

उत्तर प्रदेश UTTAR PRADESH

CW 708759

POWER SALE AGREEMENT  
FOR  
SALE OF BUNDLED POWER  
  
ON LONG TERM BASIS  
(UNDER NATIONAL SOLAR MISSION)  
(Phase-II, Batch-II, Tranche-I)

20 MAR 2016

Between

NTPC Limited  
And

UTTAR PRADESH POWER CORPORATION LIMITED

This Power Sale Agreement is made on the 15<sup>th</sup> day of March of 2016 at Lucknow

Between

NTPC Limited, a company incorporated under the Companies Act 1956, having its registered office at 7, Institutional Area, Core-7, Scope Complex, Lodhi Road, New Delhi-110003 (hereinafter referred to as "NTPC", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the first part.

And

सप्तर्षि राय  
SAPTARSHI ROY  
क्षेत्रीय कार्यकारी निदेशक (उत्तर)  
Regional Executive Director (North)  
एन.टी.पी.सी./उ.क्षेत्र मुख्यालय, लखनऊ  
N.T.P.C./N.R.H.Q., Lucknow

(A. P. MISHRA)  
MD, UPPCL

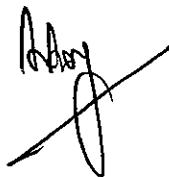
UTTAR PRADESH POWER CORPORATION LIMITED, a company incorporated under the Companies Act 1956, having its registered office at Shakti Bhawan, 14, Ashok Marg, Lucknow (hereinafter referred to as "UPPCL", or "Discom" which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the second part.

NTPC and Discom are individually referred to as 'Party' and collectively referred to as 'Parties'.

Whereas:

- A. NTPC has been identified by the Govt. of India as the nodal agency for purchase and sale of 33kV and above grid connected 'Solar PV' power under the "State Specific Bundling Scheme" under National Solar Mission by Ministry of Power (MoP), Government of India (GoI).
- B. NTPC has also been authorised by MoP, GoI and under the provisions of the National Solar Mission Phase-II, Guidelines for selection of 3000 MW Grid connected Solar PV power Projects under Batch II to bundle the purchased Solar Power with unallocated quota from NTPC thermal power stations on 2:1 on MW basis as per allocations made by MoP, GoI.
- C. NTPC shall sign Power Purchase Agreements (PPAs) with Solar Power Developers assigned by parent Company **Prayatna Developers Pvt. Ltd** (hereinafter referred to as "SPDs") for procurement of 50 MW (5X 10 MW) Solar Power on a long term basis @ Rs. 4.78/kWh.
- D. NTPC Viidyut Vyapar Nigam Limited (NVVN) on behalf of NTPC, will purchase Solar Power from SPDs and sell it to Discoms after bundling it with the Thermal Power allocated by MoP GoI, for this purpose. Further on behalf of NTPC, NVVN will facilitate Daily Scheduling, Billing, Realization, Data Submission and other associated day to Day activities for fulfilling the obligations of NTPC as assigned in this agreement.
- E. The Parties hereby agree to execute this Power Sale Agreement (PSA) setting out the terms and conditions for the sale of Bundled Power by NTPC to the Discom.
- F. The agreed Contracted thermal power from different stations of NTPC for bundling shall be as per the allocation letter to be issued by MOP, GoI from time to time.

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



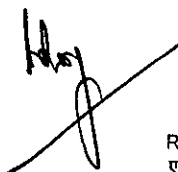
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## ARTICLE 1: DEFINITIONS AND INTERPRETATION


### 1.1 Definitions

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

"Act" or "Electricity Act, 2003"	Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
"Agreement" or "Power Sale Agreement" or "PSA"	shall mean this Power Sale Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	shall mean the Central Electricity Regulatory Commission referred to in sub- section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Bundled Power"	Shall mean power to be sold by NTPC to the Discom, after bundling Solar Power received from SPD and thermal power from NTPC stations on 2:1 basis;
"Business Day"	shall mean with respect to NTPC and Discom, a day other than a statutory holiday, on which the banks remain open for business in the state of Delhi and Uttar Pradesh(State).
"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
"Central Transmission Utility" or "CTU"	shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;
"Change in Law"	shall have the meaning ascribed thereto in Article 8 of this Agreement;
"Competent Court of Law"	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
"Consultation Period"	shall mean the period of sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a



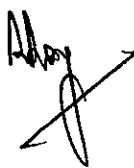
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NTPC Preliminary Default Notice or Discom Preliminary Default Notice as provided in Article 9 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

- "Contract Year" Shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;
- "Contracted Capacity" shall mean Bundled Power contracted with Discom for sale of such power by NTPC/NVVN to Discom as per recital F of this Agreement;
- "Day" Shall mean a day, if such a day is not a Business Day, the immediately succeeding Business Day;
- "Delivery Points" shall mean SPD Delivery Point and NTPC Delivery Point;
- "Dispute" shall mean any dispute or difference of any kind between NTPC and the Discom in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 12 of this Agreement;
- "Due Date" shall mean the last day of the month provided NTPC/NVVN raises bill up to 4th day of the next month. For the bills raised after 4th, it shall be 30th day from the date of raising of bill, by which date such Monthly Bill is payable by Discom;
- "Effective Date" shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
- "Electricity Laws" shall mean the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
- "Energy Accounts" shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
- "Event of Default" shall mean the events as defined in Article 9 of this Agreement;
- "Expiry Date" Shall mean the date occurring twenty five (25) years from the date of commercial operation of the last unit of the Solar Power Project;
- "Force Majeure" or "Force Majeure Event" shall have the meaning ascribed thereto in Article 7 of this Agreement;

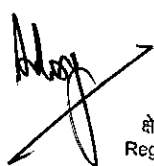


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"Grid Code" / "IEGC" or "State Grid Code"	shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
"Incremental Receivables"	Shall mean the amount of receivables, in excess of the amounts which have already been charged or agreed to be charged in favour of the parties by way of a legally binding agreement, executed prior to the Effective Date.
"Indian Governmental Instrumentality"	shall mean the Government of India, Governments of State(s), where the Power Project, NTPC and SPD are located and any Ministry, Department, Board, Authority, Agency, Corporation, Commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India.
"Interconnection Facilities"	shall mean the facilities on SPD's side of the SPD Delivery Point or NTPC's side of NTPC Delivery Point for sending and metering the electrical output in accordance with this Agreement and, subject to Article 4, the Metering System required for supply of power ;
"Invoice" or "Bill"	shall mean either a Monthly Invoice, Monthly Bill or a Supplementary Invoice /Supplementary Bill by any of the Parties;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 6.3.3 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 6.4 of this Agreement;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"National Solar Mission"	shall mean the National Solar Mission launched by the Government of India vide resolution No.32/8/013-14/NSM dated 05th March,2015, as amended from time to time;



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"NTPC Delivery Point"	shall mean the NTPC stations' delivery point i.e. Bus Bar of NTPC Stations;
"NTPC -SPD PPA"	shall mean the power purchase agreement signed between NTPC and SPD for procurement of Solar Power by NTPC from SPD and annexed hereto as Schedule 1 of this Agreement;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Security Mechanism"	shall have the meaning ascribed thereto in Article 6.4 of this Agreement;
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 9 of this Agreement;
"RBI"	shall mean the Reserve Bank of India;
"Rebate"	shall have the same meaning as ascribed thereto in Article 6.3.4 of this Agreement;
"RLDC"	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"RPC"	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Rupees", "Rs." or "₹"	shall mean Indian rupees, the lawful currency of India;
"SERC"	shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Sub-section (1) of Section 83 of the Electricity Act 2003;
"SLDC"	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
"SLDC Charges"	shall mean the charges levied by any of the relevant SLDCs on the Discom;
"Solar Photovoltaic" or "Solar PV"	Shall mean the solar photovoltaic power project that uses sunlight for direct conversion into electricity and that is being set up by the SPD to provide Solar Power to NTPC ;
"Solar Power"	Shall mean power generated from the Solar Photovoltaic Power Project;
"SPD Delivery Point"	Shall mean the delivery point as identified in NTPC -SPD PPA:



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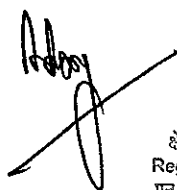
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"State Transmission Utility" or "STU"	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
"Tariff"	Shall have the same meaning as provided for in Article 5 of this Agreement;
"Tariff Payments"	shall mean the payments to be made under Monthly Bills as referred to in Article 6;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 9 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
"Trading Margin"	Trading Margin payable to NTPC for sale of Power to DISCOM, shall be 7 Paise per kWh on the solar component of the bundled power as per MNRE guidelines for Solar Power under Phase II, Batch II, Tranche I;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

## 1.2 Interpretation

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

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;



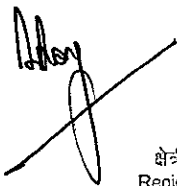
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- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees" "Rs." or "₹"(new rupee symbol) shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented only if agreed to between the parties;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;



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## 2 ARTICLE 2 : TERM OF AGREEMENT

### 2.1 Effective Date

2.1.1 This Agreement shall come into effect from the date of its execution by both the Parties and such date shall be referred to as the Effective Date.

### 2.2 Term of Agreement

2.2.1 This Agreement subject to Article 2.3 and 2.4 shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date.

### 2.3 Early Termination

2.3.1 This Agreement shall terminate before the Expiry Date:

- i. if either NTPC or Discom terminates this Agreement, pursuant to Article 9 of this Agreement; or
- ii. If NTPC -SPD PPA gets terminated

### 2.4 Survival

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under, Article 7 (Force Majeure), Article 9 (Events of Default and Termination), Article 10 (Liability and Indemnification), Article 12 (Governing Law and Dispute Resolution), Article 13 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.



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### 3 ARTICLE 3 : OPEN ACCESS & TRANSMISSION

#### 3.1 Open Access

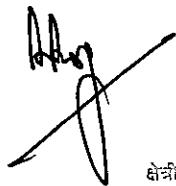
- 3.1.1 The Discom shall be responsible for obtaining and maintaining long term open access, as required, from the Delivery Points to its receiving substation(s).
- 3.1.2 The Discom shall be required to apply for open access as per the applicable regulations specified by the Appropriate Commission and shall obtain open access for the Term of the Agreement well in advance so as to start evacuating the Contracted Capacity from the Delivery Points.
- 3.1.3 Delay or failure by the Discom to obtain open access as required under this Article 3.1 due to reasons solely attributable to the Discom shall not relieve it from the Tariff payment obligations to NTPC which shall commence from the date of supply of power by NTPC and SPD.

#### 3.2 Charges

- 3.2.1 As per applicable regulation(s) of the Appropriate Commission(s), all charges pertaining to open access of the transmission network of the concerned STU/CTU from the Delivery Points to the receiving substation(s) shall be directly paid by the Discom.
- 3.2.2 NTPC shall neither be liable for obtaining the open access nor for any payments to be made for such open access to the concerned STU/CTU by the Discom.
- 3.2.3 Any charges payable for Open Access on behalf of Discom by NTPC /SPD shall be reimbursed by Discom.

#### 3.3 Losses

- 3.3.1 The Discom shall be liable to bear all the transmission losses in respect of the power evacuated from the Delivery Points to its receiving substation(s).



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#### 4 ARTICLE 4: METERING

##### 4.1 Metering

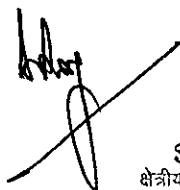
4.1.1 The arrangements for metering of Solar Power supplied at the SPD Delivery Point shall be as per the provisions identified in the NTPC -SPD PPA. Similarly the arrangement for metering of NTPC Thermal Power supplied shall be at NTPC Delivery Point. The metering arrangements shall comply with the norms of SERC/ CEA as applicable.

4.1.2 The energy details obtained from Energy Accounts shall be provided to the Discom by NTPC along with Monthly Bill validating the total energy for which the Monthly Bill is generated.

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

##### 4.2 Energy Accounting & Scheduling

4.2.1 The scheduling and energy accounting of NTPC thermal power shall be as per the provisions of the Grid Code while the scheduling and energy accounting of solar power shall be as per the provisions of the NTPC -SPD PPA and applicable Grid Code.



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5 **ARTICLE 5: APPLICABLE TARIFF**

5.1.1 The Applicable Tariff for Bundled Power shall be derived as per provisions of Schedule-1 of this Agreement and the Discom shall make the Tariff Payments to NTPC as per the provisions of this Agreement.

6 **ARTICLE 6: BILLING AND PAYMENT**

6.1 **General**

6.1.1 From the commencement of supply of power by NTPC, the Discom shall pay to NTPC the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in Article 5. All Tariff Payments by the Discom shall be in Indian Rupees.

6.2 **Delivery and Content of Monthly Bills**

6.2.1 NTPC shall issue to the Discom a signed Monthly Bill on the last Business Day of the Month.

6.2.2 The Monthly Bill prepared as detailed in Schedule-1 of the PSA shall include the following:

i) Provisional Bill for Bundled Power Supplied in the Month;

ii) (a) Adjustments against the Provisional Bill(s) based on Energy Accounts for the Bundled Power Supplied in the preceding month(s);

ii) (b) Any other adjustments to cover changes in tariff of NTPC Power, open access related charges and any other prior-period adjustments;

iii) Late Payment Surcharge, if any; and

iv) Taxes, Duties, Levies etc. as applicable.

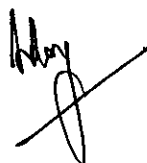
6.3 **Payment of Monthly Bills**

6.3.1 The Discom shall pay the amount payable under the Monthly Bill on the Due Date to such account of NTPC, as shall have been previously notified to the Discom in accordance with Article 6.3.2 below.

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

6.3.3 **Late Payment Surcharge**

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In the event of delay in payment of a Monthly Bill by the Discom thirty (30) days beyond its Due Date, a Late Payment Surcharge shall be payable by the Discom to NTPC at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by NTPC through the next Monthly Bill.

#### 6.3.4 Rebate

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the NTPC to Discom in the following manner.

- a) A Rebate of 2% shall be payable to the Discoms for the payments made on the 1<sup>st</sup> Business Day of the Month.
- b) Any payments made beyond the 1<sup>st</sup> Business Day of the month upto the Due Date shall be allowed rebate of 1%.
- c) Provided that, any payment made by Discom on date of presentation of Bill a Rebate of 2% shall be payable, if bill is raised beyond 1<sup>st</sup> Business Day of the Month.
- d) For the above purpose, the date of presentation of bill shall be same day in case it is delivered on or before 12:00 noon, else it would be the next Business Day.
- e) No Rebate shall be payable on the Bills raised on account of taxes, duties and cess etc.

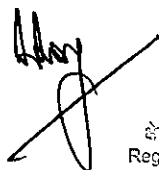
#### 6.4 Payment Security Mechanism

##### Letter of Credit (LC):

6.4.1 The Discom shall provide to NTPC, in respect of payment of its Monthly Bills, a single, unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Discom, which may be drawn upon by NTPC in accordance with this Article. The Discom shall provide NTPC draft of the Letter of Credit proposed to be provided to NTPC two (2) months before the Scheduled Commissioning Date.

6.4.2 Not later than one (1) Month before the Start of Supply, the Discom shall through a scheduled bank at Lucknow open a Letter of Credit in favour of NTPC, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be reviewed every year, in the month of January and revised w.e.f. April for 105% of amount in the following manner:

- i) For the first Contract Year, equal to the estimated average monthly billing;
- ii) For each subsequent Contract Year, equal to 6 months of the average of the monthly Tariff Payments of the previous Contract Year and equal to 6 months of the estimated monthly billing from new capacities.



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- 6.4.3 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 6.4.2 due to any reason whatsoever, the Discom shall restore such shortfall within seven (7) days.
- 6.4.4 The Discom shall cause the scheduled bank issuing the Letter of Credit to intimate NTPC, in writing regarding establishing of such irrevocable Letter of Credit.
- 6.4.5 The Discom shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to its expiry.
- 6.4.6 All costs relating to opening, maintenance of the Letter of Credit shall be borne by the Discom.
- 6.4.7 If the Discom fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 6.6.1 and 6.6.2, NTPC may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Discom, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
- a copy of the Monthly Bill which has remained unpaid by the Discom;
  - a certificate from NTPC to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

#### 6.4.9 Collateral Arrangement

As a further support for the Discom's obligations, on or prior to the Effective Date, the Discom and NTPC shall execute Default Escrow Agreement (referred as "Default Escrow Agreement") for the establishment and operation of the Default Escrow Account in favour of NTPC, through which the revenues of the Discom shall be routed and used as per the terms of the Default Escrow Agreement. The Discom and NTPC shall contemporaneously with the execution of the Default Escrow Agreement enter into the Agreement to Hypothecate Cum Deed of Hypothecation, whereby the Discom shall agree to hypothecate, Incremental Receivables to the extent as required for the Letter of Credit as per Article 6.4.2. The Default Escrow Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation are collectively referred to as the "Collateral Arrangement".

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

  
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6.4.10 The Default Escrow would come into operation if.

- i) The Letter of Credit is not recouped by the Discom to its required value by the 7<sup>th</sup> day of its operation;
- ii) NTPC is unable to draw on the Letter of Credit on the Due Date, if the Discom fails to pay by the Due Date.
- iii) Non-restoration of Escrow Arrangement by the 7<sup>th</sup> day of the Due Date.

6.4.11 In the event of the extension of Tri partite Agreement signed between Government of India (GOI), Government of Uttar Pradesh and Reserve Bank of India (RBI) beyond 31.10.2016, it will not be mandatory for Discom to execute the escrow arrangement as mentioned above till the validity of the Tripartite Agreement.

## 6.5 Third Party Sales by NTPC

6.5.1 Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of any of the following event(s), NTPC shall be entitled to regulate power supply of Bundled Power of the Discom:

- i) Default in making payment by the 7<sup>th</sup> day of the Due Date,
- ii) Non-recoupment of LC by the 7<sup>th</sup> day of its operation.
- iii) Non-availability of LC for operation and for its required value by the 7<sup>th</sup> day of the Due Date.

6.5.2 NTPC shall issue the Notice for Regulation of Power Supply on the date above and shall give a notice of 2 days to start the regulation on the 3<sup>rd</sup> day.


6.5.3 Regulation of Power Supply would be on pro rata basis i.e., in the ratio of amount due and unpaid to total amount due against the relevant Monthly Bill. In case of shortfall in amount of LC available, the right to regulate shall be in the ratio of shortfall in LC maintained /available to the total amount of LC required.

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

i) In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, NTPC would have a right to regulate and sell Discom's allocation of the power to third parties to the extent of 40% (i.e.  $10/25 \times 100$ ).

ii) If LC required to be opened/ maintained by Discom is to the extent of Rs. 25 Crore and LC opened/maintained/available is to the extent of Rs. 15 Crore only i.e. LC available is short by Rs. 10 Crore, NTPC would have a right to regulate and sell Discom's allocation of power to third parties to the extent of 40% (i.e..  $10/25 \times 100$ ).

  
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6.5.5 NTPC shall have the right to divert the Bundled Power or part thereof and sell it to any third party namely;

- i) Any consumer, subject to applicable Law; or
- ii) Any licensee under the Act;

NTPC shall request the concerned SLDC/RLDC to divert such power to third party as it may consider appropriate.

6.5.6 Provided that such sale of power to third party shall not absolve the Discom from its obligation to pay in full to NTPC for the solar power as per NTPC -SPD PPA and capacity charge liability for thermal power and any other outstanding payment liability of the Discom as per this Agreement.

6.5.7 The amount realized from the diversion and sale of power to third party over and above the trading margin, energy charges relevant to NTPC power, open access charges and other costs shall be adjusted first against the pending liability of the Discom.

6.5.8 Sales to any third party shall cease and regular supply of electricity to the Discom shall commence and be restored within thirty (30) days from the date of clearing all the outstanding dues payable to NTPC for the bundled power under this Agreement.

6.5.9 Further, that the liability of the Discom to make the Tariff Payments to NTPC as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available by NTPC and SPD for usage by the Discom.

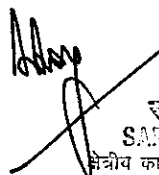
## 6.6 Disputed Bill


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

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

- i) the details of the disputed amount;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its claim.

6.6.3 If the NTPC agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.6.2, the NTPC shall make appropriate adjustment in the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment

  
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was made by the Discom and up to and including the date on which such payment has been received as refund.

6.6.4 If the NTPC does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:

- i) reasons for its disagreement;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its counter-claim.

6.6.5 Upon receipt of the Bill Disagreement Notice by the Discom under Article 6.6.4, authorized representative(s) or a director of the board of directors/ member of board of the Discom and NTPC shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

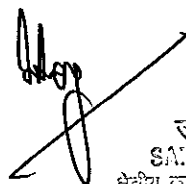
6.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 6.6.4, the matter shall be referred to Dispute resolution in accordance with Article 12.

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

### 6.7 Quarterly and Annual Reconciliation

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

6.7.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Discom and NTPC shall jointly sign such reconciliation statement. After signing of a reconciliation statement, the NTPC shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 12.



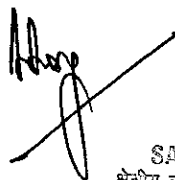
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## 6.8 Renewable purchase obligation

- 6.8.1 The Discom may identify the energy procured from the SPD Delivery Point to meet its renewable purchase obligations (as mandated by the Appropriate Commission). Provided that the renewable purchase obligation of the Discom shall be considered to be met by the Discom only if there is no payment default for such energy procured by the Discom and a certificate to such effect is provided by NTPC to the Discom.
- 6.8.2 NTPC shall provide such certificate identifying the quantum of solar energy supplied by NTPC and being met by the Discom for each year within thirty (30) days after the end of such year.
- 6.8.3 NTPC, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the SPD beyond the energy value as committed by the SPD at the time of signing of the PPA. If for any Contract Year, it is found that the SPD has not been able to generate minimum energy value as agreed at the time of signing of the PPA, on account of reasons solely attributable to the SPD, the non-compliance by SPD shall make SPD liable to pay the compensation provided in the PPA as payable to Discom and shall duly pay such compensation to NTPC to enable NTPC to remit the amount to Discom. This compensation shall be proportional to the amount of shortfall in solar energy during the Contract Year.
- 6.8.4 Notwithstanding Article 6.8.3, the SPD is free to sell such power to any third party prior to the Scheduled Commissioning Date and any capacity which is in excess of the quantum of power agreed to be supplied under this Agreement from Scheduled Commissioning Date. Provided that the SPD shall not be entitled to claim benefit of bundling of power provided in this Agreement in any manner whatsoever on such sale of infirm power or power in excess of the contracted capacity as the case may be.



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## 7. ARTICLE 7: FORCE MAJEURE

### 7.1 Definitions

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

### 7.2 Affected Party

7.2.1 An affected Party means NTPC or the Discom whose performance has been adversely affected by an event of Force Majeure.

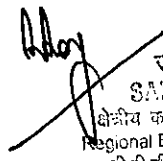
### 7.3 Force Majeure


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

- a) Act of God, including, but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, resulting in evacuation of power being disrupted from the Delivery Points; or
- b) Explosion, accident or breakage of transmission facilities to deliver power from the Delivery Points to the receiving substation(s); or
- c) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action making the performance of obligations as specified herein as impossible; or
- d) radio active contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.
- e) An event of force majeure identified under NTPC -SPD PPA thereby affecting supply of power by SPD and/or NTPC.
- f) An event of force majeure affecting the concerned STU/CTU, as the case may be, thereby affecting the evacuation of power from the Delivery Points by the Discom:

### 7.4 Force Majeure Exclusions

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

  
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- a. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- b. Strikes at the facilities of the Affected Party;
- c. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- d. Non-performance caused by, or connected with, the Affected Party's:
  - i. Negligent or intentional acts, errors or omissions;
  - ii. Failure to comply with an Indian Law; or
  - iii. Breach of, or default under this Agreement.

## 7.5 *Notification of Force Majeure Event*

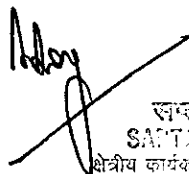
7.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force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


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

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

## 7.6 *Duty to Perform and Duty to Mitigate*

7.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 7.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

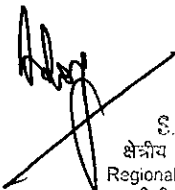
  
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**7.7 Available Relief for a Force Majeure Event**

**7.7.1 Subject to this Article 7:**

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

  
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## 8 ARTICLE 8: CHANGE IN LAW

### 8.1 Definitions

In this Article 8, the following terms shall have the following meanings:

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

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Discom;
- any change in tax or introduction of any tax made applicable for sale of power by NTPC to the Discom as per the terms of this Agreement.


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

### 8.2 Relief for Change in Law

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

8.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.

  
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9 ARTICLE 9: EVENTS OF DEFAULT AND TERMINATION

9.1 *Discom Event of Default*

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

- (i) Any amount subject to Article 6.6 remains outstanding beyond a period of ninety (90) days after the Due Date and NTPC is unable to recover the amount outstanding from the Discom through the Letter of Credit and Default Escrow Account; or
- (ii) The Discom fails to evacuate power from the Delivery Points for a continuous period of one day.
- (iii) if (a) the Discom becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Discom, or (c) the Discom goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

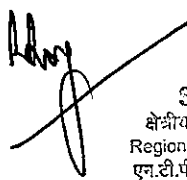
Provided that a dissolution or liquidation of the Discom will not be a Discom Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the Discom and expressly assumes all obligations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

- (iv) the Discom repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from NTPC in this regard; or
- (v) except where due to any NTPC's failure to comply with its material obligations, the Discom is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the Discom within thirty (30) days of receipt of first notice in this regard given by NTPC.
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Discom.

9.2 *Procedure for cases of Discom Event of Default*

9.2.1 Upon the occurrence and continuation of any Discom Event of Default under Article 9.1, NTPC shall have the right to deliver to the Discom a notice, stating its intention to terminate this Agreement (NTPC Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

9.2.2 Following the issue of NTPC Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a

  
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(A. S. MISHRA)  
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view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.


- 9.2.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 9.2.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Discom Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, NTPC may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Discom.


### 9.3 *Termination due to Force Majeure*

- 9.3.1 If the Force Majeure Event or its effects continue to be present beyond a period of twelve (12) months, either Party shall have the right to cause termination of the Agreement. In such an event this Agreement shall terminate on the date of such Termination Notice without any further liability to either Party from the date of such termination.

### 9.4 *Termination of back to back agreements*

In case of termination of NTPC -SPD PPA, this Agreement shall automatically terminate but only to the extent of that particular NTPC -SPD PPA. Provided that in case of such termination as identified in this Article 9.4, any pending monetary liabilities of either Party shall survive the termination of this Agreement.

  
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## 10 ARTICLE 10: LIABILITY AND INDEMNIFICATION

### 10.1 Indemnity

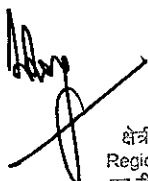
10.1.1 The Discom shall indemnify, defend and hold NTPC harmless against:

- a) any and all third party claims against NTPC for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Discom of any of its obligations under this Agreement, except to the extent that any such claim has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of NTPC, its contractors, servants or agents; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by NTPC from third party claims arising by reason of:
  - (i) breach by the Discom of any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by the Discom, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of NTPC, its contractors, servants or agents, or
  - (ii) any of the representations or warranties of the Discom, if any made under this Agreement, being found to be inaccurate or untrue.

### 10.2 Procedure for claiming Indemnity

#### 10.2.1 Third party claims

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 10.1.1(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 10.1.1(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice.
- b. Provided however that, if the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute, the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.
- c. The Indemnified Party may contest the claim by referring to the Appropriate Commission for which it is entitled to be Indemnified under Article 10.1.1(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred

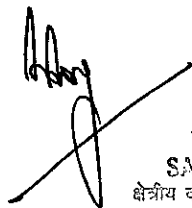
  
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by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

### 10.3 *Indemnifiable Losses*

10.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 10.1.1(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 10.3, such event shall constitute a payment default under Article 9.



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## 11 ARTICLE 11: ASSIGNMENTS AND CHARGES

### 11.1 Assignments

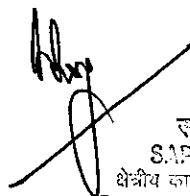
This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:


Provided that, such consent shall not be withheld if NTPC seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

### 11.2 Permitted Charges

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

  
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## 12 ARTICLE 12: GOVERNING LAW AND DISPUTE RESOLUTION

### 12.1 Governing Law

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

### 12.2 Amicable Settlement and Dispute Resolution

#### 12.2.1 Amicable Settlement

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ( "Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:
  - (i) a description of the Dispute;
  - (ii) the grounds for such Dispute; and
  - (iii) all written material in support of its claim.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 6.6.2, furnish:
  - (i) counter-claim and defences, if any, regarding the Dispute; and
  - (ii) all written material in support of its defences and counter-claim.
- iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 6.6.2 if the other Party does not furnish any counter claim or defence under Article 6.6.4 or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 6.6.4, the Dispute shall be referred for dispute resolution in accordance with Article 12.3.

### 12.3 Dispute Resolution

#### 12.3.1 Dispute Resolution by the Appropriate Commission

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

  
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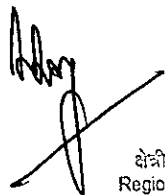
  
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Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

- ii. The obligations of the Discom under this Agreement towards NTPC shall not be affected in any manner by reason of inter-se disputes amongst the Discom.

#### 12.4 *Parties to Perform Obligations*

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



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### 13 ARTICLE 13: MISCELLANEOUS PROVISIONS

#### 13.1 *Amendment*

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

#### 13.2 *Third Party Beneficiaries*

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

#### 13.3 *Waiver*

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

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

#### 13.4 *Confidentiality*

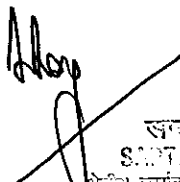
13.4.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:


- a) to their professional advisors;
- b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- c) disclosures required under Law.

without the prior written consent of the other Parties.

#### 13.5 *Severability*

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

  
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## 7.1 Notices

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

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

Address : Chief Engineer (PPA), Uttar Pradesh Power Corporation Limited (UPPCL), 14<sup>th</sup> Floor, Shakti Bhawan Extn., 14, Ashok Marg, Lucknow-226001  
Attention :  
Email : ccppa2009@gmail.com  
Fax. No. : 0522-2218812  
Telephone No. : 0522-2218812

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


(i) Address : NTPC Limited  
NTPC Bhawan  
SCOPE Complex, Core-7  
7, Institutional Area, Lodhi Road  
New Delhi- 110 003  
Fax. No. :  
Telephone No. :

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

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

## 7.2 Language

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

  
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SAMPAT KISHOR  
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Regional Executive Director (North)  
एन.टी.पी.सी./उ.क्षेत्र मुख्यालय, लखनऊ  
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13.7.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

### **13.8 Restriction of Shareholders / Owners' Liability**

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

### **13.9 Taxes and Duties**

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

13.9.2 NTPC shall be indemnified and held harmless by the Discom against any claims that may be made against NTPC in relation to the matters set out in Article 13.9.1.

13.9.3 NTPC shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Discom by NTPC on behalf of Discom or its personnel.

### **13.10 No Consequential or Indirect Losses**

13.10.1 The liability of the Discom and NTPC shall be limited to that explicitly provided in this Agreement.


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

### **13.11 Order of priority in application**

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

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

  
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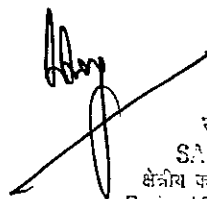
  
(A. P. MISHRA)  
MD, UPPCL

### 13.12 *Independent Entity*

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

### 13.13 *Compliance with Law*

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



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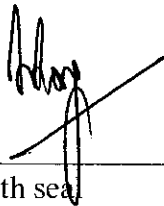


(A. P. MISHRA)  
MD, UPPCL

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

For and on behalf of  
[NTPC Limited]

For and on behalf of  
[Uttar Pradesh Power Corporation Limited]



Signature with seal

सप्तर्षि राय  
SAPTARSHI ROY  
क्षेत्रीय कार्यकारी निदेशक (उत्तर)  
Regional Executive Director (North)  
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( A. P. MISHRA )  
MD, UPPCL

Signature with seal

Witness:

1. N. Qureshi  
AGM (BD)

15.3.16

Witness:

1. V. P. Srivastava  
CE (PPA)



( A. P. MISHRA )  
MD, UPPCL

## SCHEDULE 1: RATE DERIVATION FOR SOLAR POWER AND NTPC POWER

1) The billing to the Distribution Utilities (Discons) shall be done by NTPC for realization of amount for solar power component and NTPC thermal power component.

2) The solar power component amount is product of the energy metered and tariff notified by CERC and shall be calculated as under:

$$A(sp) = E(sp) * T(sp)$$

Where

- A(sp) = Amount realization (in Rs.) for Solar Power for the applicable Month;
- E(sp) = No. of units (kWh) metered at SPD Delivery Point and verified by the Energy Accounts for the applicable Month;
- T(sp) = Tariff (in Rs./kWh) as agreed in the respective NTPC-SPD PPA;

3) The NTPC thermal power component amount is computed on (i) Monthly capacity charges (ii) Energy Charges for the energy scheduled at CERC determined tariff for the station including fuel price adjustments (FPA) and (iii) other applicable charges and taxes.

$$A(np) = \text{Capacity Charges for the applicable Month proportionate to the NTPC allocated capacity} + E(np) * V(np) + \text{Other applicable charges as per CERC order}$$

Where

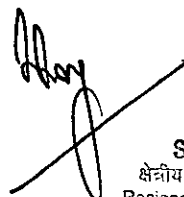
- A(np) = Amount realization (in Rs.) for NTPC thermal power component for the applicable Month;
- E(np) = No. of units (kWh) scheduled at NTPC Delivery Point as per the Energy Accounts for the applicable Month;
- V(np) = Variable charges including FPA(in Rs./kWh) for the applicable Month;
- Applicable charges may include foreign exchange rate variation/ hedging costs, cess, duties, other levies and any other adjustments etc.

And

$$T(np) = A(np)/E(np)$$

Where

- T(np) = Tariff (in Rs./kWh) as computed for the applicable Month;
- E(np) = No. of units (kWh) scheduled at NTPC Delivery Point as per the Energy Accounts for the applicable Month.



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MD, UPPCL

## AMOUNT REALISATION FOR BUNDLED POWER

- i) The payments to be made by the Discom to NTPC for the Bundled Power in a Monthly Invoice shall comprise of amounts to be realized for Solar Power component and NTPC thermal power component.
- ii) The Bills shall be raised by NTPC on the Distribution Utilities as mentioned under:

### 1. Provisional Billing for Bundled Power for the previous month-

#### (a) Provisional tariff for bundled power for the previous month

$$Tp(bp) = \frac{\sum Ep(sp) * \{T(sp) + T(m)\} + \sum Ep(np) * T(np) + \sum Atr}{\sum Ep(sp) + \sum Ep(np)}$$

Where,

- Tp(bp) = Tariff (in Rs./kWh) as computed for Bundled Power for the applicable Month;
- Ep(sp) = No. of units (kWh) for the applicable Month based on normative CUF as per CERC Regulations for respective solar power project;
- T(sp) = Tariff (in Rs./kWh) which shall be as agreed in the respective NTPC-SPD PPA;

**Where, weighted average component of solar power is worked out for all Solar Power Developers who have signed their respective power purchase agreements with NTPC under the Guidelines for Selection of 3000 MW Grid –connected Solar PV Power projects under Batch-II;**

- Ep(np) = No. of units (kWh) at NTPC Delivery Point at normative PLF for the applicable Month;
- T(np) = Tariff (in Rs./kWh) for the applicable Month as computed in Schedule 1;
- Atr = Monthly Transmission Charges (Rs.) as applicable for the link between the respective STU pooling Station to STU grid station/CTU grid station for the Solar Power Stations, as the case may be;
- T(m) = Trading Margin of NTPC.

**Where weighted average for NTPC Stations is worked out for the identified Stations allocated to Distribution Utilities as allocation for bundling with solar power, for which power purchase agreement has been signed with NTPC.**


#### (b) Provisional billing amount for previous month

$$Ap(bp) = Ed(bp) * Tp(bp)$$

Where:

- Ap(bp) = Provisional Billing amount (in Rs.) for Bundled Power for the applicable Month;
- Ed(bp) = Energy computed for respective Distribution Utilities from the tied up power of respective Solar Power Stations at normative CUF and from the allocated power from NTPC thermal power Stations at normative PLF.

  
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- Tp (bp) = Tariff (in Rs./kWh) as computed for Bundled Power for the applicable Month;

**2. Adjustment against Provisional Billing for Bundled Power for the preceding previous month on the basis of Energy Accounts-**

**(a) Tariff for bundled power for the preceding previous month**

$$Tf (bp) = \frac{\Sigma Ea (sp) * \{T(sp) + T(m)\} + \Sigma Es (np) * Ta (np) + \Sigma Atr}{\Sigma Ea (sp) + \Sigma Es (np)}$$

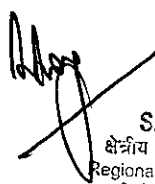
Where,


- Tf (bp) = Tariff (in Rs./kWh) as computed for Bundled Power for the applicable Month (preceding previous);
- Ea (sp) = No. of units (kWh) metered at SPD Delivery Point as per the Energy Accounts for the applicable Month (preceding previous);
- T (sp) = Tariff (in Rs./kWh) which shall be as notified by CERC for respective solar power project and discount offered by Solar Power Developer, if any;

**Where, weighted average component for solar power is worked out for all Solar Power Developers who have signed their respective power purchase agreements with NTPC under the Guidelines for Selection of 3000 MW Grid –connected Solar PV Power projects under Batch-II;**

- Es (np) = No. of units (kWh) scheduled at NTPC Delivery Point as per the Energy Accounts for the applicable Month (preceding previous);
- Ta (np) = Tariff (in Rs./kWh) for the applicable Month (preceding previous) as calculated based on actual energy billed by NTPC.
- Atr = Monthly Transmission Charges (Rs.) as applicable for the link between the respective STU pooling Station to STU grid station/CTU grid station for the Solar Power Stations, as the case may be; The Monthly Transmission Charges shall be based on Demand Charges and Usage Charges of the STU;

**Where weighted average for NTPC Stations is worked out for the identified Stations allocated to Distribution Utilities as allocation for bundling with solar power, for which power purchase agreement has been signed with NTPC;**

  
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**(b) Adjustment against Provisional billing amount for preceding previous month**

$$A_f(\text{bp}) = E_d(\text{bp}) * T_f(\text{bp})$$

Where:

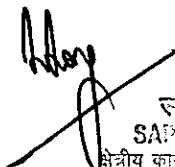
- $A_f(\text{bp})$  = Adjustment against Provisional Billing amount(in Rs.) based on Energy Accounts for Bundled Power for the applicable Month(preceding previous);
- $E_d(\text{bp})$  = Actual Energy metered for respective Distribution Utilities from the tied power of respective Solar Power Stations during the preceding previous month and from the allocated power of NTPC thermal power Stations during the preceding previous month;
- $T_f(\text{bp})$  = Actual Tariff (in Rs./kWh) for Bundled Power for the applicable Month (preceding previous);


**(c) Adjustment against Provisional billing amount for the preceding previous month-**

Adjustment against Provisional Billing for bundled power  $A_f(\text{bp})$  for preceding previous month as computed at Serial No.2(b) less Provisional Billing amount  $A_p(\text{bp})$  for preceding previous month as per last month bill at Serial no.1(b).

**3. Billing to be done by NTPC on the Distribution Utilities on each month**

**Total Amount to be billed = {Provisional Billing as at serial 1(b) + Adjustment against Provisional Billing amount as at serial 2(c)}**

  
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