmission loss and/or any other charges levied by MERC and/or any other Government Instrumentality and other duties and taxes in relation to the transmission and distribution beyond the Delivery Point shall be borne by NMMC.
- 6.1.4. All expenses including royalty charges to the irrigation department shall be borne by NMMC as the owner of the Project.
- 6.1.5. NMMC shall ensure and release water as per the approved operational philosophy (as agreed with the Concessionaire) for Morbe Dam in synchronization and shall maintain, at all times, except due to a Force Majeure Event, minimum requisite water level (as specified in the DPR), in the Morbe Dam for operation and maintenance of the Generating Station at Normative Availability.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to NMMC that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) along with its Associates, it has the financial standing and capacity to operate the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date hereof;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association of the Concessionaire or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with all Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate or individually have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Article 5.3; and that its promoters together with their Associates, hold not less than 51% (fifty-one per cent) of its issued and paid up Equity as on the date of this Agreement;
- (l) the Concessionaire and its Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) the Concessionaire is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested NMMC to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) no representation or warranty by it contained herein or in any other document furnished by it to NMMC or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (o) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing or entering into this Agreement or for influencing or attempting to influence any officer or employee of NMMC in connection therewith;
- (p) all information provided by the Concessionaire in response to the Request for Proposals, is to the best of its knowledge and belief, true and accurate in all material respects; and

- (q) all undertakings and obligations of the Concessionaire arising from the Request for Proposals shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 Representations and warranties of NMMC

NMMC represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on NMMC's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects; and
- (g) it shall have good and valid right and actual possession of the Site and has the power and authority to grant a license in respect thereto to the Concessionaire in terms of this Agreement.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

- 8.1.1. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Agreement, Specifications and Standards, Site, existing structures, local conditions, and any information provided by NMMC or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. NMMC makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against NMMC in this regard.
- 8.1.2. The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 8.1.1 above and hereby acknowledges and agrees that NMMC shall not be liable for the same in any manner whatsoever to the Concessionaire, and its Associates or any person claiming through or under any of them.
- 8.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of NMMC to give any notice pursuant to this Article 8.1.3 shall not prejudice the disclaimer of NMMC contained in Article 8.1.1 and shall not in any manner shift to NMMC any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and NMMC shall not be liable in any manner for such risks or the consequences thereof.

Part III
Operations

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1. The Concessionaire shall, for the performance of its obligations hereunder, provide to NMMC before signing of this Agreement, an irrevocable and unconditional guarantee from a scheduled bank for a sum equivalent to Rs. _____ (Rupees _____) in the form set forth in RFP for a period of 37 (thirty-seven) months from the date of its submission.
- 9.1.2. Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon the submission of the Performance Security by the Concessionaire pursuant to this Agreement, NMMC shall release the Bid Security in full, back to the Concessionaire.
- 9.1.3. Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 30 (thirty) days from the date of this Agreement, NMMC may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived off, and to have ceased with the concurrence of the Concessionaire, and this Agreement, shall be deemed to have been terminated with the consent of the Concessionaire.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, NMMC shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which NMMC shall be entitled to terminate this Agreement in accordance with Article 18. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire fails to cure its default or satisfy its Condition Precedent within such Cure Period, NMMC shall be

entitled to encash and appropriate the Performance Security as Damages, and to terminate this Agreement in accordance with Article 18.

9.3 Release of Performance Security

- 9.3.1. NMMC shall release 50% (fifty per cent) of the Performance Security, i.e., Rs. _____ (Rupees _____ Lakhs) after release of 1st (first) instalment of funds by the Lenders in the Escrow Account as per the terms of Financial Model. The remaining 50% (fifty per cent), i.e., Rs. _____ (Rupees _____) Performance Security shall remain in force and effect until expiry of 6 (six) months after the Commercial Operation Date, and shall be released upon the Operational Performance Security taking effect in accordance with the provisions of Article 9.4 and expiry of 6 (six) months after the Commercial Operation Date.
- 9.3.2. As set forth in Article 4.4, in case this Agreement is terminated due to the non-occurrence of the Appointed Date within 365 (three hundred and sixty five) days from the date of this Agreement or such extended period, due to Force Majeure or due to any delay or default by NMMC to comply with the provisions of this Agreement, then NMMC shall return the Performance Security to the Concessionaire within a period of 45 (forty-five) business days, upon receipt of notice in this regard from the Concessionaire.

9.4 Operational Performance Security

The Parties expressly agree that upon release of Performance Security in accordance with the provisions of Article 9.3, the Concessionaire shall submit to NMMC an irrevocable and unconditional guarantee from a scheduled bank located in Navi Mumbai or endorsed by a branch of Bank located in Navi Mumbai and having a validity period until the expiry of the Contract Period in order to secure the Concessionaire's obligations with respect to operation and maintenance of the Project (the "**Operational Performance Security**"). The Operational Performance Security shall be unconditional and irrevocable and shall be equal to 2.5% (two point five per cent) of the sum of Total Monthly Charge multiplied by 6 (six). NMMC shall be entitled to enforce the Operational Performance Security in accordance with Article 9.5 below.

9.5 Appropriation of Operational Performance Security

Upon occurrence of a Concessionaire Default, NMMC shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Operational Performance Security as Damages for such Concessionaire Default. For the avoidance of doubt, the Parties expressly agree that upon the Operational Performance Security being appropriated, in whole or in part, it shall be replenished to the extent of such appropriation.

9.6 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to NMMC, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire, and the amount so determined shall be appropriated from the Performance Security or Operational Performance Security, as the case may be.

- 9.7 The Performance Security of requisite amount shall be submitted by the Concessionaire in 04 (four) Nos. of bank guarantees in the ratio of 10% (ten per cent), 20% (twenty per cent), 30% (thirty per cent) and 40% (forty per cent) (Example – If total Performance Security value is Rs. _____ (Rupees _____). Then 4 (four) bank guarantees of value Rs. _____ (Rupees _____), Rs. _____ (Rupees _____), Rs. _____ (Rupees _____) and Rs. _____ (Rupees _____) are to be submitted).

ARTICLE 10

SYNCHRONIZATION AND COMMERCIAL OPERATIONS

10.1 Synchronized and Integrated Operations

- 10.1.1. The concerned DISCOM/STU shall allow the Concessionaire to interconnect its Generating Station at its switchyard and operate it in synchronization with the DISCOM's/STU's system subject to the terms and provisions of this Agreement. The Concessionaire shall run the Generating Station as a part of integrated system to generate power in synchronization with the grid and shall inject three phase 50 Hz (nominal) AC Supply into DISCOM's/STU's system at an appropriate voltage level.
- 10.1.2. The Renewable Energy Project Facilities shall be connected to the nearest substation at appropriate voltage level as per MERC Regulations.
- 10.1.3. The responsibility of getting connectivity with the transmission system owned by the Discom/STU will lie with the Concessionaire.
- 10.1.4. The entire cost of transmission till the Delivery Point including cost of construction of line, bay, metering and protection system etc. along with transmission charges, losses etc. up to Maharashtra (STU/ DISCOMs substation) will be borne by the Concessionaire.
- 10.1.5. The operation/maintenance of evacuation infrastructure and related system up to Delivery Point shall be the responsibility of the Concessionaire.
- 10.1.6. The Delivery Point shall be located at the substation/grid point of Maharashtra State Transmission Company Limited/concerned DISCOM or any other point mutually decided by the NMMC and the Concessionaire.
- 10.1.7. The Renewable Energy Project Facilities shall be connected to the nearest substation/grid point of Maharashtra State Transmission Company Limited/concerned DISCOM or any other point mutually decided by the NMMC and Concessionaire at the appropriate voltage level as per the Act and regulations of MERC.

10.2 Advance intimation of intend to synchronize the Project to the grid system

- 10.2.1. The Concessionaire shall give the concerned SLDC and DISCOM at least 60 (sixty) days advance written notice, of the date on which it intends to synchronize the Project to the grid system. The Concessionaire will specify the written notice to the NMMC that:

- (a) the Generating Station is constructed in accordance with this Agreement and is ready to deliver Renewable Energy Project Facilities in accordance with the terms hereof;
- (b) all permissions and approvals required for the plant to sell generated Renewable Energy Project Facilities at the rates and terms specified under this agreement have been obtained; and
- (c) all interconnection facilities are available up to the Delivery Point to transmit the Contracted Capacity from the Generating Station.

10.3 Metering

10.3.1. The Concessionaire shall install special energy meters (main and check) at the Delivery Point at its own cost, capable of recording and storing 15 (fifteen) minutes average of all the electric parameters for a minimum of 45 (forty-five) days. Along with installed meter export and import shall be ABT compliant as per Central Electricity Authority (Installation and Operation of Meters) Regulations, 2010, and as amended from time to time.

10.3.2. The meter installed having 0.2S accuracy class or better accuracy and feature having kWh, kVAh, kVAr facility.

10.3.3. The interface metering shall conform to Central Electricity Authority (Installation and Operation of Meters) Regulations, 2010 as amended from time to time. Dedicated CTs and PTs of 0.2S accuracy class or better accuracy shall also be made available by the power producer for their respective meters at the Delivery Point.

10.3.4. The installed meter should comply with following parameters to measure, display and record/log:

- (a) Daily plotting of graphs for various parameter shall also be available on demand i) 15 (fifteen) minute, daily, monthly and annual energy generated by the Hydro Electric system (kWh) and Solar photovoltaic system (kWh).
- (b) Electric system temperature.
- (c) Ambient temperature.
- (d) Electric irradiation/isolation.
- (e) AC and DC side voltage and currents.
- (f) Power factor on AC side.
- (g) DC injection into the grid (one-time measurement at the time of installation).
- (h) Total Current Harmonics distortion in the AC side.
- (i) Total Voltage Harmonic distortion in AC side.
- (j) Efficiency of the inverter.
- (k) Electric system efficiency.
- (l) Display of I-V curve of the Electric system.

- (m) Any other parameter considered necessary by supplier of the Electric system based on prudent practice.

10.3.5. Metering arrangements shall be made by the Concessionaire in consideration with the Guidelines/regulations notified by MERC and NMMC, if any, under the Grid Code.

10.3.6. The Concessionaire shall provide appropriate facility/instrumentation/ metering arrangement to enable remote monitoring of generation.

10.4 Metering Arrangement:

10.4.1. The metering arrangements shall be made by the Concessionaire in consultation with the NMMC and the Maharashtra State Transmission Company Limited keeping in view guidelines/regulations notified by MERC, if any, under Grid Code.

10.4.2. The Concessionaire shall be responsible to operate the Renewable Energy Facilities as envisaged under this Agreement and to provide appropriate facility/instrumentation/ metering arrangement to enable remote monitoring of generation.

10.4.3. All the meters, CTs and PTs as described in Article 10.3 above shall be jointly inspected and sealed on behalf of both the parties and shall not be interfered with except in the presence of the representatives of both parties. For testing and calibration of meters, a notice of at least 7 (seven) days shall be given by the Party requesting the testing to enable the authorized representatives of both the parties to be present.

10.4.4. All meters CTs and PTs shall be jointly checked for accuracy prior to commissioning and once in every 6 (six) months by both the parties and shall be treated as working satisfactorily, so long as the errors are within the limits prescribed for such meters. Testing of the main and the check metering equipment shall be carried out at the cost of the Concessionaire.

10.4.5. Meter readings of the main meter at the Delivery point will form the basis of billing, so long as the half yearly checks thereof are within the prescribed limit. If either of the meters is found to be defective during these checks, they will be immediately calibrated.

10.4.6. Where the half yearly check indicates errors in the main meters beyond the prescribed limit but no such error is noticed in the check meters, billing for the month up to the date and time of such test check will be done on the basis of check meters and the main meters will be re-calibrated immediately. Billing for the period after the main meters are calibrated shall be as per the calibrated meters.

- 10.4.7. If during the half yearly checks, both the main meters and check meters at the Delivery Point are found to be beyond the permissible limit of error, the meters shall be immediately recalibrated and the correction shall be applied to the consumption registered by the main meters to arrive at the correct consumption of energy for billing purposes for the period of the month up to the time of such check, billing for the period thereafter till the next monthly meter reading shall be measured by recalibrated main meters.
- 10.4.8. Corrections in billing, wherever necessary, shall be applicable to the period between date and time of the previous test calibration and the date and time of the test calibration in the current month when the error is observed and this correction shall be for the full value of the absolute error. For the purpose of the correction to be applied, the meter shall be tested at 100% (one hundred per cent), 75% (seventy-five per cent), 50% (fifty per cent), 25% (twenty-five per cent) and 10% (ten per cent) load at unity, 0.85 lag and 0.75 lag power factors. Out of these 15 (fifteen) values, the error at the load and power factor nearest to the average monthly load served at the point during the period shall be taken as the error to be applied for correction.
- 10.4.9. Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement and the operation of the Generating Station. Among such other records and data, the Concessionaire shall maintain an accurate and up-to-date operating log at the Generating Station with records of-
- (a) 15 (fifteen) minutes logs of real and reactive power generation, frequency, transformer tap position, bus voltage(s), main meter and check meter readings and any other data mutually agreed.
 - (b) Any unusual conditions found during operation / inspections.
 - (c) Chart and print out of event loggers, if any, for system disturbances/outages.
- 10.4.10. The reading of this meter shall be taken at 00.00 hrs (or at some other mutually agreed time) on the 1st (first) day of each month.

10.5 Dispute regarding metering

- 10.5.1. All the issue/dispute regarding metering shall be settled by the parties amicably.
- 10.5.2. If the dispute is not settled within 21 (twenty one) days of such discussion, then either party may refer the same for Arbitration as per Article 22.3.
- 10.5.3. The meters shall be calibrated and sealed from reputed government. testing laboratory once in every 2 (two) years and subsequently calibration report will be submitted to NMMC.

- 10.5.4. In addition to above provision regarding metering, the generating company has to comply with the Grid Code (metering code section).
- 10.5.5. All meters need to be SCADA controlled with power dashboard to be installed at the premises of NMMC as may be communicated by NMMC.

Part IV

Financial Covenants

ARTICLE 11

TARIFF

11.1 Energy Purchase and Sale

- 11.1.1 All the Delivered Energy at the Delivery Point for sale to NMMC will be purchased at the Tariff provided for in Article 11.1.2 from and after the respective Commercial Operation Date of the Project. The title of the Delivered Energy purchased shall pass from the Concessionaire to NMMC at the Delivery Point.
- 11.1.2 The NMMC shall pay a Tariff of Rs. ____ (Rupees _____)/kWh (“**Tariff/Generic Levellised Tariff**”) arrived through competitive bidding based on the bidding guidelines issued vide RFP no. _____ Dated _____.
- 11.1.3 The Tariff payable by NMMC will be inclusive of all taxes, duties and levies, calculated up to the Delivery Point which shall be borne by the Concessionaire. The above tariff and applicable conditions would remain constant for the “Contract Period”, subject to provision of “Change in Law” provided in Article 20.
- 11.1.4 All the Delivered Energy with respect to Floating Solar Power Plant during the interim period till the Hydro Electric Power Plant is commissioned, shall be purchased by NMMC at the per unit rate determined through Financial Model for Floating Solar Power Plant.
- 11.1.5 NMMC, at any time, during a contract year will purchase electricity at the Tariff mentioned at Article 11.1.2 above from the Concessionaire up to the Contracted Capacity. Beyond the said quantum; the electricity will be purchased at 75% (seventy-five per cent) of the Tariff mentioned at Article 11.1.2 for the entire Contract Period, provided the generation is from the approved Contracted Capacity and in accordance to scheduling as per Article 13. Excess Power shall be after set-off shall be banked with the Distribution Licensee and all benefits shall be accrued by NMMC as per Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016.
- 11.1.6 In case the Concessionaire fails to maintain generation so as to achieve (-5%) of the Normative Availability, then it will be liable to pay to NMMC, penalty for the shortfall in availability below the Normative Availability. The amount of such penalty will be in accordance with the terms of this Agreement, which shall ensure that NMMC is offset for all potential costs associated plus 20% (twenty per cent) of the applicable Tariff with low generation and supply of power under the PPA, however, this compensation shall not be applicable in event of Force Majeure identified under this Agreement, affecting supply of electricity by the Concessionaire.

- 11.1.7 The Concessioner shall be permitted for full commissioning of the Renewable Energy Facilities even prior to the Commercial Operation Date. In case of early commissioning till COD, NMMC shall purchase the delivered energy till COD, at 105% (One Hundred and five per cent) of the PPA tariff. Provide the generation is from the approved Installed Capacity and in accordance to scheduling as per 11.1.2 and 11.1.3.
- 11.1.8 All regulations of MERC/CERC/MEDA & Amendments thereto from time to time shall be applicable.

11.2 Declaration of Availability

- 11.2.1 Unless otherwise notified by the Concessionaire, the declared Availability shall, be deemed to be 100% (one hundred per cent) thereof at all times.
- 11.2.2 In the event that any shortfall in supply of electricity to NMMC occurs on account of any deficiency in transmission beyond the Delivery Point, the Availability shall be deemed to be reduced to the extent of reduction in transmission of electricity, and the reduction referred to hereinabove shall be deemed as Non-Availability.
- 11.2.3 The Concessionaire shall notify, no later than 15 (fifteen) days prior to the commencement of a month, its maintenance schedule for that month and any reduction in Availability arising as a result thereof to RLDC/ SLDC/ NMMC. The Concessionaire shall, as soon as may be, notify any modifications of its maintenance schedule and shall confirm, with or without modifications, the reduction in Availability no later than 48 (forty-eight) hours prior to its occurrence.
- 11.2.4 In the event that the Availability at any time is determined to be lower than 100% (one hundred per cent) of the Normative Availability or the reduced Availability notified hereunder, an event of mis-declaration of Availability (the “**Mis-declaration**”) shall be deemed to have occurred. In such an event, the Availability for the relevant month shall, for the purposes of payment of Total Monthly Charges, be deemed to be reduced by the same proportion that Availability bears to Mis-declaration, as if the Mis-declaration had occurred only for the period of 1(one) month. For the avoidance of doubt, the Parties agree that deductions on account of Mis-declaration shall be made from the subsequent payments due to the Concessionaire under this Agreement.
- 11.2.5 Notwithstanding the provisions of Article 11.5.5, any reduction in Availability arising out due to an Emergency, scheduled maintenance, non-scheduled electricity outage or a Force Majeure Event shall not be deemed to be Mis-declaration if the Concessionaire shall have notified NMMC of such event.

11.3 Incentive and Damages

In the event that the Availability in any month exceeds the Contracted Capacity, the Concessionaire shall, be entitled to an Incentive which shall be calculated and paid at the rate of 75 % (seventy-five per cent) of the Tariff for the excess power units generated for Availability in excess of Contracted Capacity subject to the prior agreement distribution licensee.

Provided, however, that any Incentive hereunder shall be due and payable only to the extent of Despatch of the Renewable Energy Project Facilities. For the avoidance of doubt and by way of illustration, in the event the Availability in any month shall exceed the Contracted Capacity by 3% (three per cent) but the Despatch recorded at the Delivery Point during that month shall exceed 1% (one per cent) of the Contracted Capacity; the Incentive payable hereunder shall be restricted to such 1% (one per cent) only.

- 11.3.1 In the event that Availability in any month is less than the Normative Availability except in cases of Emergency, Force Majeure and scheduled maintenance, the Total Monthly Charge for such month shall be reduced to the extent of shortfall in Normative Availability and in addition, any reduction below the Normative Availability shall be multiplied by a factor of 0.25 (zero point two five) to determine the Damages payable for such reduction in Availability.
- 11.3.2 The Parties expressly agree that within 30 (thirty) days of the close of every Accounting Year, the cumulative monthly Availability for such year shall be determined and the Incentive or Damages, as the case may be, shall be computed with reference to the Normative Availability for that year. The amount so arrived at shall be adjusted against the Incentives or Damages determined for the respective months of the year and the balance remaining shall be adjusted in the following Monthly Invoice.
- 11.3.3 Provided also that, if the Concessionaire fails to achieve the Normative Availability in 2 (two) consecutive months, the NMMC shall be recover to a penalty equal to the amount provided in the settlement of deviation at the injection point in case of non-firm power shall be governed as per provisions specified under Maharashtra Electricity Regulatory Commission (Deviation Settlement Mechanism & related matters) Regulations, 2019 and as identified under the mechanism operating in Maharashtra from time to time. The penalty shall be recovered from Total Monthly Payment to concessionaire in subsequent month bills.

11.4 Taxes and duties

- 11.4.1 The Parties expressly agree that the Tariff shall be inclusive of all taxes and duties applicable in accordance with prevailing laws in force and calculated up to the Delivery Point.

11.4.2 The Tariff and Incentives payable by NMMC under this Article 11 shall be inclusive of all taxes and duties, or any replacement thereof, if applicable,

11.4.3 Any payment to be made by NMMC shall be subject to any tax deduction at source, if required to be made by NMMC as per Applicable Laws.

11.5 Billing and Payment

11.5.1 NMMC shall pay the amount payable under the Monthly Bill by the Payment Due Date to such designated bank account of the Concessionaire. The Concessionaire shall provide the necessary account details in advance to NMMC in this regard. The Monthly Bill shall be calculated in accordance with the following:

The readings of the meters (supplying power to grid and for captive consumption of plant) would be taken jointly by representatives of NMMC (not below the rank of AE/EE) and the Concessionaire at 00:00 hrs. (or at some other mutually agreed time,) on the 1st (first) day of each month.

11.5.2 Billing Procedure and Payments: The invoice shall be delivered through by hand or by post or by e-mail by the Concessionaire to NMMC at its designated office on or before the 5th (fifth) day of the succeeding month hereinafter referred to as the “**Invoice Date**”. NMMC shall make the payment of such invoice within the 30th (thirtieth) day (or if such day is not a business day, then immediate succeeding business day) from the Invoice Date (“**Payment Due Date**”) through RTGS/NEFT or any other electronic mode of payment.

11.5.3 In case payment of invoices is made before the Payment Due Date, the NMMC shall be entitled for rebate as follows:

In case the payment is made on the 5th (fifth) day after a monthly energy bill or a supplementary bill is received by the NMMC through by hand / by post/ e- mail or if 5th (fifth) day is not a business day, the immediately the succeeding business day) by which date such bill is payable by NMMC, a rebate of 1% (one per cent) shall be the ‘X’+5 day, where ‘X’ is the date of receipt of bill by the NMMC.

11.5.4 Late payment surcharge – In case the payment of any bill is delayed beyond 30 (thirty) days (or if such a day is not a business day, then immediately succeeding business day) from the date of its receipt in the NMMC, the NMMC would pay late payment surcharge @ 1.25% (one point twenty-five per cent) per month for the actual period of delay.

If at any time either Party feels that the meter is not recording correctly, it shall give notice to the other Party. The Concessionaire shall then undertake testing and calibration of meters owned by the Power producer and located at metering interface points in co-ordination with and in the presence of the representatives of

NMMC. The charges for testing of the meters shall be borne by the party, who gives the call.

- 11.5.5 The Concessionaire shall raise monthly invoice/bill on the basis of joint meter reading (JMR) along with MRI to NMMC for the energy sold at Delivery Point by the Concessionaire at the Tariff as described in Article 11.1 (“**Monthly Invoice**”).
- 11.5.6 In case of Dispute on any of the bills, the NMMC shall notify the Concessionaire of any disputed amount of bills and the Concessionaire shall rectify the errors/shortcomings or otherwise notify its rejection of the disputed amount with reasons thereto within 21 (twenty-one) days of the reference of NMMC. The NMMC shall however on demand will make the payment of undisputed part of the bill and for the disputed part; the parties shall try to settle amicably. If the dispute is not settled during such discussion, then either party may refer the same for Arbitration as per Article 22.3.
- 11.5.7 The Concessionaire would be entitled to draw power from the distribution/transmission licensee network during shutdown/start up and synchronization of the Generating Station or during any other Emergencies.
- 11.5.8 The supply availed would be billed by NMMC at the tariff applicable to HT industry at the time of raising the bill invoice. The accounting of import of units along with tariff of HT industry will be checked and verified by concerned sub divisional officer and the same shall be submitted along with the Joint Meter Reading to the office of NMMC

11.6 Disputed Amounts

- 11.6.1 NMMC shall, within 10 (ten) days of receiving an invoice, notify the Concessionaire of the Disputed Amounts, with particulars thereof. Within 7 (seven) days of receiving such notice, the Concessionaire shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. NMMC may, if necessary, meet a representative of the Concessionaire for resolving the dispute and in the event that the dispute is not resolved amicably, within 21 (twenty-one) days of such meeting, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment for the purposes of payment of interest thereon. For the avoidance of doubt, NMMC shall be entitled to raise a dispute regarding any Disputed Amounts, whether due or already paid in accordance with this Agreement, at any time.
- 11.6.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due

under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Article 24.4.

11.7 Continuity of Service

- 11.7.1 The NMMC may require the Concessionaire to temporarily curtail or interrupt delivery of energy when necessary in the following circumstances:
- 11.7.2 For inspection, repair, maintenance, replacement and removal to its transmission/Distribution network and associated equipment's of NMMC/STU/DISCOMS equipment or any part of its system that is associated with the Concessionaire's facility.
- 11.7.3 If the NMMC/STU/DISCOM's SLDC determines that the continued operation of the facility may endanger the safety of the NMMC/STU/DISCOM personnel or integrity of the NMMC/STU/DISCOM electric system or have adverse effect of the electric service to the NMMC/STU/DISCOM/other customer(s) leading to back down of the generation.
- 11.7.4 Any Force Majeure conditions of the NMMC/STU/DISCOMS which affects the generation of the plant.
- 11.7.5 Instructions for the disconnection of the generation facility from the NMMC/STU/DISCOM system shall be notified with the reasons and approved by SLDC for the period/duration indicated by it. However, the NMMC/STU/DISCOMS shall take all the reasonable steps to minimize the number and duration of such interruptions, curtailments or reductions.
- 11.7.6 Provided that in case of Non-Availability or instruction from NMMC/Maharashtra State Transmission Company Limited/DISCOMS as highlighted above, the Concessionaire shall be compensated by an extension of the Contract Period as set forth in Article 16.6.2 of this Agreement, for a period equal in length to the period during which the Concessionaire was prevented from generating or transmitting electricity on account thereof.

11.8 Verification of Renewable Energy Project

- 11.8.1 The third party sale of power is not permitted.
- 11.8.2 The Concessionaire will maintain a record of power generation, incident Electric radiation on the array surface, Availability and other technical features of the Generating Station for the Contract Period. The copy of the data should also be available in electronic form and shall be sent to NMMC monthly. This record will also be made available readily for verification/audit purposes, if required.

11.9 Project Consultant or Independent Engineer

11.9.1 The Concessionaire shall be further required to provide entry to the Project Premises at all times during the Contract Period to NMMC and any third party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the Concessionaire at the Project Site of the Renewable Energy Project Facilities. Provided that, NMMC and/or third party nominated by the Government Instrumentality shall adhere to the Concessionaire's health, safety, security and environment requirements displayed at the Project Premises.

11.9.2 The third party or NMMC may verify the construction works/operation of the Renewable Energy Project Facilities being carried out by the Concessionaire and if it is found that the construction works/operation of the Renewable Energy Project Facilities is not as per the Good Industry Practices, it may seek clarifications from Concessionaire or provide such instructions to the Concessionaire as may be necessary for such compliance.

11.9.3 NMMC shall appoint an Independent Engineer. The broad scope of work of Independent Engineer shall be as follows but not limited to mentioned below.

11.9.3.1 Role and functions of the Independent Engineer

11.9.3.1.1 The role and functions of the Independent Engineer shall include the following:

- review of the Documents as set forth in Article 19.9.3.3 (Construction Period) mentioned below;
- review, inspection and monitoring of Construction Works as set forth in Article 19.9.3.3 (Construction Period) mentioned below;
- witness Tests as set forth in Article 19.9.3.3 (Construction Period) mentioned below;
- review, inspection and monitoring of O&M as set forth in Article 19.9.3.4 (Operation Period);
- determine the Project Facilities Completion Schedule;
- conducting tests on completion of construction and issuing Completion Certificate;
- determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;

- determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- assisting the Parties in resolution of Disputes; and
- undertaking all other duties and functions in accordance with the Agreement.

11.9.3.1.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

11.9.3.2 Development Period

- During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from the site, topological surveys, and bathymetry survey. The Independent Engineer shall complete such review and send its comments/observations to NMMC and Concessionaire within 15 (fifteen) days of receipt of such drawings. In particular, such comments shall specify the conformity or otherwise of such drawings with the Scope of the Project and Specifications and Standards.
- The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments with 15 (fifteen) days of receipt thereof.
- The Independent Engineer shall review any modified drawings or supporting documents sent to it by the Concessionaire and furnish its comments within 7(seven) days of receiving such drawings or documents.
- Upon reference by NMMC, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project and furnish its comments within 7 (seven) days from receipt of such reference from NMMC.

11.9.3.3 Construction Period

- The Independent Engineer shall undertake a review of the Documents to be furnished by the Concessionaire for construction of the Power Plant and send its comments/observations to NMMC within 15 (fifteen) days of receipt of such Documents. In particular, such comments shall specify the conformity or otherwise of such Documents with the Scope of the Project and Specifications and Standards. The Independent Engineer shall review any modified

Documents sent to it by the NMMC in pursuance thereof and furnish its comments within 7 (seven) days of receiving such Documents.

- The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to NMMC within 7 (seven) days of receipt of such report.
- The Independent Engineer shall inspect the Construction Works and equipment once every month, and make out a report of such inspection (the “Inspection Report”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted and conformity of Construction Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Power Plant or in the equipment. The Independent Engineer shall send a copy of its Inspection Report to NMMC within 7 (seven) days of the inspection.
- The Independent Engineer may inspect the Power Plant more than once in a month if any lapses, defects or deficiencies require such inspections.
- The Independent Engineer shall witness all the standard tests prior to recommendation of Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Article 19.9.3.3 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of this Agreement.
- In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards as per the Power Procurement Agreement.
- In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to NMMC and the Concessionaire forthwith.

- If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify NMMC and Concessionaire of the same.

11.9.3.4 Operation Period

- The Independent Engineer's term shall be during execution period plus minimum 2 (two) years from the successful commissioning of the plant, which may be extended with mutual consent of NMMC, Concessionaire and Independent Engineer.
- In respect of the Documents received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Article 19.9.3.2 (Development Period) shall apply, mutatis mutandis.
- The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to NMMC within 15 (fifteen) days of receipt of the Maintenance Programme.
- The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to NMMC within 7 (seven) days of receipt of such report.
- The Independent Engineer shall inspect the Power Plant, once every six months, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators and Maintenance Requirements. The Independent Engineer shall send a copy of its O&M Inspection Report to NMMC within 7 (seven) days of the inspection.
- The Independent Engineer may inspect the Power Plant more than once in a quarter, if any lapses, defects or deficiencies require such inspections.
- The Independent Engineer shall examine the request of the Concessionaire for closure of any section of the Power Plant comprising Contracted Capacity for undertaking maintenance/repair thereof, keeping in view the need to minimize disruption in generation and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such section, and in case of delay, determine the Damages payable by the Concessionaire as per Power Procurement Agreement.

- The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Power Procurement Agreement.

11.9.3.5 Fee and Expenses

- In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development, Construction and Operation period, the payment to the Independent Engineer shall be equally divided amongst NMMC and the Concessionaire in accordance with the provisions of this Agreement. The NMMC shall/may recover the pro-rated costs payable to the Independent Engineer as Remuneration from amounts payable to the Concessionaire or vice a versa if not paid by any or both the parties. Fees shall be paid on monthly basis at prevailing rates of the NMMC for similar consulting/PMC works.

ARTICLE 12

PAYMENT SECURITY

12.1 Default Escrow Account

NMMC and the Concessionaire shall, prior to the Appointed Date, execute a default escrow agreement with NMMC's bank substantially in the form specified in Schedule-B (the "**Default Escrow Agreement**") for the establishment and operation of the default escrow account (the "**Default Escrow Account**"). The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank (the "**Default Escrow Bank**") where the Payment Security Fund due to the Concessionaire based on Tariff is normally deposited. All charges and fees levied by the Default Escrow Bank with respect to the Default Escrow Account shall be borne by the Concessionaire. NMMC expressly agrees and undertakes that throughout Contract Period, an amount of not less than 6 (six) times of the Total Monthly Charge payable to the Concessionaire based on Tariff, shall be deposited and maintained by NMMC in such Default Escrow Account. In case NMMC fails to maintain or replenish such Payment Security Fund maintained in the Default Escrow Account, then it will be regarded as an NMMC Default in terms of Article 18.2.1 of this Agreement. The Concessionaire and/or Lenders shall have the right to recover any unpaid dues, unpaid Monthly Bills, including any penalties and damages payable by NMMC under this Agreement, from the Default Escrow Account, by giving a 48 (forty-eight) hours prior notice to NMMC. As per the terms of the Default Escrow Agreement, the Default Escrow Bank shall provide to NMMC and/or the Concessionaire, no later than the 15 (fifteen) days from the end of each month or at any such time as requested either by NMMC and/or the Concessionaire, a statement of accounts detailing all deposits and withdrawals into and from the Default Escrow Bank during the previous month. The Lenders and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Default Escrow Bank providing inter alia, for detailed procedures and documentation for withdrawals from the Sub-Accounts (as defined under the Default Escrow Agreement). The Tariff shall be deposited by NMMC in the specified Sub-Account, i.e., the 'project proceeds Sub-Account', and the Payment Security Fund shall be deposited in different Sub-Account, i.e., the 'payment security Sub-Account'. The Concessionaire shall be entitled to create charge over the Default Escrow Account, all the Sub-Accounts and the monies lying to the credit of Default Escrow Account and various Sub-Accounts (including the 'payment security Sub-Account').

12.2 Recovery from the sale of Contracted Capacity

12.2.1. In the event the Concessionaire is unable to recover its Tariff through the Default Escrow Account, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 57 (fifty-seven) days from the Payment Due Date, then

notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall have the right to sell the whole or part of the Contracted Capacity to any Buyer for recovery of its dues from NMMC. For the avoidance of doubt, the Parties expressly agree that the Concessionaire shall be entitled to appropriate the Revenues from sale hereunder for recovering the Tariff due and payable to it for sale of such Contracted Capacity to NMMC and the surplus remaining, if any, shall be appropriated for recovery of its dues from NMMC.

12.2.2. The sale of Contracted Capacity pursuant to Article 12.2.1 shall not extinguish any liability of NMMC or any claim that the Concessionaire may have against NMMC, save and except to the extent of amounts recovered under the provisions of Article 12.2.1.

12.2.3. Supply of electricity to NMMC in accordance with the provisions of this Agreement shall be restored no later than 7 (seven) days from the day on which NMMC pays, or is deemed to have paid, the arrears due to the Concessionaire in accordance with the provisions of this Agreement, and restores the Default Escrow Account.

12.3 Payment security for Termination

The Parties agree and acknowledge that upon Termination and on failure of NMMC to make the Termination Payment within 30 (thirty) days of demand by the Concessionaire, Revenues equal to the Total Monthly Payment based on Tariff, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and paid to the Concessionaire until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, NMMC expressly agrees and undertakes that it shall continue to restore the Default Escrow Account with the Payment Security Fund until its liability with respect to Termination Payment is fully discharged.

ARTICLE 13

SCHEDULING AND DESPATCH OF CONTRACTED CAPACITY

13.1 Despatch of Contracted Capacity

- 13.1.1 The Concessionaire shall in accordance with Applicable Laws including the Grid Code and the Act, schedule the production of electricity and despatch thereof to the Grid as per the schedule provided by the Concessionaire to the RLDC and/or the SLDC (the “**Despatch**”). Provided that the Concessionaire shall not Despatch in excess of the Contracted Capacity, unless mutually agreed between the Parties. For the avoidance of doubt, the Parties agree that NMMC may, in its discretion, direct the Concessionaire to Despatch on its behalf, all or part of the Contracted Capacity, in favour of the third parties designated by it from time to time (with prior intimation of 3 (three) business days to the Concessionaire) on the express understanding that the payment therefor shall be made by NMMC to the Concessionaire as if the electricity has been Despatched in favour of NMMC.
- 13.1.2 Pursuant to the provisions of Article 13.1.1, the Concessionaire shall plan the production and Despatch of electricity and convey its availability for scheduling thereof to the appropriate SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Act.
- 13.1.3 In the event the Concessionaire schedules any electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement, the Concessionaire shall pay Damages equal to the higher of: (a) twice the entire sale revenue accrued from Buyers.

13.2 Overriding powers of NMMC

- 13.2.1 NMMC may issue directions to the RLDC and the SLDC (with a copy to the Concessionaire) to undertake Despatch and scheduling in accordance with such instructions as NMMC may issue hereunder from time to time, which shall be adhered to by the Concessionaire. Provided that such instructions of NMMC shall not be in contravention to Article 13.1.1.
- 13.2.2 The Concessionaire shall, prior to the Appointed Date, furnish a certified true copy of this Agreement to the RLDC and SLDC and obtain a receipt thereof. By furnishing a copy of this Agreement to the RLDC and SLDC, the Concessionaire shall be deemed to have agreed and undertaken to abide by the provisions of this Article 13 and to have given irrevocable instructions to the RLDC and SLDC to carry out all the directions given by NMMC hereunder. For the avoidance of doubt, the Parties expressly agree that the provisions of this Article 13.2 shall remain in force and effect until the Termination Payment, if any, has been made by the Concessionaire to NMMC.

13.2.3 The exercise of any overriding powers by NMMC under this Article 13.2 shall not in any manner affect or diminish the liability and obligation of NMMC to make payments to the Concessionaire for the electricity supplied or the Availability of Contracted Capacity and NMMC shall, for this purpose, ensure and procure compliance of the provisions of Article 13. Notwithstanding anything to the contrary contained in this Article 13.2, NMMC shall not be entitled to issue any directions hereunder nor shall the RLDC and SLDC comply with such directions to the extent and for the period during which NMMC is in material breach of the provisions of Article 13 or of its payment obligations to the Concessionaire under this Agreement.

13.3 Ramp up of Despatch

In the event NMMC, at any time, requires ramping up of generation of the Hydro Electric Power Plant, it shall allow a period defined in the detailed project report (approved and vetted by MEDA or third party auditor) to the Concessionaire for reaching Availability equal to the Contracted Capacity. For the avoidance of doubt, the Parties agree that in the event the Concessionaire fails to reach such Availability within the stipulated time period, the shortfall thereof shall be deemed to be Mis-declaration under the provision of Article 11.2.4. The Parties further agree that the liability of NMMC hereunder, shall at all times be reckoned with reference to the Contracted Capacity.

13.4 Scheduling

13.4.1 Concessionaire shall prepare a yearly and quarterly water release hydraulic model from dam taking into factors of quantity and time of release of water and management of water levels in the dam which shall be as specified in the DPR.

13.4.2 The Concessionaire shall develop an operational philosophy for synchronization using state of art software to maintain the operational water level and install SCADA System in coordination with NMMC and Engineer In-charge.

13.4.3 A joint coordination committee of senior engineers of NMMC and the Concessionaire shall monitor the implementation of water levels and release in accordance to the dynamic model. Any deviation and disputes in this regard shall be escalated to the administrative levels with immediate effect and shall be tried its best to resolve in maximum 3 (three) days.

13.4.4 The Concessionaire shall be allowed to install independent SCADA mechanism (hardware and software) to monitor the water release hydraulic model with an interface to NMMC.

13.5 Operation of facility in Emergencies

13.5.1 The Concessionaire shall operate the facility in excess of Concessionaire's prevailing reported Availability for the facility or outside the operating characteristics or in a manner that would, in normal circumstances, be contrary to Good Industry Practices:

- (a) if so instructed by NMMC in an Emergency; and
- (b) where NMMC reasonably believes that such action is necessary to help preserve the security, reliability or integrity of the transmission system.

ARTICLE 14

INSURANCE

14.1 Insurance during the Contract Period

The Concessionaire shall effect and maintain at its own cost, such insurances for such maximum sums as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on NMMC as a consequence of any act or omission of the Concessionaire during the Contract Period.

14.2 Insurance Cover

Without prejudice to the provisions contained in Article 14.1, the Concessionaire shall, during the Contract Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) loss, damage or destruction of the Project Assets at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of NMMC or others caused by the Project;
- (c) the Concessionaire's general liability arising out of this Agreement;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

14.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 14 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to NMMC, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to NMMC .

14.4 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, NMMC shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

14.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 14 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, NMMC, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

14.6 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, NMMC and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible Articles in or inadequacy of limits of any such policies of insurance.

14.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall, notwithstanding anything to the contrary contained in Article 18.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or development of the Renewable Energy Project Facilities.

14.8 Lenders as Loss Payees

The Parties acknowledge and agree that the Lenders or any person nominated by them shall be designated as loss payee under the Insurance Cover.

ARTICLE 15

ACCOUNTS AND AUDIT

15.1 Audited accounts

15.1.1. The Concessionaire shall maintain books of accounts recording all its receipts (including Tariff, Revenues from sale of power to NMMC , other Distribution Licensees and Buyers and all incomes derived/collected by it from or on account of the Renewable Energy Project Facilities and/or sale of electricity from the Renewable Energy Project Facilities), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. NMMC shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to NMMC for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

15.1.2. The Concessionaire shall, within 30 (thirty) days of the close of each Accounting Year, furnish to NMMC its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India.

15.1.3. On or before the 31st (thirty first) day of May each Accounting Year, the Concessionaire shall provide to NMMC, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) receipts on account of Tariff, (b) Revenues from sale of electricity to other Distribution Licensees and Buyers, and (c) such other information as NMMC may reasonably require.

15.2 Appointment of auditors

15.2.1. The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors, a firm of chartered accountants, suggested by the Concessionaire and acceptable to NMMC. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

15.2.2. The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to NMMC, subject to the replacement Statutory Auditors being appointed in the manner specified in Article 15.2.1.

15.2.3. Notwithstanding anything to the contrary contained in this Agreement, NMMC shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) of chartered accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

15.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to NMMC in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

15.4 Set-off

In the event any amount is due and payable by NMMC to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by NMMC of its rights under this Article 15.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

15.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by NMMC by recourse to the Dispute Resolution Procedure.

Part V

Force Majeure and Termination

ARTICLE 16

FORCE MAJEURE

16.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, mean occurrence in India of any or all of Non- Political Event, Indirect Political Event and Political Event, as defined in Articles 16.2, 16.3 and 16.4 respectively, if it affects the performance by NMMC or the Concessionaire claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

16.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, draught, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Station Premises);
- (b) pandemic (e.g. COVID 19) or any consequent lockdown or restriction on the movement of manpower and machinery imposed by the relevant Government Instrumentality;
- (c) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Renewable Energy Project Facilities for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 16.3;
- (d) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any delay or failure of an overseas contractor to deliver equipment in India, if such delay or failure is caused outside India by any event specified in Sub-

Article (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by such contractor;

- (f) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by NMMC;
- (g) the discovery of geological conditions, toxic contamination or archaeological remains on the Station Premises that could not reasonably have been expected to be discovered through an inspection of the Station Premises; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

16.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents generation or transmission of electricity by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (f) any Indirect Political Event that causes a Non-Political Event; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

16.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 20 and its effect, in financial terms, exceeds the sum specified in Article 20.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire, or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire, or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

16.5 Duty to report Force Majeure Event

16.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 16 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement; and
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and any other information relevant to the Affected Party's claim.

16.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

16.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 16.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

16.6 Effect of Force Majeure Event and Non-Availability of Transmission/Distribution Infrastructure (beyond the Delivery Point) on the Agreement

16.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Article 4.1 for fulfilment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

16.6.2 If any force Majeure Event occurs at any time after the Appointed Date, whereupon the Concessionaire is unable to transmit electricity to the Grid despite making best efforts or it is directed by NMMC, RLDC or SLDC or any Government Instrumentality to suspend generation or transmission during the subsistence of such Force Majeure Event, Non-Availability including the unavailability of the transmission or distribution system of Maharashtra State Transmission Company Limited and/or the respective DISCOM or due to any other reasons (other than any Concessionaire Default) due to which NMMC is unable to offtake the Delivered Energy beyond the Delivery Point, then the Contract Period shall be extended for the Renewable Energy Project Facilities (which have a useful life beyond the Expiry Date), by a period equal in length to the period during which the Concessionaire was prevented from generating or transmitting electricity on account thereof and to compensate for the lost Units during such Force Majeure Event; provided that in the event of reduction in generation on account of partial inability or suspension, as the case may be, which cause the Availability on any day to decline below 80% (eighty per cent) of the Normative Availability, NMMC shall extend the Contract Period in proportion to the loss of Availability due to Force Majeure. For the avoidance of doubt, loss of 25% (twenty-five per cent) of Availability for 4 (four) days shall entitle the Concessionaire to extension of 1 (one) day in the Contract Period.

16.7 Allocation of costs arising out of Force Majeure

16.7.1 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Contracted Capacity of the Renewable Energy Project Facilities (the “Force Majeure Costs”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event and Indirect Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and
- (b) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by NMMC to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Tariff, Revenues from sale of electricity to other Distribution Licensees and Buyers, or debt repayment obligations.

16.7.2 Notwithstanding anything contained in this Article 16.7, if during the occurrence of a Force Majeure Event, the Contracted Capacity is deemed Available in accordance with the provisions of Article 5.1.4, NMMC shall not be liable to make any payments towards Force Majeure Costs in respect thereof to the Concessionaire under this Article 16.7.

Save and except as expressly provided in this Article 16, neither Party shall be liable to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

16.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 16, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days’ time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

16.9 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event, provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence;
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder; and
- (d) the contract period shall be extended for this Force Majeure Event.

16.10 Relief for Unforeseen Events

16.10.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person and such unforeseen event has a Material Adverse Effect on either Party for satisfaction of their respective material obligations under this Agreement (the “**Unforeseen Event**”), in such cases the affected Party may by notice inform the other Party of the occurrence of such an Unforeseen Event with the particulars thereof and its effects on the costs, expense and Revenues of the Renewable Energy Project Facilities. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such an Unforeseen Event has occurred, and upon reaching agreement on accordance thereof deal with it in accordance with the provisions of this Article 16.10.

16.10.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise 1 (one) member each to be nominated by both Parties from among persons who have been Judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

16.10.3 The conciliation tribunal referred to in Article 16.10.2 shall conduct its proceedings in accordance with the provisions of Article 22 as if it is an arbitration proceeding under that Article, save and except as provided in this Article 16.10.

16.10.4 The conciliation tribunal referred to in this Article 16.10 shall conduct preliminary proceedings to satisfy itself that:

- (a) an Unforeseen Event has occurred;
- (b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
- (c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or its part and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Article 16.10.

16.10.5 Upon completion of the conciliation proceedings referred to in this Article 16.10, the conciliation tribunal may by a reasoned order make recommendations which shall be:

- (a) based on a fair and transparent justification;
- (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
- (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
- (d) quantified and restricted in terms of relief or remedy.

16.10.6 Within 15 (fifteen) days of receiving the order referred to in Article 16.10.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may, enter into a Memorandum of Understanding (the “**MoU**”) setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of the Agreement.

ARTICLE 17

COMPENSATION FOR BREACH OF AGREEMENT

17.1 Compensation for default by the Concessionaire

In the event of the Concessionaire being in material breach or default of this Agreement, it shall, upon receipt of the demand supported by necessary particulars thereof, pay to NMMC by way of compensation, all direct costs suffered or incurred by NMMC as a consequence of such material breach or default; Provided that no compensation shall be payable under this Article 17.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement; Provided further that the compensation payable by the Concessionaire in this Article 17.1 shall be limited to payment due. For the avoidance of doubt, the Parties agree that the compensation payable under this Article 17 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any. The Parties further agree that the non- defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising as a result of breach of Agreement by the other Party or for any consequential losses incurred by NMMC.

17.2 Compensation for default by NMMC

In the event of NMMC being in material breach or default of this Agreement at any time after the Appointed Date, it shall, upon receipt of the demand supported by necessary particulars thereof, pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable includes interest payments on debt due, O&M Expenses and all other costs directly attributable to such material breach or default but shall not include loss on account of Tariff, Revenues from sale of electricity to other Distribution Licensees and Buyers, and other Revenues, debt repayment obligations, or any consequential losses.

17.3 Extension of the Contract Period

In the event that a material breach or default of this Agreement causes delay in achieving the Appointed Date or leads to reduction in Availability, as the case may be, NMMC shall, in addition to payment of compensation under Article 17.2, extend the Contract Period, such extension being equal in duration to the period by which the Appointed Date was delayed or Availability was reduced on account thereof, as the case may be; and in the event of reduction in Availability below 85% (eighty five per cent) of the Normative Availability, NMMC shall, in addition to payment of compensation hereunder, extend the Contract Period in

proportion to the loss of Availability. For the avoidance of doubt, loss of 25% (twenty-five per cent) of Availability for 4 (four) days shall entitle the Concessionaire to extension of 1 (one) day in the Contract Period.

The Contract Period shall be extended for the Renewable Energy Project Facilities (which have a useful life beyond the Expiry Date), by a period equal in length to the period during which the Concessionaire was prevented from generating or transmitting electricity on account thereof and to compensate for the lost Units as per Financial Model.

ARTICLE 18

TERMINATION

18.1 Termination for Concessionaire Default

18.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 90 (ninety) days, the Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire Default**”), unless the default has occurred as a result of any breach of this Agreement by NMMC or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) the Performance Security has been encashed and appropriated in accordance with Article 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Article 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred twenty) days;
- (c) the Concessionaire has failed to make any payment to NMMC within the period specified in this Agreement;
- (d) the Concessionaire creates any encumbrance in breach of this Agreement;
- (e) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement and fails to pay Damages in accordance with the provisions of this Agreement;
- (f) the Concessionaire schedules electricity, produced from Contracted Capacity, for sale to Buyers in breach of this Agreement and fails to pay Damages in accordance with the provisions of Article 13.1.3;
- (g) a Change in Ownership has occurred in breach of the provisions of Article 5.3;
- (h) the Concessionaire fails to achieve a monthly Normative Availability for a period of 2 (two) consecutive months or for a cumulative period of 6 (six) months within any continuous period of 12 (twelve) months, save and except to the extent of Non-Availability caused by (i) a Force Majeure

Event, (ii) an act or omission of NMMC, (iii) Emergency, not occurring due to any default of the Concessionaire;

- (i) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire and such transfer causes a Material Adverse Effect;
- (j) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (k) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (l) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of NMMC, a Material Adverse Effect;
- (m) a resolution for winding up of the Concessionaire is passed;
- (n) any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction under Section(s) 7, 9 or 10 of the Insolvency and Bankruptcy Code, 2016, and a provisional liquidator or receiver or an interim resolution professional is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date;
 - (iii) each of the Project Agreements remains in full force and effect; and

- (iv) such amalgamation or reconstruction is approved by a court of competent jurisdiction.
- (o) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (p) the Concessionaire submits to NMMC any statement, notice or other document, in written or electronic form, which has a Material Adverse Effect on NMMC's rights, obligations or interests and which is false in material particulars;
- (q) the Concessionaire has failed to fulfil any material obligation, for which failure Termination has been specified in this Agreement;
- (r) the Concessionaire issues a Termination Notice in violation of the provisions of this Agreement; or
- (s) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect on NMMC.

18.1.2 Without prejudice to any other rights or remedies which NMMC may have under this Agreement, upon occurrence of a Concessionaire Default, NMMC shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, NMMC shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

18.2 Termination for NMMC default

18.2.1 In the event that any of the defaults specified below shall have occurred, and NMMC fails to cure such default within a Cure Period of 120 (one hundred and twenty) days or such longer period as has been expressly provided in this Agreement, NMMC shall be deemed to be in default of this Agreement (the "**NMMC Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) NMMC commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

- (b) NMMC has failed to make any payment to the Concessionaire, and the Concessionaire is unable to recover any unpaid amounts through the Default Escrow Account, within 45 (forty-five) days;
- (c) failure by NMMC to replenish the Default Escrow Account within a period of 90 (ninety) days;
- (d) NMMC repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement;
- (e) any breach by NMMC of Article 3.3 of this Agreement;
- (f) any representation or warranty of NMMC herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or NMMC is at any time hereafter found to be in breach thereof; or
- (g) any encumbrance created on the Project and/or the Site which has a Material Adverse Effect.

18.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a NMMC Default, the Concessionaire shall be entitled to terminate this Agreement by issuing a Termination Notice to NMMC; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform NMMC of its intention to issue the Termination Notice and grant 15 (fifteen) days to NMMC to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

18.3 Termination Payment

18.3.1 Upon Termination on account of a Concessionaire Default

Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 65% (sixty-five per cent) of the sum of unpaid Capital Cost remaining for and in respect of the Contract Period, including interest at the rate of Bank Rate (Prime Lending Rate of RBI) thereon up to the Transfer Date.

18.3.2 Upon Termination on account of Concessionaire Default during the construction period.

Notwithstanding to the provisions of Article 18.3.1, upon an event of the Termination on account of Concessionaire Default during the construction period, the Termination Payment shall be based on the Project Milestone achieved which is in terms of the physical progress made by the Concessionaire. Provided that, such

physical progress shall be determined in accordance with the bar chart set forth in the DPR.

The Project and the Termination Payment corresponding to the achieved Project Milestone shall be as follows:

Project Milestone	Termination Payment
On achievement of 10% of physical progress at Site	50% of Debt Due or 7% of Capital Cost based on physical progress at Site, whichever is lower
On and before achievement of 30% Physical Progress at Site	60% of Debt Due or 21% of Capital Cost based on physical progress at Site, whichever is lower
On and before achievement of 50% Physical Progress at Site	70% of Debt Due or 35% of Capital Cost based on physical progress at Site, whichever is lower
On and before achievement of 75% Physical Progress at Site	80% of Debt Due or 52.5% of Capital Cost based on physical progress at Site, whichever is lower
On and before achievement of 90% Physical Progress at Site	90% of Debt Due or 63% of Capital Cost based on physical progress at Site, whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Project Milestones, for the purpose of calculation of Termination Payment, only the milestone achieved would be considered.

18.3.3 Upon Termination on account of an NMMC Default,

In event of an occurrence of termination of NMMC default, The NMMC shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) In case the termination occurs prior to COD,
 - (i) Debt Due payment calculated as per the table below less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. Further the Debt Due would be calculated as per the table provided below:

Project Milestone	Basis of calculation for Debt Due payment
On achievement of 10% of physical progress at Site	Debt Due or 10% of Capital Cost based on physical progress at Site, whichever is lower
On and before achievement of 30% Physical Progress at Site	Debt Due or 30% of Capital Cost based on physical progress at Site, whichever is lower
On and before achievement of 50% Physical Progress at site	Debt Due or 50% of Capital Cost based on physical progress at site, whichever is lower
On and before achievement of 75% Physical Progress at Site	Debt Due or 75% of Capital Cost based on physical progress at Site, whichever is lower
On and before achievement of 90% Physical Progress at Site	Debt Due or 90% of Capital Cost based on physical progress at Site, whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Project Milestones, for the purpose of calculation of Debt Due, only the milestone achieved would be considered; and

- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity;
 - (i) In case the termination occurs on or after COD,
 - A. The Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to sum of 100% (one hundred per cent) Debt Due payment less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
 - B. 150% (one hundred fifty per cent) of the Adjusted Equity.

18.3.4 Termination Payment due time:

Termination Payment shall be due and payable within 15 (fifteen) days of a demand being made with the necessary particulars, and in the event of any delay, the

defaulting Party shall pay interest at a rate equal to 3% (three percent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by NMMC of its payment obligations in respect thereof hereunder.

18.3.5 Full and final settlement of all claims of the Concessionaire on account of Termination

The Concessionaire expressly agrees that Termination Payment under this Article 18 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

18.4 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 18.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

18.5 Divestment and Handover Requirements

18.5.1. Upon Termination or Expiry of the Contract Period, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) notify to the NMMC forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all defects and deficiencies with respect to any Project Assets, structures and equipment, so that the Project is compliant with the maintenance requirements; provided that in the event of Termination during the construction period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, intellectual property and other licenses pertaining to the Project and its design, engineering, construction,

operation and maintenance, including all programmers and manuals pertaining thereto, and complete 'as built' drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the intellectual property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the NMMC free of any encumbrance;

- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the NMMC may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the NMMC, absolutely unto the NMMC or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all encumbrances, absolutely unto the NMMC or to its nominee.

18.5.2. Subject to the exercise by the NMMC of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

18.6 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination or Expiry of the Contract Period but not later than 15 (fifteen) days prior to the effective date of such Termination, the NMMC shall verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the maintenance requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the maintenance requirements shall be cured by the Concessionaire at its cost and the provisions of Article 17 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 18.

18.7 Cooperation and assistance on transfer of Project

18.7.1. The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or

inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.

18.7.2. The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the NMMC, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

18.8 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the NMMC shall, without unreasonable delay, thereupon issue a certificate (the “**Vesting Certificate**”), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the NMMC or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

18.9 Divestment costs etc.

18.9.1. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favor of the NMMC upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such Divestment shall be borne by the NMMC.

18.9.2. In the event of any Dispute relating to matters covered by and under this Article 18, the Dispute Resolution Procedure shall apply.

18.10 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the NMMC in the Project during the aforesaid period. In case of completion of Contract Period, it is clarified such obligation of the Concessionaire shall be limited to a defect in the Hydro Electric Power Plant and it shall not apply to the Floating Solar Power Plant. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of

15 (fifteen) days from the date of notice issued by the NMMC in this behalf, the NMMC shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the maintenance requirements. All costs incurred by the NMMC hereunder shall be reimbursed by the Concessionaire to the NMMC within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, NMMC shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Article 18.11 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 18 shall not apply if Termination occurs prior to COD.

18.11 Retention in Escrow Account

18.11.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 18.11.2, a sum equal to last 3 (three) months payment due and payable immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Article 18.10.

18.11.2. Without prejudice to the provisions of Article 18.11.1, the NMMC shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination or Expiry Date of the Contract Period and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Article 18.11.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the third party auditor shall be retained in the Escrow Account for the period specified by it.

18.11.3. The Concessionaire may, for the performance of its obligations under this Article 18, provide to the NMMC a guarantee from a Bank for a sum equivalent to the amount determined under Article 9, as the case may be, and for the period specified therein, to be modified, mutatis mutandis, for this purpose, and the NMMC shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 18. Upon furnishing of a guarantee under this Article 18.11.3, the retention of funds in the Escrow Account in terms of Article 18.11.1 or 18.11.2, as the case may be, shall be dispensed with.

18.12 Right of First Refusal in Fresh Bidding for New Phase or Capacity Expansion

Subject to the Applicable Laws, in the event NMMC decides to grant rights for Development of New Phase Or Capacity Expansion during the Contract Period or operation and maintenance of the Hydro Electric Plant to a third party for a period

beyond the Expiry Date of the Contract Period through a competitive bidding process, the Concessionaire shall have the option to compete and match the bid of the highest bidder, so obtained through such competitive bidding process, for undertaking the said Development or operation and maintenance on such terms and conditions as may be stipulated in the bid documents issued at that time. However, such option may be available to the Concessionaire only, if it participates (and it will not be required to meet the eligibility criteria in the relevant bid documents) in the aforesaid bid process and its bid is within 10% (ten per cent) margin of the bid of the Lowest bidder (L1).

For the avoidance of doubt it is hereby clarified that the flexibility hereinabove granted to the Concessionaire shall be subject to the Concessionaire being in absolute compliance to the terms, conditions and its obligations under the Agreement and the prescribed criteria (other than eligibility criteria) under the bid documents issued at that time, to the satisfaction of NMMC, and shall not be, in any manner whatsoever, claimed by the Concessionaire as an enforceable right against NMMC.

NMMC may start the bidding process at any time within 1 (one) year prior to the expiry of the Contract Period and so as to conclude the bidding process and award the rights of operation and maintenance of the Hydro Electric Power Plant to the Selected Bidder in terms of this prior to the expiry of the Term. In such a case the vesting of the Assets and Project Utilities by the Concessionaire in terms of Article 18 shall be in favour of such Selected Bidder. If the Concessionaire itself gets selected as the successful bidder, the vesting of the Assets and Project Utilities shall be in favour of itself under the new agreement.

18.13 Expiry and Vesting Provisions

18.13.1. Unless Termination earlier in accordance with Article 18 or by mutual agreement between the Parties in writing, the Agreement shall expire at the end of the Contract Period. Upon such termination or expiry, as the case may be, and payment of Termination Payment (payable if any), the Site together with all Assets, Project Utilities and work-in-progress existing on the Site shall automatically vest in NMMC and the Agreement shall stand terminated.

Part VI
Other Provisions

ARTICLE 19

ASSIGNMENT AND CHARGES

19.1 Restrictions on assignment and charges

19.1.1 Subject to Articles 19.2 and 19.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of NMMC.

19.1.2 Subject to the provisions of Article 19.2, the Concessionaire shall not create nor permit to subsist any encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of NMMC.

19.2 Permitted assignment and charges

The restraints set forth in Article 19.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Renewable Energy Project Facilities;
- (b) mortgages/pledges/hypothecation of Project Assets and their related documents of title, arising or created in the ordinary course of business of the Renewable Energy Project Facilities, and as security only for indebtedness to its Lenders and/or for working capital arrangements for the Renewable Energy Project Facilities;
- (c) assignment of rights, interest and obligations of the Concessionaire under this Agreement and Project;
- (d) agreements to or in favour of its Lenders as a security for financing provided by the Lenders; and
- (e) liens or encumbrances required by any Applicable Law.

19.3 Assignment by NMMC

Notwithstanding anything to the contrary contained in this Agreement, NMMC may, after giving 60 (sixty) days' prior written notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of NMMC, capable of fulfilling all of NMMC's then outstanding obligations under this Agreement and has the financial standing necessary for this purpose. Provided that any assignment undertaken by NMMC shall not create any additional financial obligation or new financial obligation upon the Concessionaire.

19.4 Approvals for assignment

Any assignment under this Article 19 shall be subject to the approvals and consents required therefor under Applicable Laws, including approval of the MERC. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige NMMC to grant its approval to such assignment, save and except as provided herein.

ARTICLE 20

CHANGE IN LAW

20.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1,00,00,000/- (Rupees One Crore) and 0.1% (zero point one per cent) of the yearly payment in any Accounting Year, the Concessionaire may so notify NMMC and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may, by notice, require NMMC to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, NMMC shall pay the amount specified therein; provided that if NMMC shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article 20.1 shall be restricted to Changes in Law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

20.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees One Crore) and 0.1% (zero point one per cent) of the yearly payment in any Accounting Year, NMMC may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by NMMC, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, NMMC may by notice require the Concessionaire to pay an amount that

would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to NMMC; provided that if the Concessionaire shall dispute such claim of NMMC, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article 20.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

20.3 Protection of NPV

Pursuant to the provisions of Articles 20.1 and 20.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall endeavour to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, Revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Concessionaire has raised the Debt Due under its Financing Agreements.

20.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 20 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than 1(one) year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

20.5 No claim in the event of recovery from third party

Notwithstanding anything to the contrary contained in this Agreement, NMMC shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from any third party.

ARTICLE 21

LIABILITY AND INDEMNITY

21.1 General indemnity

The Concessionaire shall indemnify, defend, save and hold harmless NMMC and its officers, servants, agents (the “**NMMC Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services to NMMC or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of NMMC Indemnified Persons.

NMMC shall indemnify, defend, save and hold harmless the Concessionaire and its officers, servants, agents, employees and partners against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of breach by NMMC of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

21.2 Indemnity by the Concessionaire

21.2.1 Without limiting the generality of Article 21.1, the Concessionaire shall fully indemnify, hold harmless and defend NMMC and NMMC Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s Contractors, suppliers and representatives; or

- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.

21.3 Concessionaire fully indemnify, hold harmless and defend NMMC

Without limiting the generality of the provisions of this Article 21, the Concessionaire shall fully indemnify, hold harmless and defend NMMC Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the NMMC Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project.

If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Renewable Energy Project Facilities, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire promptly make every reasonable effort to secure for NMMC a licence, at no cost to NMMC, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

21.4 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 21 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

21.5 Defence of claims

- 21.5.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 21, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 21.5.2 If the Indemnifying Party has exercised its rights under Article 21.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (wherein consent shall not be unreasonably withheld or delayed).
- 21.5.3 If the Indemnifying Party exercises its rights under Article 21.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
 - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
 - (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
 - (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

- (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
- (ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if sub-Articles (b), (c) or (d) of this Article 21.5.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

21.6 No consequential claims

Notwithstanding anything to the contrary contained in this Article 21, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

ARTICLE 22

DISPUTE RESOLUTION

22.1 Dispute resolution

Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Article 22.2.

The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non- privileged records, information and data pertaining to any Dispute.

22.2 Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Municipal Commissioner of NMMC, then the Municipal Commissioner of NMMC will form a committee for amicable settlement and upon such reference, such committee shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Article 22.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 22.3.

22.3 Arbitration

22.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Article 22.2, shall be finally decided by reference to arbitration under the provisions of Mumbai Centre for International Arbitration constituted in accordance with Article 22.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the Mumbai Centre for International Arbitration (the “**MCIA Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The seat and venue of such arbitration shall be Navi Mumbai, India and the language of arbitration proceedings shall be the English language.

22.3.2 There shall be an arbitral tribunal in accordance with the rules of arbitration set by Mumbai Centre for International Arbitration. Appointment of the members of the arbitral

tribunal shall be made in accordance with the Rules of Arbitration and Conciliation (Amendment) Act, 2015.

22.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 22 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and NMMC agree and undertake to carry out such Award without delay.

22.3.4 The Concessionaire and NMMC agree that an Award may be enforced against the Concessionaire, as the case may be, and their respective assets wherever situated.

22.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

22.4 Adjudication by the MERC

22.4.1 In the event a Dispute is required under Applicable Laws to be adjudicated upon by the MERC, such Dispute shall, instead of reference to arbitration under Article 22.3, be submitted for adjudication by the MERC in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal, if any, against such adjudication has been decided by the appellate tribunal, or no such appeal has been preferred within the time specified in the Applicable Law.

22.4.2 Where any dispute is referred by the MERC to be settled through arbitration, the procedure specified in Article 22.3 shall be followed to the extent applicable.

22.5 Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Concessionaire and NMMC, all Disputes arising after such constitution shall, instead of reference to arbitration or adjudication under Articles 22.3 and 22.4 respectively, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 23

DISCLOSURE

23.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Agreement (hereinafter collectively referred to as the “**Specified Documents**”), during normal business hours on all working days at the Concessionaire’s Registered Office and the Renewable Energy Project Facilities and shall provide copies of the same to NMMC and any other Government Instrumentality upon payment of necessary stationary charges on a “no profit no loss” basis.

23.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person, copies of such documents and data relating to safety of the Renewable Energy Project Facilities, during normal business hours on all working days, at the Concessionaire’s Registered Office and the Renewable Energy Project Facilities. The Concessionaire shall make copies of the same available to NMMC and any other Government Instrumentality upon payment of necessary stationary charges on a “no profit no loss” basis.

23.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Articles 23.1 and 23.2, but subject to Applicable Laws, NMMC shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Articles.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Articles 23.1 and 23.2, or portions thereof, the disclosure of which NMMC is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 24

MISCELLANEOUS

24.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Mumbai shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

24.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or Revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or Revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or Revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

24.3 Interest

Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis on quarterly rests.

24.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement,

in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 1.25% (one point two five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

24.5 Waiver

24.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

24.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

24.6 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

24.7 Survival

24.7.1 Termination shall:

- (a) not relieve the Concessionaire or NMMC, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof, including any rights and obligations under Article 18; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

24.7.2 Period of surviving Termination

All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

24.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

24.9 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

24.10 No partnership

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

24.11 Third parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

24.12 Successors and assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

24.13 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to NMMC; provided that notices or other communications to be given to an address outside the city specified in Sub-Article below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to NMMC.

Attention: _____

Designation: _____

Address: _____

Email: _____

- (b) in the case of NMMC, be given by facsimile or e-mail and by letter delivered by hand at the address given and marked to the attention of the person set out below with a copy delivered to NMMC Representative or such other person as NMMC may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in the same city as NMMC, it may send such notice by facsimile or e-mail and by registered acknowledgement due, or by courier.

Attention: _____

Designation: _____

Address: _____

Email: _____

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date of delivery;

provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

24.14 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

24.15 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

ARTICLE 25

DEFINITIONS

25.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Accounting Year**” means the financial year commencing from the first day of April of any calendar year and ending on the 31st (thirty-first) day of March of the next calendar year.

“**Act**” means the Electricity Act, 2003.

“**Additional Auditors**” shall have the meaning set forth in Article 15.2.3.

“**Adjusted Equity**” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “**Reference Date**”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date; or
- (b) from COD and until the 5th (fifth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; or
- (c) after the 5th (fifth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42% (zero point four two per cent) thereof at the commencement of each month following the 5th (fifth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date; and
- (d) for the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Contract

Period is extended, but the revision on account of WPI shall continue to be made.

“**Affected Party**” shall have the meaning as set forth in Article 16.1.

“**Agreement**” or “**Agreement for Procurement of Power**” means this Agreement, its Recitals, and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement.

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement.

“**Applicable Permits**” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Renewable Energy Project Facilities during the subsistence of this Agreement.

“**Appointed Date**” means the date on which all the Conditions Precedent are achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period.

“**Associate**” or “**Affiliate**” means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise).

“**Availability**” shall have the meaning as set forth in Article 5.1.4 and the term “**Available**” shall be construed accordingly.

“**Award**” shall have the meaning as set forth in Article 22.3.3.

“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect.

“**Bid**” means the documents in their entirety comprised in the bid submitted by the selected bidder in response to the Request for Proposals in accordance with the

provisions thereof and “**Bids**” shall mean the bids submitted by any and all pre-qualified bidders.

“**Bid Date**” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals.

“**Bid Security**” means the security provided by the Concessionaire to NMMC along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security.

“**Buyer(s)**” shall mean the third parties buying electricity from the Renewable Energy Project Facilities, in accordance with the provisions of this Agreement and Applicable Laws.

“**Capacity Certificate**” means the certificate issued by an experienced and qualified firm of technical consultants certifying the installed capacity, plant configuration, and other principal parameters of the Renewable Energy Project Facilities.

“**Capital Cost**” shall mean the lower of the following:

- (a) the actual capital cost of the Renewable Energy Project Facilities on a relevant date which shall not be later than the Delivery Date, as certified by the auditors appointed jointly by the Concessionaire and NMMC jointly; or
- (b) the total cost of the Renewable Energy Project Facilities as set forth in the Financing Agreements,

Provided that Capital Cost shall always exclude cost overruns arising due to a Concessionaire Event of Default, or costs due to events for which compensation has been received by the Concessionaire from NMMC or Insurers or third parties.

Provided further that the Capital Cost in relation to a unit shall be the total cost of the Renewable Energy Project Facilities allocated in proportion to the Aggregate Contracted Capacity.

“**Change in Law**” means the occurrence of any of the following after the Bid Date:

- (a) the enactment of any new Indian law including any enactment of any regulation by MERC or CERC;
- (b) the repeal, modification or re-enactment of any existing Indian law including any amendment, repeal and/or re-enactment of any regulation by MERC or CERC;
- (c) the commencement of any Indian law which has not entered into effect until the Bid Date;

- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- (e) any change in the rates of any of the Taxes and/or introduction of any new Tax that has a direct effect on the Project.

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the promoters together with their Associates in the total Equity to decline, at any time prior to the 1st (first) anniversary of the “Appointed Date” below 51% (fifty one per cent) thereof, or such lower proportion as may be permitted by NMMC upon substitution of the promoters of the Concessionaire by an entity having sufficient financial and technical capacity to discharge the obligations of the Concessionaire under this Agreement.

“Commercial Operation date (C.O.D)” shall mean the Date on which the concessioner will start delivering the power at the Delivery Point as per the terms and conditions of the PPA; which is 18 months from the date of financial Closure excluding monsoon period for the Hydro power project and for First phase of Floating Solar energy plant (i.e. 60 MW) it is 12 months from the date of financial Closure excluding monsoon period. COD for Second Phase of Floating Solar energy plant (i.e. 40 MW) shall be 12 months from COD of First phase of Floating Solar or 12 months from the order for the next phase issued by NMMC, whichever is earlier.”

“Concessionaire” shall have the meaning set forth in list of Parties of the Recitals of this Agreement.

“Concessionaire Default” shall have the meaning as set forth in Article 18.1.1.

“Conditions Precedent” shall have the meaning as set forth in Article 4.1.1.

“Contracted Capacity” shall pursuant to the provisions of this Agreement, the Concessionaire shall construct and install dedicate a generating capacity of not less than 101.5 MW (Hydro Electric Power Plant having capacity of not less than 1.5 MW generating not less than 10.80 Million Unit’s and Floating Solar Power Plant having capacity of not less than 100 MW generating not less than 208.8) 219.60 Million Unit’s (kWh) Alternate Current (AC) in 2 phases of 60 MW & 40 MW over the period of next 2 – 3 years to NMMC as the capacity contracted hereunder and the contracted capacity shall at all times be operated and utilized in accordance with the provisions of this Agreement.

"Contract Period" shall mean the duration beginning from the COD of Hydro Electric Power Plant and up to the Expiry Date.

“Contractors” means the person or persons, as the case may be, with whom the Concessionaire has entered into any contract for operation and maintenance, or any other material agreement or contract for operation and maintenance of the Contracted Capacity or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire.

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) Commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice; and
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

Provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by NMMC hereunder, the applicable Cure Period shall be extended by the period taken by NMMC to accord their approval.

“Damages” shall have the meaning as set forth in sub-Article (y) of Article 1.2.1;

“Debt Due” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Termination Date:

- (a) the principal amount of the debt provided by Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment 6 (six) months prior to the Termination Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Termination Date but excluding (i) any interest, fees or charges that had fallen due 3 (three) months prior to the Termination Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre- payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default or State Government Default; and
- (c) any Subordinated Debt which is included in the Financial Model disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into equity at the option of Lenders and/or the Contractor, it shall for the purposes of this Agreement be deemed

to be Debt Due even after such conversion and the principal shall be dealt with as if such conversion had not been undertaken. For the Purposes of this Agreement, the term “Subordinated Debt” shall mean the debt provided by lenders or the Contractor’s shareholders for meeting the Total Project Cost and shall be subordinate to the financial assistance provided by Lenders.

“**Default Escrow Account**” shall have the meaning as set forth in Article 12.1.

“**Default Escrow Agreement**” shall have the meaning as set forth in Article 12.1.

“**Default Escrow Bank**” shall have the meaning as set forth in Article 12.1.

“**Delivered Energy**” shall mean the units of electricity in kWh delivered and injected at the Delivery Point.

“**Delivery Point**” shall be the point at which the Concessionaire shall deliver or inject the Delivered Energy to the STU under this Agreement. The metering shall be done at this point of interconnection. All transmission charges and losses up to the delivery point shall be borne by the Concessionaire. For interconnection with the grid and metering, the Concessionaire shall abide by the relevant CERC/MERC (as the case maybe), Grid Code and the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.

“**Despatch**” shall have the meaning as set forth in Article 13.1.

“**Detailed Project Report**” and/or “**DPR**” shall mean the detailed project report prepared by the Concessionaire in relation to the Project, and such report being approved by NMMC or any independent third party auditor.

“**Dispute**” shall have the meaning as set forth in Article 22.1.

“**Disputed Amounts**” shall have the meaning as set forth in Article 11.6.

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes as set forth in Article 22.

“**Distribution Licensee**” means a person who has been granted a licence under section 14 of the Electricity Act, 2003 to distribute electricity as a distribution licensee.

“**Document**” or “**Documentation**” means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form.

“**Emergency**” means a condition or situation that is beyond the control of either Parties and is likely to endanger the safety and security of the Project and includes

any grid outages, forced stand down, electricity outages, unavailability of grid or transmission networks, instructions from the Maharashtra State Transmission Company Limited and/or the appropriate DISCOM to stand down the Generating Station etc.

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost including premium on Paid up equity share capital, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Concessionaire, and any interest-free funds advanced by any shareholder of the Concessionaire for meeting such equity component.

"Expiry Date" shall mean the date that is 25 (twenty-five) years from the Commercial Operation Date for the Hydro Electric Power Plant or such other date as may be extended as per terms of this Agreement, till which date the Agreement shall remain effective, unless terminated earlier in accordance with the provisions herein.

“Financing Agreement” shall mean the agreements executed by the Concessionaires in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost.

“Financial Model” means the financial model submitted by the Concessionaire and approved by NMMC, setting forth the capital and operating costs of the Project and Revenues therefrom and on the basis of which financial viability of the Project has been determined by the Concessionaire, and includes a description of the assumptions and parameters used for making calculations and projections therein.

“Financial Package” means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any.

“Floating Solar Power Plant” shall have the meaning set forth in Recital (B).

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Article 16.1.

“Force Majeure Costs” shall have the meaning set forth in Article 16.7.1.

“Generating Station” shall have the meaning as set forth in Recital (B).

“**GOI**” means the Government of India.

“**Good Industry Practice**” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the generation of hydro and/or solar power which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent utility practices generally accepted by electricity generating stations for ensuring safe, economic and efficient construction, operation and maintenance of the Renewable Energy Project Facilities and for providing safe, economic, reliable and efficient supply of electricity.

“**Government**” means the Government of India or the Government of the State, as the case may be.

“**Government Instrumentality**” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Renewable Energy Project Facilities or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“**Grid**” means the high voltage backbone system of inter-connected transmission lines and sub-stations.

“**Grid Code**” means the Indian Electricity Grid Code 2010 or any substitute thereof specified by the Central Electricity Regulatory Commission under Article (h) of sub-section 79 of the Act and/or the state grid code as specified by MERC (Maharashtra State Grid Code, 2020), referred under Article (j) of sub-section 86 of the Act.

“**Hydro Electric Power Plant**” shall have the meaning set forth in Recital (B).

“**Incentive**” means a payment due to the Concessionaire, in accordance with the provisions of this Agreement, for any delivery, performance or outcome, as the case may be, which is better than the standards specified in respect thereof;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 21.4.

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 21.4 .

“**Indirect Political Event**” shall have the meaning as set forth in Article 16.3.

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 14, and includes all insurances required to be taken out by the Concessionaire under Article 14.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event.

“Invoice Date” shall have the meaning set forth in Article 11.5.2.

“Lenders” shall mean the financial institutions, banks, multilateral lending agencies, companies (including asset reconstruction companies and life insurance companies), trusts (including investment trusts), funds, foreign institutional investors, foreign portfolio investor and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements.

“LOA” or **“Letter of Award”** means the letter of award referred to in Recital (D).

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“MEDA” shall mean the Maharashtra Renewable Energy Development Agency.

“MCIA Rules” shall have the meaning as set forth in Article 22.3.1.

“Monsoon period” period shall be considered from 1st June to 30 September i.e. Four months. However due to climate change dates of onset and withdrawal of Monsoon may change.

“MoU” shall have the meaning as set forth in Article 16.10.6.

“NMMC” or **“Procurer”** shall have the meaning set forth in list of Parties of the Recitals of this Agreement;

“NMMC Default” shall have the meaning as set forth in Article 18.2.1.

“NMMC Indemnified Persons” shall have the meaning as set forth in Article 21.1.

“NMMC or Procurer Representative” means such person or persons as may be authorised in writing by NMMC to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of NMMC under this Agreement.

“MERC” shall mean the Maharashtra Electricity Regulatory Commission.

“**Mis-declaration**” shall have the meaning as set forth in Article 11.2.4.

“**Monthly Invoice**” shall have the meaning as set forth in Article 11.5.5.

“**Net Dependable Capacity**” shall mean the electrical power output of the Plant in kilowatts (kW) measured at the output (high voltage side) of the main transformer under all conditions.

“**Non-Availability**” means any partial or total lack of Availability due to an Emergency, Force Majeure, unavailability of the transmission or distribution system of Maharashtra State Transmission Company Limited and/or the respective DISCOM or due to any other reasons (other than any Concessionaire Default) due to which NMMC is unable to offtake the Delivered Energy beyond the Delivery Point or for any other reason.

“**Non-Political Event**” shall have the meaning as set forth in Article 16.2.

“**Normative Availability**” shall have the meaning as set forth in Article 5.1.4

“**NPV**” shall have the meaning as set forth in Article 20.3.

“**Operational Performance Security**” shall have the meaning set forth in Article 9.4.

“**Payment Due Date**” shall have the meaning as set forth in Article 11.5.2.

“**Payment Security fund**” shall be fund deposited by the NMMC in the specified Sub-Account of the Default Escrow Account equivalent to at least 6 (six) times of the Total Monthly Charge due to the Concessionaire based on Tariff throughout the term of the Contract Period.

“**Performance Liquidated Damages**” shall have the meaning set forth in Article 5.7.4.

“**Performance Security**” shall have the meaning as set forth in Article 9.1.

“**Point of Grid Connection**” means the Delivery Point at which the electricity generated by the Renewable Energy Project Facilities is transferred to the Grid.

“**Political Event**” shall have the meaning as set forth in Article 16.4.

“**Project Milestone**” shall mean specific stages during the Project development stage to measure the progress of the Project.

“**Project**” means the construction, operation and maintenance of the Renewable Energy Project Facilities in accordance with the provisions of this Agreement, and

includes all works, services and equipment relating to or in respect of the Scope of the Agreement.

“Project Consultant or Independent Engineer” shall mean Tandon urban Solutions Pvt. Ltd. ascribed thereto in Article 11.9

“Power Procurement or Power Purchase or Project Agreements” means this Agreement, engineering procurement and construction contract, operation and maintenance contract and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project.

“Project Assets” means all physical and other assets relating to and forming part of the Project including:

- (a) rights over the Station Premises in the form of licence or otherwise;
- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centres, administrative offices and Sub-stations;
- (c) all rights of the Concessionaire under the Project Agreements;
- (d) financial assets, such as receivables, security deposits etc.;
- (e) insurance proceeds; and
- (f) Applicable Permits and authorisations relating to or in respect of the Renewable Energy Project Facilities.

“Project Premises” shall mean and include the Project Site, real estate, assets, equipment’s, facilities and amenities comprising the Renewable Energy Project Facilities to be erected on land, water surface licensed to use for the specific purpose under the provisions of the Indian Easement Act, 1882, of erecting/operating the Project.

“Rated Capacity” also known as nameplate capacity, shall mean the intended full-load sustained output of the Generating Station.

“Renewable Energy Project Facilities” means the Generating Station or a unit thereof, and shall include the Dedicated Transmission System, Project Assets, and Project Facilities.

“Re.”, “Rs.” or “Rupees” or “Indian Rupees” means the lawful currency of the Republic of India.

“**Request for Proposals**” or “**RFP**” shall have the meaning as set forth in Recital (C).

“**Revenues**” means all of the present and future funds, payment obligations, monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue to or be offered or due to NMMC in the form of cash receipts or receivables from any and all sources, save and except any capital receipts of NMMC for and in relation to any capital expenditure for creation of assets.

“**RLDC**” means the Regional load Despatch Centre as specified in the Act.

“**SLDC**” means the State Load Despatch Centre as specified in the Act.

“**Scope of the Agreement**” shall have the meaning as set forth in Article 2.1.

“**Secured Obligations**” means:

- (a) the amounts due to the Default Escrow Bank from NMMC in relation to the payment;
- (b) obligations of NMMC for payment of Tariff and Incentives under and in accordance with this Agreement; and
- (c) Obligation of NMMC to make Termination Payment under and in accordance with this Agreement upon termination thereof;

“**Site**” shall have the meaning as set forth in Recital (A).

“**Solar Photovoltaic**” or “**Solar PV**” shall mean the solar photovoltaic crystalline panels that uses sunlight for direct conversion into electricity and that is being set up by the Concessionaire to provide solar energy to NMMC in the Floating Solar Power Plant.

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Renewable Energy Project Facilities, as set forth in the rules and regulations made under the Act.

“**Specified Documents**” shall have the meaning as set forth in Article 23.1.

“**State**” means the State or the Union Territory, as the case may be, in which the headquarters of NMMC is situate and “**State Government**” means the government of that State or Union Territory.

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Article 15.

“**Sub-Account**” shall have the meaning set forth in the Default Escrow Agreement.

“**Subordinated Debt**” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Lenders; and
- (b) all accrued interest on the debt referred to in sub-Article (a) above but restricted to the lesser of actual interest rate and a rate equal to 2% (two per cent) above the SBI MCLR, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date.

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken.

“**Tariff**” or “**Generic Levellised Tariff**” shall have the meaning as set forth in Article 11.1.2.

“**Taxes**” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Renewable Energy Project Facilities charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income.

“**Termination**” means the expiry or termination of this Agreement in terms of the provisions set forth hereunder;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement.

“**Termination Payment**” means the amount payable by the defaulting Party to the other Party, under and in accordance with the provisions of this Agreement upon Termination.

“**Total Monthly Charge/ Revenue/Payment**” shall mean the monthly payment payable by NMMC to the Concessionaire as per Article 11.

“Total Project Cost” means the Capital Cost incurred for the construction, implementation, erection, development, engineering, designing, financing of the Project and as specified in the DPR.

“Transfer Date” means the date on which this Agreement and the concession hereunder expires pursuant to the provisions of this Agreement or it is terminated by a Termination Notice.

“Unforeseen Event” shall have the meaning set forth in Article 16.10.1.

“Unit” means a unit of the Renewable Energy Project Facilities which is equipped with all allied facilities of the Hydro Electric Power Plant and the Floating Solar Power Plant including the turbine, solar photovoltaic crystalline panels, invertors, transformer floating system and associated facilities for generation of electricity independently of other units at the Renewable Energy Project Facilities.

“Unpaid Capital Cost” means the sum of Debt Due and Adjusted Equity on the Transfer Date, including interest at the rate of Bank Rate (prime lending rate of RBI) thereon up to the Transfer Date.

“Vesting Certificate” shall have the meaning set as set forth in Article 18.8.

“WPI” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Tariff in accordance with the provisions of Article 11, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

Schedules

SCHEDULE – A

SITE OF THE RENEWABLE ENERGY PROJECT FACILITIES

(See Article 2.1)

1. The Site

The Morbe Dam has been constructed by Water Supply and Sanitation Department of the Government of Maharashtra on Dhavri river in the year 1999 and in year 2003, NMMC acquired Morbe Dam for its own independent & operational source of water. Morbe Dam is situated near Khalapur in Raigad district of Maharashtra and is approximately 36 kms. away from Navi Mumbai Head Office

2. Renewable Energy Project facilities

The principal features of the Renewable Energy Project facilities are described in Annex-I of this Schedule-A.

Annex - I

(Schedule-A)

Description of Renewable Energy Project facilities

1. The site

The Site of the Renewable Energy Project facilities shall include the land, building and structures comprising a Dam, HRT, Penstocks/Pressure Shaft, Power House (Underground/Surface/Semi surface) and TRT including the back water of the Morbe Dam. The Renewable Energy Project facilities equipped with all allied facilities of the Hydro Electric Power Plant and the Floating Solar Power Plant including the turbine, solar photovoltaic crystalline panels, invertors, transformer floating system and associated facilities for generation of electricity and transmission independently at the Renewable Energy Project Facilities.

2. Capacity of the Hydro power plant

2.1 The power plant facility has a generating capacity of 1.5 MW.

2.2 The configuration of Units is given below:

(a) The number of Units is __ (___)

(b) The nameplate capacity of each Unit is __ MW.

2.3 Head

Maximum net head available for power generation is __ meter, which is the maximum gross head less all the losses in the water conductor system including penstock.

Minimum net head results from the difference in elevation between the minimum head water level (MDDL) and the maximum tailrace water level (TWL) minus losses with all turbines operating at full gate opening.

2.4 Overloading Limits

All Units of Hydro Electric Power Plant shall be capable of increasing their output by minimum 10% (ten per cent). The rate of increase or decrease in machine output shall be governed by change in speed/pressure rise in compliance other relevant IS.

2.5 Ramp Rates

Each Units of the Hydro Electric Power Plant shall have the capacity to ramp up from spinning at zero load to reach full capacity within a period defined in the detailed project report (approved and vetted by MEDA or third party auditor).

2.6 **Description of the Hydro Electric Power Plant**

The Hydro Electric Power Plant shall conform with Applicable Laws and the regulations notified by the Central Electricity Authority and the Appropriate Commission.

The Hydro Electric Power Plant is briefly described below:

(A) Intake

- (i) Number: (as specified in the DPR)
- (ii) Invert Level: (as specified in the DPR)
- (iii) Design Discharge: (as specified in the DPR)
- (iv) Intake Gates (Size): (as specified in the DPR)

(B) Head Race Tunnel

- (i) Number: (as specified in the DPR)
- (ii) Size: (as specified in the DPR)
- (iii) Shape: (as specified in the DPR)
- (iv) Length: (as specified in the DPR)
- (v) Design Discharge: (as specified in the DPR)
- (vi) Velocity: (as specified in the DPR)

(C) Surge Shaft

- (i) Number: (as specified in the DPR)
- (ii) Type: (as specified in the DPR)
- (iii) Size: (as specified in the DPR)
- (iv) Height: (as specified in the DPR)
- (v) Max. Surge Level: (as specified in the DPR)
- (vi) Min Surge Level: (as specified in the DPR)

(D) Penstock

- (i) Number: (as specified in the DPR)
- (ii) Diameter: (as specified in the DPR)
- (iii) Length: (as specified in the DPR)
- (iv) Shape: (as specified in the DPR)
- (v) Design Discharge: (as specified in the DPR)

(E) Water Levels

- (i) Full Reservoir Level: (as specified in the DPR)
- (ii) Minimum Draw down Level: (as specified in the DPR)
- (iii) Minimum TWL: (as specified in the DPR)
- (iv) Maximum TWL: (as specified in the DPR)

(F) Power House

- (i) Type: (as specified in the DPR)
- (ii) Installed Capacity: (as specified in the DPR)
- (iii) Number of Units: (as specified in the DPR)
- (iv) Power House Cavern Size: (as specified in the DPR)
- (v) Type of Turbine: (as specified in the DPR)
- (vi) Type and Capacity of Generator: (as specified in the DPR)
- (vii) Number and Rating of Transformer: (as specified in the DPR)
- (viii) Overall efficiency: (as specified in the DPR)

(G) Tail Race Tunnel

- (i) Type: (as specified in the DPR)
- (ii) Size: (as specified in the DPR)
- (iii) Length: (as specified in the DPR)
- (iv) Design Discharge: (as specified in the DPR)

3. Capacity of the Floating Solar Power Plant

3.1 The solar power plant facilities has a generating capacity of 100 MWp.

3.2 The configuration of Units is given below:

- (a) The number of Units is (as specified in the DPR)
- (b) The nameplate capacity of each Unit is (as specified in the DPR)

3.3 Floating Solar System

a. A Grid Connected Floating Solar Photovoltaic (FSPV) System shall consist of mainly the following components but not limited to any other components and accessories.

- I. Solar panels
- II. Floating system
- III. Module mounting structure
- IV. Mooring and anchoring system
- V. Junction boxes
- VI. Power conditioning unit (PCU)
- VII. Metering system
- VIII. Earthing system
- IX. Cable and accessories

SCHEDULE – B

DEFAULT ESCROW AGREEMENT

(See Article 13.1.1)

THIS DEFAULT ESCROW AGREEMENT is entered into on this the.... day of20....

AMONGST

1. _____, a company incorporated under the provisions of the Companies Act, 2013 represented by its Managing Director/Authorised Person, having its registered office at _____, and having its corporate office at _____ (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns);
2. _____ (name and particulars of the Default Escrow Bank), through its branch, and having its registered office at.... (hereinafter referred to as the “**Default Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns); and
3. _____, a statutory authority constituted in, having office of the Commissioner at _____, for the time being holding the said office and also his successors and shall also include all “Additional Municipal Commissioners, Director (Engineering Services & Projects)” and the Deputy Municipal Commissioner, to whom the powers of Municipal Commissioner, have been deputed under Section 56 and 56B of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as the “**Procurer**” also as “**NMMC**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

- (A) The NMMC has entered into an agreement dated with the Concessionaire (the “**Agreement for Procurement of Power**”) for supply of ____ MW of electricity from the Renewable Energy Project facilities at _____ in the State of, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) To secure NMMC’s payment obligations to the Concessionaire under the Agreement for Procurement of Power, NMMC is required to establish a default escrow account on the terms and conditions stated therein (the “**Default Escrow Account**”).

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Agreement**” means this Default Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein.

“**Agreement for Procurement of Power**” shall have the meaning set forth in Recital A of this Agreement.

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by NMMC, and shall commence from the date on which a notice is delivered by the Concessionaire to NMMC asking the latter to cure the breach or default specified in such notice.

“**Default Escrow Account**” shall have the meaning set forth in Recital B of this Agreement.

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually.

“**Procurer Escrow Default**” shall have the meaning set forth in Article 8.1.

“**Security**” shall have the meaning set forth in Article 3.1.

“**Sub-Account**” shall mean the different sub-accounts of the Default Escrow Account opened by the Concessionaire in terms of the Supplementary Escrow Agreement; and

“**Supplementary Escrow Agreement**” shall have the meaning set forth in Article 2.4.

1.2. Interpretation

1.2.1. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Agreement for Procurement of Power shall, unless repugnant to the context, have the meaning ascribed thereto in the Agreement for Procurement of Power

- 1.2.2. References to Articles and Annexes are, unless stated otherwise, references to Articles and Annexes of this Agreement.
- 1.2.3. The rules of interpretation stated in Articles 1.2, 1.3 and 1.4 of the Agreement for Procurement of Power shall apply, *mutatis mutandis*, to this Agreement.

2. DEFAULT ESCROW ACCOUNT

2.1. Default Escrow Bank to act as trustee

- 2.1.1. NMMC hereby appoints the Default Escrow Bank to act as trustee for the Concessionaire and NMMC in connection herewith and authorises the Default Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Default Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Default Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2. NMMC hereby declares that all rights, title and interest in and to the Default Escrow Account shall be vested in the Default Escrow Bank and held in trust for the Concessionaire and NMMC, and shall be applied in accordance with the terms of this Agreement. No person other than the Concessionaire and NMMC shall have any rights hereunder as third-party beneficiaries under this Agreement.

2.2. Acceptance of Default Escrow Bank

The Default Escrow Bank hereby agrees to act as such and to accept the Payments of NMMC pursuant to the provisions of this Agreement and the Agreement for Procurement of Power. The Default Escrow Bank shall hold and safeguard the Default Escrow Account during the term of this Agreement and shall treat the amount in the Default Escrow Account as monies deposited by NMMC with the Default Escrow Bank. In performing its functions and duties under this Agreement, the Default Escrow Bank shall act in trust for the benefit of, and as agent for, the Concessionaire and NMMC, or their nominees, successors or permitted assigns, in accordance with the provisions of this Agreement.

2.3. Establishment of Accounts

- 2.3.1. Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Procurer shall open and establish the Default Escrow Account with the (name of Branch) Branch of the Default Escrow Bank, and such account shall be maintained at all times until the termination of this Agreement under Article 9 hereof. The Default Escrow Account shall be denominated in Rupees.

- 2.3.2. The Default Escrow Bank shall maintain the Default Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3. The Default Escrow Bank and NMMC shall, in accordance with Good Industry Practice, agree on the detailed mandates, terms and conditions, and operating procedures for the Default Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4. Supplementary Escrow Agreement

The Lender and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Default Escrow Bank (“**Supplementary Escrow Agreement**”) providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to this Article 2.4 and for matters not covered under this Agreement such as the rights and obligations of Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of a Procurer Escrow Default, procedures relating to operation of the Default Escrow Account (including the Sub-Account) and withdrawal there from, reporting requirements and any matters incidental thereto; provided that such Supplementary Escrow Agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such Supplementary Escrow Agreement, the provisions of this Agreement shall prevail.

2.5. Default Escrow Bank’s fee

The Default Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Default Escrow Bank and NMMC and Concessionaire. For the avoidance of doubt, the Default Escrow Bank shall be entitled to deduct such fee and expenses from the monies deposited in the Default Escrow Account. It is agreed that all such charges and fees levied by the Default Escrow Bank shall be borne by the Concessionaire.

2.6. Rights of the Parties

Save and except as otherwise provided in the Agreement for Procurement of Power, the rights of the Concessionaire and NMMC in the monies held in the Default Escrow Account are set forth in their entirety in this Agreement and they shall have no other rights against or to the monies in the Default Escrow Account.

3. OBLIGATIONS OF THE DEFAULT ESCROW BANK

3.1. Creation of Security Interest

NMMC expressly agrees that the Concessionaire is entitled to execute and create a first priority charge/ security interest in favour of the Lenders on the Payment deposited after deduction of charges payable to Government, inform of Taxes and Statutory duties as Law into the Default Escrow Account pursuant to this Agreement, but not exceeding the Total Monthly Charge for and in respect of each and every month until termination of this Agreement (the “**Security**”).

3.2. Statement of accounts

The Default Escrow Bank shall provide to NMMC and the Concessionaire, no later than the 15 (fifteen) days from the end of each month or at any such time as requested either by NMMC and/or the Concessionaire, a statement of accounts detailing all deposits and withdrawals into and from the Default Escrow Bank during the previous month. During any period, following the delivery of a notice of the occurrence of a Procurer Escrow Default and until delivery of notice that Procurer Escrow Default is no longer continuing, the Default Escrow Bank shall provide statement of accounts to NMMC and the Concessionaire on a daily basis.

3.3. Protection of Concessionaire’s interest

The Default Escrow Bank shall, at all times, act and discharge its functions and obligations under this Agreement in accordance with the principle of protecting and enforcing the rights and interest of the Concessionaire hereunder and the Security afforded to it herein for the full and timely performance by NMMC of the Secured Obligations in the manner contemplated under this Agreement and the Agreement for Procurement of Power.

3.4. Monies to be held in trust

Monies received by the Default Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Default Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Default Escrow Bank.

3.5. Communications and notices

In discharge of its duties and obligations hereunder, the Default Escrow Bank:

- a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of NMMC upon a certificate signed by or on behalf of NMMC;

- b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- c) shall within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from NMMC in connection herewith; and
- d) shall within 5 (five) business days after receipt, deliver a copy to NMMC of any notice or document received by it from the Concessionaire in connection herewith.

3.6. No set off

The Default Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Default Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Default Escrow Bank that the monies held by the Default Escrow Bank in the Default Escrow Account shall not be considered as part of the assets of the Default Escrow Bank, shall in the case of bankruptcy or liquidation of the Default Escrow Bank, be wholly excluded from the assets of the Default Escrow Bank in such bankruptcy or liquidation.

3.7. Regulatory approvals

The Default Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Default Escrow Account. The Default Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Default Escrow Bank.

4. OBLIGATIONS OF NMMC

4.1. General

- 4.1.1. NMMC covenants with the Concessionaire and the Default Escrow Bank that it will discharge the Secured Obligations in accordance with the provisions of the Agreement for Procurement of Power and this Agreement.
- 4.1.2. NMMC hereby agrees and undertakes that until the termination of this Agreement, no less than total 6 (six) months payment (i.e., the Payment Security Fund) shall continue to be deposited into the specified Sub-Account, i.e., the payment security Sub-Account.
- 4.1.3. NMMC agrees and undertakes that it shall not take any actions inconsistent with the instructions given under this Agreement or interfere in any manner with the

transfer of funds into the Default Escrow Account in accordance with the terms of this Agreement, or deliver or cause to be delivered to the Default Escrow Bank any amendment, modification or supplement to such instructions or any additional or new instructions regarding routing, deposit or withdrawal of funds by the Default Escrow Bank without the express written approval of the Concessionaire, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Concessionaire.

4.2. Creation of Charge

- 4.2.1. NMMC hereby agrees and undertakes that the Concessionaire shall be entitled to create a charge over the Default Escrow Account including all the Sub-Accounts and the monies lying to the credit of the Default Escrow Account and various Sub-Accounts (including the payment security Sub-Account (excluding any interest accrued on the amounts lying therein)) in favour of the Lenders over the payment in pursuance of this Agreement, which charge shall remain in force and effect until payment and discharge of the Secured Obligations. NMMC expressly agrees that it shall procure and ensure that the rights of the Concessionaire hereunder are not prejudiced in any manner whatsoever.
- 4.2.2. NMMC agrees and undertakes to provide such other documents, certificates and agreements as the Concessionaire or the Default Escrow Bank may reasonably request in respect of creating a first charge in favour of the Lenders in accordance with Article 4.2.1.
- 4.2.3. NMMC may, subject to the provisions of this Agreement, create any other security interest subordinate and secondary to (i) the first charge created in favour of the Concessionaire over the Payments routed through the Default Escrow Account or (ii) any part thereof, in favour of any person other than the Concessionaire for any reason whatsoever.

4.3. Changes in Payment Mechanism

No change shall be made or permitted by NMMC in its business operations or Payment policies which would result in the reduction or diversion of payment from Escrow Account such that its level falls below three times of the total monthly payment from any and all sources as applicable time to time.

5. OPERATION AND MANAGEMENT OF DEFAULT ESCROW ACCOUNT

5.1. General

- 5.1.1. All amounts deposited in NMMC Account shall be applied by the Default Escrow Bank in accordance with this Article 5. The Default Escrow Account and the various

Sub-Accounts shall be operated on the instructions of the Concessionaire (and in certain identified cases by the Lenders).

- 5.1.2. In the event of any dispute arising out of this Agreement, the Parties shall have recourse to the dispute resolution mechanism specified in Article 11.

Provided that pending the full and final resolution of such dispute, the Default Escrow Bank shall retain the disputed amounts in the Default Escrow Account and shall not allow transfer or withdrawal of funds from the Default Escrow Account to the extent of the amount under dispute. Upon full and final settlement of the dispute, either NMMC or the Concessionaire may bring the decision of the Arbitrator, MERC or court, as the case may be, to the notice of the Default Escrow Bank who shall be bound by such decision and shall carry out such actions as are specified in the decision.

5.2. Deposits in the Default Escrow Account and Sub-Account

The Tariff shall be deposited by NMMC in the specified Sub-Account, i.e., the 'project proceeds Sub-Account' and the Payment Security Fund shall be deposited in a different Sub-Account, i.e., the 'payment security Sub-Account'. All receivables *inter alia* disbursements from the Lenders, infusion of funds by promoters / shareholders of Concessionaire shall be made in the 'project proceeds Sub-Account'. The Concessionaire and/or the Lenders shall be entitled to withdraw and deposit in the 'project proceeds Sub-Account', the amounts lying in the 'payment security Sub-Account' upon failure of NMMC to deposit the Tariff in the 'project proceeds Sub-Account' by the Payment Due Date in accordance with the Agreement for Procurement of Power.

5.3. Deposits by Lenders

The Concessionaire agrees, confirms and undertakes that the Lenders may deposit into and/or credit into an account specified by the Concessionaire with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

5.4. Drawl from Escrow Deposit

- 5.4.1. If for any reason whatsoever, any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Agreement for Procurement of Power, the Concessionaire may, at any time after the 57th (fifty seventh) day from Payment Due Date shall have occurred, draw on the Escrow Deposit, to recover such amount. Provided that, the

Concessionaire and/or the Lender's will have the right to draw from the Escrow Deposit by giving a 48 (forty-eight) hours prior notice to NMMC.

- 5.4.2. Notwithstanding anything to the contrary contained in this Agreement, in the event that the amount covered through Escrow Deposit at any time less than the Total Monthly Charge or is insufficient for recovery of payment due against the Monthly Invoice, and there is a failure of NMMC to replenish such shortfall and reinstate Escrow Deposit within a period of 15 (fifteen) days shall lead to the default on behalf of NMMC

5.5. Withdrawals upon Termination

- 5.5.1. Upon Termination of the Agreement For Procurement of Power, if NMMC fails to make the Termination Payment due and payable to the Concessionaire within a period of 30 (thirty) days from the date of demand by the Concessionaire under and in accordance with the provisions of the Agreement for Procurement of Power, the Concessionaire may by notice, convey the necessary particulars and instruct the Default Escrow Bank to make the Termination Payment in accordance with this Article 5.5.1.
- 5.5.2. Upon Termination of this Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:
- a. all taxes due and payable by the Concessionaire for and in respect of the Project;
 - b. outstanding Concession Fee;
 - c. all payments and Damages certified by the NMMC as due and payable to it by the Concessionaire pursuant to this Agreement, including {Premium,} repayment of Revenue Shortfall Loan and any claims in connection with or arising out of Termination;
 - d. retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in this Agreement;
 - e. Outstanding Debt Service including the balance of Debt Due;
 - f. outstanding Subordinated Debt;
 - g. incurred or accrued O&M Expenses;
 - h. any other payments required to be made under this Agreement; and
 - i. balance, if any, in accordance with the instructions of the Concessionaire.

6. REPRESENTATIONS AND WARRANTIES

6.1. Representations and Warranties of NMMC

NMMC hereby represents and warrants to the Concessionaire and the Default Escrow Bank as of the date of this Agreement and at all times that:

- (a) NMMC is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Agreement constitutes a valid, legal and binding obligation on NMMC, enforceable in accordance with the terms of this Agreement;
- (c) to the best of the knowledge of the Procurer, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi-judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of NMMC or the ability of NMMC to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;
- (d) the execution, delivery and performance of this Agreement by NMMC have been duly authorized by all requisite actions and will not constitute a violation of:
 - (i) Any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to NMMC, its assets or its business; or
 - (ii) The NMMC's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (e) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Payment of NMMC, routed through the Default Escrow Account pursuant to this Agreement,
- (f) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;

- (g) all filings and other actions necessary to create, perfect and protect a first priority security interest and charge with respect to the Security have been duly made or taken or shall be duly made as soon as possible and as of the said date, all such filings and actions shall be in full force and effect;
- (h) At least amount equal to 3 (three) times of Concessionaire's total monthly payment are deposited in Escrow Account every month and shall continue to be deposited in Escrow Account till the termination of this Agreement in accordance with the terms herein.

6.2. Representations and Warranties of the Default Escrow Bank

The Default Escrow Bank shall represent and warrant to NMMC and the Concessionaire as of the date of this Agreement and at all times that:

- (a) the Default Escrow Bank is a duly constituted scheduled commercial bank having its head office at and its branch among others, at and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid legal and binding obligations of the Default Escrow Bank enforceable in accordance with the terms of this Agreement;
- (c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Bank before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Bank to perform its duties and obligations under this Agreement;
- (d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Bank, its assets or its business; or
 - (ii) the Default Escrow Bank's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and
- (e) the Default Escrow Bank is not aware of any other charge or security interest or encumbrance granted over the Payment to concessionaire routed through the Default Escrow Account in favour of any other person other than the Concessionaire,

6.3. Representations and Warranties of the Concessionaire

The Concessionaire hereby represents and warrants to the Default Escrow Bank and the NMMC that:

- (a) it has been duly constituted under the Companies Act, 1956/2013 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid, legal and binding obligations of the Concessionaire enforceable in accordance with the terms of this Agreement;
- (c) the execution, delivery and performance of this Agreement by the Concessionaire has been duly authorized by all requisite action, and will not constitute a violation of:
 - (i) Any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Concessionaire, its assets or its business; or
 - (ii) The Concessionaire's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound; and
- (d) There are no actions, suits or proceedings pending or threatened, against or affecting the Concessionaire before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Concessionaire to perform its duties and obligations under this Agreement.

7. NMMC'S COVENANTS

7.1. NMMC covenants that:

- (a) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of NMMC, in connection with:
 - (i) the execution, delivery, performance and observance by NMMC of this Agreement;
 - (ii) the validity, binding effect and enforceability of this Agreement; and
 - (iii) the creation and perfection of the charge over the payment routed through the Default Escrow Account pursuant to this Agreement;

- (b) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by NMMC of its obligations under this Agreement;
- (c) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement; and
- (d) it shall inform the Concessionaire of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.

8. ESCROW DEFAULT

8.1. NMMC's Escrow Default

Following events shall constitute an event of default by NMMC (a “**Procurer Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Concessionaire:

- (a) NMMC commits breach of this Agreement by failing to deposit the Payment Security Fund into the specified Sub-Account of the Default Escrow Account, i.e., the ‘payment security Sub-Account’ as provided herein and fails to cure such breach by depositing the same into Default Escrow Account within a period of 30 (thirty) business days thereof;
- (b) NMMC causes the Default Escrow Bank to withdraw or transfer funds in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Default Escrow Account within a Cure Period of 30 (thirty) business days;
- (c) NMMC commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 30 (thirty) business days;
- (d) any representation or warranty made by NMMC in this Agreement shall be or shall have been incorrect in any material respect;
- (e) the amount covered by the Escrow Deposit is at any time less than the six 1 Monthly Charge or is insufficient for recovery of payment due against the Monthly Invoice, and there is failure on the part of NMMC to replenish such shortfall and reinstate the Escrow Deposit within a period of 30 (thirty) days;
- (f) NMMC commits or causes any breach of the provisions of the Deed of Hypothecation and fails to cure the same within a Cure Period of 60 (sixty) business days.

9. TERMINATION OF DEFAULT ESCROW AGREEMENT

9.1. Duration of the Default Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains outstanding from NMMC in respect of the Secured Obligations, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

9.2. Termination of the Agreement

NMMC may, by no less than 60 (sixty) days prior notice to the Default Escrow Bank and the Concessionaire, terminate this Agreement and appoint a successor Default Escrow Bank, provided that the successor Default Escrow Bank is acceptable to the Concessionaire. The termination of this Agreement shall take effect only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Article 9.4 to the satisfaction of the Concessionaire.

9.3. Resignation by the Default Escrow Bank

The Default Escrow Bank may, after giving at least 180 (one hundred and eighty) days' notice in writing to NMMC and the Concessionaire resign from acting as Default Escrow Bank for the purposes of this Agreement. In the event of such notice of resignation, NMMC and the Concessionaire shall forthwith appoint a successor bank as Default Escrow Bank and shall, no later than 60 (sixty) days prior to the effectiveness of such resignation, execute and cause such successor bank to execute a Default Escrow Agreement with NMMC and the Concessionaire. Provided that if a successor bank acceptable to the Concessionaire is found within a shorter period, the Concessionaire and Procurer may waive the notice period of 180 (one hundred and eighty) days. For the avoidance of doubt, the resignation of the Default Escrow Bank hereunder shall be effective only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Article 9.4 to the satisfaction of the Concessionaire.

9.4. Procedure for substitution

In the event that a successor Default Escrow Bank is appointed under the provisions of Article 9.2 or 9.3, as the case may be, the Default Escrow Bank shall:

- (i) cease therewith accepting any payments or deposits into the Default Escrow Account;
- (ii) transfer all amounts standing to the credit for the Default Escrow Account to the Default Escrow Account opened with the successor Default Escrow Bank to the satisfaction of the Concessionaire;

- (iii) when all such amounts have been transferred, close the Default Escrow Account; and
- (iv) within 30 (thirty) days of such closing, provide to NMMC and the Concessionaire a written report which shall fully reconcile all deposits to, and withdrawals from the Default Escrow Account.

9.5. Default Escrow Bank to continue

Notwithstanding the termination of the Default Escrow Agreement or the resignation of the Default Escrow Bank, as the case may be, the Default Escrow Agreement shall remain in force and the Default Escrow Bank shall continue to discharge its obligations thereunder until a successor Default Escrow Bank has been appointed and its Default Escrow Agreement has become effective upon completion of the procedure set forth in Article 9.4 to the satisfaction of the Concessionaire.

9.6. Closure of Default Escrow Account

The Default Escrow Bank shall, at the request of NMMC and the Concessionaire, made on or after the payment by NMMC of all the Secured Obligations, and upon confirmation of receipt of such payments, close the Default Escrow Account and any Sub-Accounts thereunder and pay any amount standing to the credit thereof to NMMC. Upon closure of the Default Escrow Account hereunder, the Default Escrow Agreement shall be deemed to be terminated.

10. INDEMNITY

10.1. General indemnity

- 10.1.1. NMMC will indemnify, defend and hold the Concessionaire and the Default Escrow Bank harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by NMMC of any of its obligations under this Agreement or on account of failure of NMMC to comply with Applicable Laws and Applicable Permits.
- 10.1.2. The Concessionaire will indemnify, defend and hold NMMC harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessionaire to fulfil any of its obligations under this Agreement, which materially and adversely affects the performance of NMMC's obligations under this Agreement, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Concessionaire, its officers, servants and agents.
- 10.1.3. The Default Escrow Bank will indemnify, defend and hold NMMC and the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Default

Escrow Bank to fulfil its obligations under this Agreement, which materially and adversely affects the performance of NMMC or Concessionaire's obligations under this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Default Escrow Bank, its officers, servants and agents.

10.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 10.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

11. DISPUTE RESOLUTION

11.1. Dispute resolution

11.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably within a period of 21 (twenty-one) days from the date of discussion between the Parties, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising 1 (one) nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

11.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The seat and venue of arbitration shall be Navi Mumbai and the language of arbitration shall be in English language.

12. MISCELLANEOUS PROVISIONS

12.1. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Mumbai shall have jurisdiction over all matters arising out of or relating to this Agreement.

12.2. Waiver of sovereign immunity

NMMC unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government or NMMC with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

12.3. Priority of agreements

In the event of any conflict between the Agreement for Procurement of Power and this Agreement, the provisions contained in the Agreement for Procurement of shall prevail over this Agreement.

12.4. Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

12.5. Waiver

12.5.1. Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

- (c) shall not affect the validity or enforceability of this Agreement in any manner.

12.5.2. Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

12.6. No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

12.7. Survival

12.7.1. Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

12.7.2. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

12.8. Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 11 of this Agreement or otherwise.

12.9. Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

12.10. Continuation of Agreement

Any corporation or association into which the Default Escrow Bank may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Default Escrow Bank hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

12.11. Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

12.12. Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Agreement, NMMC and the Concessionaire shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. NMMC and the Concessionaire shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

12.13. Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English language.

12.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

12.15 Original Document

This Agreement may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

<p>THE COMMON SEAL OF THE CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the.... day of 20... hereunto affixed in the presence of..., Director, [who has signed these presents in token thereof and Company Secretary/Authorised Officer who has countersigned the same in token thereof]:</p>	<p>SIGNED, SEALED AND DELIVERED For and on behalf of THE DEFAULT ESCROW BANK by:</p>
<p>(Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)</p>	<p>(Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)</p>
<p>SIGNED, SEALED AND DELIVERED for and on behalf of THE NMMC by:</p> <p>(Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)</p>	
<p>In the presence of:</p>	
<p>1</p>	<p>2</p>

SCHEDULE – C

CONTENTS OF DETAILED PROJECT REPORT (DPR)

The Detailed Project Report (DPR) shall be submitted by the Concessionaire at the time of financial closure. The detailed project report shall contain following, but not limited to;

- (a) Executive Summary.
- (b) Project description, plant & equipment design criteria for the renewable Energy.
- (c) Description of Project facilities Hydro Electric, Floating Solar
- (d) General Arrangement Drawing (GAD) drawings for development of both the project facilities
- (e) Project facility wise land requirement
- (f) Bathymetry and Hydrography study & Geo Technical Investigations
- (g) Development and Installation of SCADA & Operational Philosophy for all 3 Dam synchronization using state of art software
- (h) Technology overview along with the equipment specifications.
- (i) Hydro Electric resource assessment and technology selection.
- (j) Power evacuation system & grid interaction.
- (k) Construction programme & schedule,
- (l) Compliance checklist for adherence of the proposed project facilities and its detailed specifications, construction plan and schedule with reference to the applicable Guidelines/notifications, Rules, Regulations stipulated by Law of Land or any Statutory Body or any Government Department.
- (m) Permits & License required.
- (n) Operation & maintenance requirement.
- (o) Social & Environment impact assessment, risk assessment etc.
- (p) Environment Management Plan
- (q) Project Cost Estimate & Financial analysis

Way Forward & Conclusion.