

**Manipur Renewable Energy Development Agency (MANIREDA)**

Manipur

**Dated: 05.03.2021**

**(RfS for Selection of Solar Power Developers (SPD) for Setting up of 100MW Grid Connected Solar PV Power Project Jiribam, Manipur)**

**Clarifications to the queries on the RfS**

**[NIB No. 7/SPD(100MW)/Rfs/2021-22/MANIREDA]**

Sl. No.	Document	Clause No.	Existing Clause	Proposed Modifications	Rationale/Remarks	MANIREDA/ Govt. of Manipur's response
1	RFS	Section - III, Clause - 4	<u>PROJECT LOCATION</u> Land will be handed over to the developer prior to the signing of the PPA.	Please provide Forest clearance, Bush cutting approval with all the approvals related to land along with handing over of un-encumbered land at the time of PPA signing.	Handing over of un-encumbered land along with all approvals for land and construction is essentially required for timely execution and successful implementation of project.	
2	RFS	Section - III, Clause - 4	<u>PROJECT LOCATION</u> The lease amount may be calculated as one-time deposit of Rs. 500/-/Hectare/year for 30 years plus yearly land revenue fees as fixed by the Govt. from time to time.	Please provide clarity on the statement and complete payment schedule - one time and year on year basis.	Please clarify in absolute amount terms so that all charges and fees to be paid is known before submission of bid.	
3	RFS	Section - III, Clause - 7.2	<u>CONNECTIVITY WITH THE GRID</u> The construction of the transmission ..... owned by MSPCL	All construction related activities shall be taken up by STU for transmission line, bay construction and termination at MSPCL substation. <b>Kindly exclude transmission and evacuation of power from the scope of SPD.</b>	Construction of 132 KV double circuit line and construction of bay will be a difficult and time taking task for SPD, considering long transmission line length and forest land in the line route kindly exclude this from the scope of SPD. MSPCL, instead can take up the transmission and evacuation infrastructure for this project.	

4	PPA	ARTICLE 10.3.5. b	Any payments made after ten (10) days of the date of presentation of Bill through hard copy up to the Due Date shall be allowed a rebate of 1%.	Please change <b>rebate of 1% up to</b> 10 days from the date of presentation of hard copy of the Bill. Payment Due date shall be 30 days. Beyond 30 days Late Payment Surcharge (LPS) shall be applicable.	Due Date is 45 days of the date of presentation of hard copy of the Bill, is very long time. This in turn increases working capital requirements and thereby increasing the tariff.	
5	PPA	ARTICLE 10.4	Payment Security Mechanism	<p>Apart from Letter of Credit Facility (LC), provisions for Escrow Agreement and State Government Guarantee towards Payment Security are required.</p> <p>An intermediate trader like PTC, can also be involved by MSPCL who can in turn back up the low credit rating of MSPCL. This will ease up the project funding issues from the Lender/Bank.</p>	<p>The similar kind of State Govt. Guarantee towards payment security mechanism were provided by Govt. of Andhra Pradesh in the recent 6.4 GW solar tender &amp; all the solar tenders by Govt. of Madhya Pradesh in their respective States. Hence, we request the authorities to kindly take this into consideration and incorporate the same in the tender.</p> <p>For your kind and ready reference please find below also the format of the State Government Guarantee as provided by Andhra Pradesh and Madhya Pradesh Government.</p>	

6	PPA		Ceiling Tariff	<p>Kindly increase the ceiling tariff up to INR 4.00 per kWh.</p> <p>Higher ceiling tariff at the level of INR 4.00 per kWh shall be required due to the following reasons:</p> <ol style="list-style-type: none"> <li>1. Solar Insolation in Manipur is much lower as compared to Assam and West Bengal</li> <li>2. Transportation charges for plant &amp; equipment shall be higher</li> <li>3. Lack of experienced Contractors in the Region for setting up large scale solar installations</li> <li>4. Lower Credit Rating of MSPCL resulting in higher interest to be offered by the Lenders/FIs/Banks</li> </ol>	<p>Higher Tariff shall be essentially required for commercial viability of the project. The neighbouring State of Meghalaya recently has failed to attract Bidders even with a ceiling tariff of INR 4.25 per kWh for their 20 MW Solar Project.</p>	
7			Documents required for Project Land & Substation	<p>Kindly share the documents listed as under:</p> <ol style="list-style-type: none"> <li>1. Solar Park AutoCAD layout along with Boundary Coordinates of project location</li> <li>2. Soil investigation report of Project land.</li> <li>3. Power Flow Study and Load flow study</li> <li>4. Substation Automation System (SAS) Technical Specification of MSPCL substation.</li> <li>5. Topo Survey report</li> <li>6. Flood Data Report of project location and its near-by area.</li> <li>7. Environmental Impact assessment study report (if any)</li> <li>8. Land lease agreement</li> </ol>	<p>These documents are essentially required for technical assessment and due diligence of the projects.</p>	

8			Support and Incentives Required from Govt. of Manipur	<p>The Project Developer shall further require following supports and incentives as listed as under:</p> <ol style="list-style-type: none"> <li>1. Letter of support from Govt. of Manipur for implementation of the project</li> <li>2. Letter of Recommendation to Ministry of Development of North Eastern Region (DoNER), Govt. of India for considering the project under NEIIPP.</li> <li>3. Law and Order support for implementation of the project by providing Police post at project site</li> <li>4. SPDs always strive to engage Locals for employment in the project; however, there shall be no compulsion for local employment.</li> <li>5. Special Incentive Package for the project developer <ul style="list-style-type: none"> <li>- Allotment of Land for Industrial Purpose free of cost</li> <li>- Exemption from Land Tax and Lease Rentals</li> <li>- Exemption from CTE, CTO, Pollution Clearance, Ground Water clearance</li> <li>- Exemption from Payment on Stamp Duty and Registration fees on Land Allotment and Other Agreements including Financing Agreements and Mortgage of project land in favour of Lender.</li> </ul> </li> </ol>	These documents are essentially required for technical assessment and due diligence of the projects.	
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## GUARANTEE OF THE STATE OF ANDHRA PRADESH

(To be executed on stamp paper of appropriate value for each APGECL PPA)

This guarantee (Guarantee) is made in Vijayawada, Andhra Pradesh, India, on this ..... day of ....., 2020 by THE GOVERNOR OF ANDHRA PRADESH (herein referred to as the Guarantor of GoAP, which expression shall unless repugnant to the subject or context thereof include its successors, assigns and permitted substitutes).

As per G.O.Ms.No.5 dated 15-02-2020, Government accorded permission for formation of the Andhra Pradesh Green Energy Corporation Limited (APGECL) (which will establish 10,000 MWp of Solar Power Projects in the State) as a 100% subsidiary of Andhra Pradesh Power Generation Corporation Limited (“APGENCO”) under the provisions of the Companies Act, 2013. One of the main objectives of the Company is establishment of 10,000 MWp Solar Power Projects in the State of Andhra Pradesh to ensure nine hours daytime free power supply to the Agriculture sector on a sustainable basis. It is envisaged to set up large grid connected solar power plants which would help in significantly reducing the subsidy outgo from Government of Andhra Pradesh. Further, in this regard, the Government of Andhra Pradesh has issued G.O.MS.No. 18 dated 15 June 2020 and G.O. MS.No. 19 dated 17 July 2020 for establishment of 10,000 MWp of solar power capacity in the State to provide 9-hours of free day time power supply to the Agriculture sector.

In order to select appropriately experienced and qualified developers for setting up of grid connected Solar PV Power Projects (UMSPP) at Kolimigundla Ultra Mega Solar Park in Kolimigundla Mandal, Kurnool District in Andhra Pradesh for a total Solar Park Capacity of 600 MW (AC), Andhra Pradesh Green Energy Corporation Limited (APGECL) invited proposals from all interested entities by launching a single stage two-envelope competitive bidding process followed by e-reverse auction pursuant to Request for Selection (RfS) document issued on ..... [insert date of issue of RfS]. Pursuant to the terms of the RfS, ..... [Name of Selected Bidder] submitted its Bid. Following the process of selection of Bidders as set out in the RfS, APGECL accepted ..... [Name of Selected Bidder]'s Bid to develop ..... MW capacity [Insert contracted capacity in respect of which Letter of Award has been issued]. Subsequently, APGECL issued the Letter of Award on ..... [insert date of issue of LoA] to ..... [Name of Selected Bidder] appointing it as the Solar Power Developer for ..... MW [insert contracted capacity in respect of which Letter of Award has been issued].

..... [Name of Selected Bidder/ Project Company {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable], a Company incorporated under the Companies Act 1956 or Companies Act 2013, having its registered office at ..... [Insert address of the registered office of Selected Bidder/ Project Company, if applicable] has informed APGECL through its letter dated ..... that ..... [Name of Selected Bidder/ Project Company {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable] shall be the Solar Power Developer and will be the entity which shall undertake and perform its obligations, including the obligations to enter into this Guarantee.

In consideration of ..... [Name of Selected Bidder/ Project Company, {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable] (referred to as the **Company**, which expression shall, unless repugnant to the subject or context thereof, be deemed to include its successors and permitted assigns) undertaking to develop, construct, operate and maintain ..... MW in Kolimigundla Ultra Mega Solar Park in Kolimigundla Mandal, Kurnool District, Andhra Pradesh for supply of power there from on long term basis to Andhra Pradesh Green Energy Corporation Limited, a 100% subsidiary of Andhra Pradesh Power Generation Corporation Limited (“APGENCO”) (referred to as APGECL, which expression will unless it is repugnant to the subject or context thereof include its successors and permitted assigns), as specified in the Power Purchase Agreement, dated .....2020, executed between the Company and APGECL as amended from time to time (hereinafter referred to as the **PPA**) and APGECL undertaking to perform its obligations set out in the PPA; the Implementation and Support Agreement, dated .....2020, executed between the Company and APGECL, as amended from time to time (hereinafter referred to as the **Implementation and Support Agreement (ISA)**); the Land Sub-lease Agreement, dated .....2020, executed between the Company and APGECL, as amended from time to time (hereinafter referred to as the **Land Sub-lease Agreement (LSA)**), the Guarantor hereby covenants and agrees as follows:

In this Guarantee, unless the context requires otherwise or defined, capitalized terms shall have the meaning ascribed to them in the project agreements executed between the Company and APGECL, i.e., the PPA, the Implementation and Support Agreement and the Land Sub-lease Agreement.

#### **1. GoAP Guarantee:**

- a) Guarantee of APGECL Payment Obligations: The Guarantor hereby irrevocably, unconditionally and without reservation guarantees to pay to the Company, within 15 (fifteen) Days following submission by the Company of a written demand, in accordance with Clause **1 b)** of this Guarantee, any and every undisputed sum of money which APGECL is liable to pay to the Company under or pursuant to the PPA, including the Tariff Payment, Late Payment Surcharge, Liquidated Damages, Generation Compensation and any Termination Compensation, and shall have failed to pay in accordance with the terms of the PPA.

In order to give full effect to this Guarantee, the Company shall be entitled to treat GoAP as the principal debtor.

The obligations of GoAP under this Guarantee are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the PPA or any other Project Agreements executed or to be executed between the Company, APGECL or any other entity, in relation to the Solar Power Project.

The GoAP shall not revoke this Guarantee during its currency, except with the previous express consent of the Company in writing.

- b) Conditions Relating to Demand: The Company shall be entitled to make a demand for payment upon the Guarantor pursuant to this Guarantee, if APGECL has failed to pay the Company directly any amounts mentioned in Clause **1 a)** above, including the Generation

Compensation and/or Termination Compensation payable by APGECL to the Company under the PPA.

Specifically with respect to the Tariff Payment, the Company shall be entitled to make a demand for payment upon the Guarantor pursuant to this Guarantee if APGECL has failed to pay the Company in accordance with the PPA and the Company has failed to realize such amount due from APGECL under the PPA by:

- (i) drawing upon the Letter of Credit, in accordance with the provisions of the PPA, at any time on or after the [30<sup>th</sup> (thirtieth)] day after the final due date for payment thereof, any sum of money which it is liable to pay to the Company pursuant to or in connection with the PPA.

Any written demand notice made by the Company with respect to demanding Tariff Payments shall state that APGECL has failed to fulfil and comply with its payment obligations, in accordance with the terms and conditions of the PPA and the Company has failed to realise such amount due from APGECL under the PPA by drawing upon the Letter of Credit in accordance with the terms and conditions of the PPA and shall accompany the relevant Monthly Bill and/or the Supplementary Bill, as the case may be.

Any written demand made by the Company stating that APGECL has failed to fulfil and comply with its payment obligations, in accordance with the terms and conditions of the PPA will be final, conclusive and binding on the GoAP.

The GoAP shall not require the Company to justify the invocation of this Guarantee.

c) Irrevocability, Absoluteness and Unconditionality:

The liability of Guarantor under this Guarantee shall be irrevocable, absolute and unconditional, irrespective of:

- (i) any change in time, manner or place of payment of sums now or hereafter due under the PPA, or any change in any other term of the PPA save and except any change that increases liability of the Guarantor under this Guarantee;
- (ii) the existence of any claim, setoff, defense or other right which Guarantor may have against the Company, whether in connection with this Guarantee or in connection with any unrelated transaction;
- (iii) any change in structure, restructuring, insolvency, bankruptcy, re-organization, dissolution or liquidation of APGECL or the Company, or any change in ownership of APGECL or the Company or any purported assignment by APGECL or the Company or any other circumstance whatsoever which might otherwise constitute a discharge or defense of a guarantor; or

- (iv) any other circumstance which might otherwise constitute a defense available to, or discharge of, APGECL or the Guarantor.

## 2. **Payments**

All payments made by the Guarantor hereunder shall be made without set-off or counter-claim and without any deduction or withholding for any reason, except as required by law.

## 3. **Other Provisions of the Guarantee:**

- a) Continuing Guarantee: This Guarantee shall be a continuing security and accordingly:
  - (i) shall extend to cover all amounts due at any time from APGECL to the Company under the PPA; and
  - (ii) no failure or delay on the part of the Company in exercising any right, power or privilege hereunder and no course of dealing between the Company and the Guarantor, or APGECL, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

This Guarantee shall remain in full force and effect from the date hereof until the term of the PPA.

Notwithstanding the foregoing, this Guarantee shall continue in effect until the sums payable under this Guarantee have been indefeasibly paid in full and the Guarantor receives written notice thereof from the Company, such notice to be issued promptly upon such occurrence.

- b) Additional Security: This Guarantee shall be in addition to and not in substitution or derogation of, any other security which the Company may at any time hold in respect of the obligations of APGECL under the PPA.
- c) Immediate Recourse: Subject to Clause **1 b)** hereof, the Company shall not be obligated prior to taking steps to enforce this Guarantee to:
  - (i) take any action, other than as expressly provided herein, or obtain any judgment against APGECL in any court;
  - (ii) make or file any claim in bankruptcy of APGECL;
  - (iii) exercise diligence against APGECL; or
  - (iv) exercise any legal remedies which may be available to it under or in connection with the PPA, or otherwise.



- d) Taxes and Expenses: The Guarantor shall pay all reasonable expenses (including, without limitation attorney fees) paid or incurred by the Company in attempting to collect the obligations of the Guarantor hereunder and in enforcing this Guarantee and any taxes or levies imposed on the Company as a result of the Company making a call on this Guarantee. If in compliance with the laws of India, any of the taxes mentioned in this clause **3 d)** are required to be withheld or deducted by the Guarantor, then the Guarantor shall pay an amount as shall be necessary to ensure that the Company receives on the due date a net sum equal to such amount as the Company would have received under the PPA.

#### **4. Guarantor's Representations and Warranties:**

The Guarantor hereby represents, warrants and undertakes to the Company as follows:

- a) Power and Authority: The Guarantor has full power, authority and legal right to incur the obligations provided for in this Guarantee, to execute and deliver this Guarantee and to perform and observe the terms and provisions hereof.
- b) Legal Validity: This Guarantee constitutes legal, valid, binding and enforceable obligations of the Guarantor in accordance with the terms.
- c) Approvals: All necessary action has been taken under the laws of India and the state of Andhra Pradesh to authorize execution, delivery and performance of this Guarantee.
- d) Direct Obligations: All of the obligations and covenants of the Guarantor contained herein constitute unconditional direct obligations of the Guarantor.

#### **5. Negative Pledge:**

At any time while this Guarantee remains in effect, the Guarantor shall not take or cause to be taken any action which impairs the Guarantee.

#### **6. Guarantor's Claim:**

So long as any amount remains due and payable by APGECL under the PPA, the Guarantor, upon notification by the Company thereof, shall not by any means (including payment hereunder) or on any ground other than for the purpose of recovery of statutory dues of APGECL:

- a) claim any right of set-off or counterclaim against APGECL; or
- b) so long as any amount is due from APGECL to the Company, the Guarantor shall not exercise any right of subrogation or any other rights of a guarantor or enforce any guarantee or other right or claim against APGECL, whether in respect of its liability under this Guarantee or otherwise, or claim in the insolvency or liquidation of APGECL or any such other person in competition with the Company.

#### **7. Notices:**

All notices, demands or other communications required to be given shall be in writing in English language and shall be addressed to the Guarantor, APGECL or the Company as the case may be, at the following addresses (or to any other address in India, as provided by either party to the other in writing):

Guarantor: .....

.....

.....

APGECL: Flat no. 401 & 402, Garuda Enclave

Beside TG Plaza

Tadepalli (Village)

Guntur District – 522501

Andhra Pradesh, India

Company:.....

.....

.....

**8. Miscellaneous Provisions:**

a) Waiver, Remedies Cumulative: No failure on the part of the Company to exercise, and no delay on the part of the Company in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by the Company shall be effective unless it is in writing. The rights and remedies of the Company herein provided are cumulative and not exclusive of any rights or remedies provided by law.

b) Assignment: The parties hereto shall not assign or transfer all or any part of their respective rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld.

Notwithstanding the above, the Company shall be permitted to assign its right, interests and benefits under this Guarantee to Lenders as Security for the Financial Assistance, without the prior consent of the GoAP or APGECL.

c) Governing Law and Jurisdiction: The rights and obligations of the parties under or pursuant to this Guarantee shall be governed by and construed in accordance with Indian law and subject to the exclusive jurisdiction of the courts at Vijayawada.

- d) If any one or more of the provisions contained in this Guarantee are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the Guarantor shall enter into good faith negotiations with the Procurer to replace the invalid, illegal or unenforceable provision.
- e) **Dispute Resolution**
- (i) Either party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Guarantee (“Dispute”) by giving a written notice (Dispute Notice) to the other party , which shall contain:
    - A. a description of the Dispute,
    - B. the grounds for such Dispute; and
    - C. all written material in support of its claim.
  - (ii) The other party shall, within thirty [30 (thirty)] Days of issue of Dispute Notice issued under Clause **8 e) (i)** above, furnish:
    - A. counter claim and defense , if any regarding the Dispute; and
    - B. all written material in support of its defense and counterclaim.
  - (iii) Within thirty [30 (thirty)] Days of issue of Dispute Notice by any party pursuant to clause **8 e) (i)**, if the other party does not furnish any counter claim or defense under clause **8 e) (ii)** or thirty [30 (thirty)] Days from the date of furnishing counter claims or defense by the other party, both the parties to the Dispute shall meet to settle such Dispute amicably (Dispute Meeting). If the parties fail to resolve the Dispute amicably within thirty 30 (thirty) Days from the later of the dates mentioned in this clause, the Dispute shall be referred for dispute resolution in accordance with clause **8 e) (iv)**.
  - (iv) **Dispute resolution through Arbitration**
    - A. Arbitration Procedure

If a Dispute is not resolved within 30 (thirty) Days after the serving of a Dispute Notice and, whether or not a Dispute Meeting has been held, any party to the Dispute shall be entitled to refer the Dispute to arbitration (Notice of Arbitration) to be finally resolved in the manner set out in this clause **8 e)**. This Guarantee and the rights and obligations of the parties shall remain in full force and effect pending the award in such arbitration proceeding.

B. Appointment of Arbitrators:

The Arbitration Committee shall be headed by Principal Secretary of Energy Department, Andhra Pradesh and shall consist of the following members:

- a. Principal Secretary of Energy Department, Andhra Pradesh
- b. Chief Engineer, APTRANSCO
- c. Superintending Engineer, APGECL
- d. One representative from SPD

C. Venue, Language and Rules of Arbitration:

The place of arbitration shall be at Vijayawada in the State of Andhra Pradesh and the language of such proceedings shall be in English and by following the principles of natural justice and provisions of the Arbitration Act. The arbitral award shall be binding on both Parties. The cost of arbitration shall be equally shared by both Parties. The arbitration shall be conducted in accordance with this Clause 8 e) (iv).

D. Award and Apportionment of costs:

The arbitration award of the arbitrator shall be final and binding on the Parties and shall be enforceable in accordance with its terms. The arbitrator shall state reasons for its findings in writing. The costs of arbitration and the manner of bearing such costs shall be determined by the arbitrator.

- (v) During the dispute resolution proceedings, the rights and obligations of the parties shall remain in force and the Guarantee will remain operative and no payments due under the Guarantee shall be withheld except any payment in dispute.

f) Sovereign Immunity:

The Guarantor unconditionally and irrevocably:

- (i) agrees that the execution, delivery and performance by it of this Guarantee do not constitute sovereign acts;
- (ii) agrees that should any proceedings be brought against it or its assets in any jurisdiction in relation to the Guarantee or any transaction contemplated by this Guarantee, no sovereign immunity from such proceedings shall, to the extent that it would otherwise be entitled to do so under the laws of India, be claimed by it on

behalf of itself or with respect to its assets, to the maximum extent permitted by law; and

- (iii) to the maximum extent permitted by law, waive any right or sovereign immunity which it or any of its assets now has or may acquire in its future in any jurisdiction.
- g) Subject to any right of appeal, second appeal, revision or any other legal proceedings or remedy available to either party under law, the Company and the Guarantor consents with respect to the enforcement of the final judgment against it in any such proceedings in any jurisdiction in India, to the giving of any relief or the issue of any process in connection with such proceedings (including, without limitation, the making, enforcement or execution against or in respect of any property whatsoever, irrespective of its use or intended use).
- h) Undertaking: The Guarantor hereby agrees and undertakes that it will not use in its defense with respect to the performance of its obligations under this Guarantee or in any proceedings brought against it, with regard to validity, legality and enforceability of this Guarantee, the PPA, the Implementation and Support Agreement and the Land Sub-lease Agreement.
- i) Amendment: Notwithstanding anything contained herein that may be construed to the contrary, this Guarantee may be amended, supplemented or modified only with written consent of the Guarantor and the Company.
- j) All capitalized terms used in this Guarantee and not defined herein shall have the meanings ascribed to them in the PPA.

IN WITNESS WHEREOF, this Guarantee has been executed as of the day and year first written above.

FOR AND ON BEHALF OF THE GOVERNOR OF ANDHRA PRADESH.

Name:.....

Designation:.....

Witnesses:

1. ....

2. ....

Accepted and Agreed:

FOR AND ON BEHALF OF ..... *[Insert name of the Company]*

Name: .....

Title:.....

Witnesses:

1. ....

2. ....

Accepted and Agreed:

FOR AND ON BEHALF OF ANDHRA PRADESH GREEN ENERGY CORPORATION  
LIMITED

Name: .....

Title: .....

Witnesses:

1. ....

2. ....



**Rewa Ultra Mega Solar Limited**  
Urja Bhawan, Link Road No.2, Shivaji Nagar, Bhopal- 462016  
Phone: 0755- 2556526, Fax: 0755-2551439

Addendum No: RUMS/2016-17/345/29

Bhopal, Date: 19/09/2016

**ADDENDUM-15**

This is with reference to the Request For Proposal (RFP) number RUMSL/2016-17/345/010 dated 16 March 2016, inviting eligible parties for participating in the bid process for selection of developer/s for the 750 MW (250 MW X 3) grid connected solar photo voltaic project in Gurh tehsil, Rewa district of Madhya Pradesh.

RUMSL is issuing State Guarantee Agreement against the payment of energy off take of Madhya Pradesh Power Management Company Limited (MPPMCL).

Thanking You,

**Mridul Khare**  
**Director (RUMSL)**

## **GUARANTEE OF THE STATE OF MADHYA PRADESH**

*(To be executed on stamp paper of appropriate value for each MPPMCL PPA)*

This guarantee (**Guarantee**) is made at Bhopal, Madhya Pradesh, India, on this [●] day of [●], 2016 by THE GOVERNOR OF MADHYA PRADESH (hereinafter referred to as the **Guarantor** or **GoMP**, which expression shall unless repugnant to the subject or context thereof include its successors, assigns and permitted substitutes).

Further to the “Solar Policy for Encouraging Generation of Power through Solar Power Projects in Madhya Pradesh”, notified by New and Renewable Energy Department, Government of Madhya Pradesh (**NRED**), on 20th July 2012, and as amended from time to time (**MP Solar Policy**), GoMP has decided to set up 3 (three) units of ground mounted grid-connected solar photovoltaic power plants of 250 MW each, to be developed on a pre-identified land parcel inside Rewa Solar Project located in District Rewa, in the state of Madhya Pradesh, India. The solar energy generated from the Units is envisaged to be supplied to MPPMCL (*defined below*) and Delhi Metro Rail Corporation.

In order to select appropriately experienced private entity(ies) to develop the units, Rewa Ultra Mega Solar Limited (**RUMSL**) invited proposals from all interested entities by launching a single stage two-envelope competitive bidding process followed by a reverse auction process pursuant to a request for proposals issued on 16 March 2016 (**RFP**). Pursuant to the terms of the RFP, [*Name of the Selected Bidder*] submitted its Bid. Following the process of selection of Bidders, as set out in the RFP, RUMSL accepted [*Name of the Selected Bidder*]'s Bid to develop [**Insert the number of Units in respect of which Letter of Award has been issued**] number of Unit(s) comprising [**Insert the aggregate capacity of the Units in MW for which Letter of Award has been issued**] MW capacity. Subsequently, RUMSL issued the Letter of Award on [●], 2016 to the [*Name of the Selected Bidder*] appointing it as the project developer for [Unit 1/ Unit 2/ Unit 3].

[*Name of the Selected Bidder*] has since incorporated [*Name of the SPV*], a company incorporated under Companies Act, 2013, having its registered office at [●] and informed RUMSL, MPPMCL and DMRC, through its letter dated [●] 2016 that [*Name of the SPV*] will be the project developer and will be the entity which shall undertake and perform its obligations, including the obligation to enter into this Guarantee.

In consideration of [*Name of the SPV*], (referred to as the **Company**, which expression will unless it is repugnant to the subject or context thereof include its successors and assigns) undertaking to develop, construct, own, operate and maintain the [Unit 1/ Unit 2/ Unit 3] and to sell energy from the Unit(s) to M.P. Power Management Company Limited, a wholly owned company of the Government of Madhya Pradesh (referred to as **MPPMCL**, which expression will unless it is repugnant to the subject or context thereof include its successors and assigns), as specified in the power purchase agreement, dated [●] 2016, executed between the Company, MPPMCL and RUMSL, as amended from time to time (hereinafter referred to as the **PPA**), and RUMSL undertaking to perform its obligations set out in the PPA; the implementation support agreement, dated [●] 2016, executed between the Company and RUMSL, as amended from time to time (hereinafter referred to as the **Implementation Support Agreement**); the land use permission agreement, dated [●] 2016, executed between the Company, NRED and RUMSL, as amended from time to time (hereinafter referred to as the **Unit LUPA**) and the coordination and scheduling agreement, dated [●] 2016, executed between MPPMCL, Delhi Metro Rail Corporation, RUMSL, the Company and [*Insert names of project developers for the other Units*] as amended from time to time (hereinafter referred to as the **Coordination and Scheduling Agreement**), the Guarantor hereby covenants and agrees as follows:

*In this Guarantee, unless the context requires otherwise or defined, capitalised terms shall have the*



*meaning ascribed to them in the project agreements executed between the Company, MPPMCL, RUMSL and NRED, i.e., the PPA, the Implementation Support Agreement, the Unit LUPA and the , the Coordination and Scheduling Agreement.*

1. GoMP Guarantee

- (a) Guarantee of MPPMCL Payment Obligations: The Guarantor hereby irrevocably, unconditionally and without reservation guarantees to pay to the Company, within 15 (fifteen) Days following submission by the Company of a written demand, in accordance with clause 1(b) of this Guarantee, any and every undisputed sum of money which MPPMCL is liable to pay to the Company under or pursuant to the PPA, including the Tariff Payment, Late Payment Surcharge, Liquidated Damages, and any Termination Compensation, and shall have failed to pay in accordance with the terms of the PPA.

In order to give full effect to this Guarantee, the Company shall be entitled to treat GoMP as the principal debtor.

Further, the Guarantor hereby irrevocably, unconditionally and without reservation guarantees to pay to RUMSL, within 15 (fifteen) Days following submission by the RUMSL of a written demand, in accordance with clause 1(b) of this Guarantee, any and every undisputed sum of money which MPPMCL is liable to pay to RUMSL under or pursuant to the PPA, including with respect to the amounts paid to the Company from the Payment Security Fund in accordance with the PPA, including the interest on such amount as specified in the PPA and the amounts to be repaid by MPPMCL to RUMSL, in relation to any payments made by RUMSL to the Company against the Monthly Bill/Supplementary Bill, in accordance with the provisions of the PPA.

In order to give full effect to this Guarantee, RUMSL shall be entitled to treat GoMP as the principal debtor.

The obligations of GoMP under this Guarantee are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the PPA or any other Project Agreements executed or to be executed between the Company, MPPMCL, RUMSL, NRED or any other entity, in relation to the Unit(s).

The GoMP shall not revoke this Guarantee during its currency, except with the previous express consent of the Company in writing. Further that, notwithstanding receipt of consent to revocation of this Guarantee from the Company, the GoMP shall not revoke this Guarantee, except with the previous express consent of RUMSL in writing, as far as it applies to the guaranteed payment obligations to RUMSL, during its currency.

- (b) Conditions Relating to Demand: The Company and RUMSL shall be entitled to make a demand for payment upon the Guarantor pursuant to this Guarantee, if MPPMCL has failed to pay the Company and/or RUMSL directly any amounts mentioned in clause 1(a) above, including the Termination Compensation payable by MPPMCL to the Company under the PPA.

Specifically with respect to the Tariff Payment, the Company shall be entitled to make a demand for payment upon the Guarantor pursuant to this Guarantee if MPPMCL has failed to pay the Company in accordance with the PPA and the Company has failed to realise such amount due from MPPMCL under the PPA by:

- (i) drawing upon the Letter of Credit, in accordance with the provisions of the PPA, at any time on or after the [7<sup>th</sup> (seventh)] day after the final due date for payment thereof, any sum of money which it is liable to pay to the Company pursuant to or in connection with the PPA; and
- (ii) drawing upon the Payment Security Fund, in accordance with the provisions of the PPA.

Any written demand notice made by the Company with respect to demanding Tariff Payments shall state that MPPMCL has failed to fulfil and comply with its payment obligations, in accordance with the terms and conditions of the PPA and the Company has failed to realise such amount due from MPPMCL under the PPA by drawing upon the Letter of Credit and the Payment Security Fund, in accordance with the terms and conditions of the PPA and shall accompany the relevant Monthly Bill and/or the Supplementary Bill, as the case may be.

Any written demand notice made by RUMSL with respect to demanding amounts mentioned in clause 1 (a) shall state that MPPMCL has failed to fulfil and comply with its payment obligations, in accordance with the terms and conditions of the PPA.

Any written demand made by the Company and/or RUMSL stating that MPPMCL has failed to fulfil and comply with its payment obligations, in accordance with the terms and conditions of the PPA will be final, conclusive and binding on the GoMP.

The GoMP shall not require the Company and/or RUMSL to justify the invocation of this Guarantee.

(c) Irrevocability, Absoluteness and Unconditionality:

The liability of Guarantor under this Guarantee shall be irrevocable, absolute and unconditional, irrespective of:

- (i) any change in time, manner or place of payment of sums now or hereafter due under the PPA, or any change in any other term of the PPA save and except any change that increases liability of the Guarantor under this Guarantee;
- (ii) the existence of any claim, setoff, defense or other right which Guarantor may have against the Company and/or RUMSL, whether in connection with this Guarantee or in connection with any unrelated transaction;
- (iii) any change in structure, restructuring, insolvency, bankruptcy, re-organisation, dissolution or liquidation of MPPMCL, RUMSL or the Company, or any change in ownership of MPPMCL, RUMSL or the Company or any purported assignment by MPPMCL, RUMSL or the Company or any other circumstance whatsoever which might otherwise constitute a discharge or defense of a guarantor; or
- (iv) any other circumstance which might otherwise constitute a defense available to, or discharge of, MPPMCL or the Guarantor.

2. PAYMENTS

All payments made by the Guarantor hereunder shall be made without set-off or counter-claim and without any deduction or withholding for any reason, except as required by law.

3. Other Provisions of the Guarantee:

(a) Continuing Guarantee: This Guarantee shall be a continuing security and accordingly:

- (i) shall extend to cover all amounts due at any time from MPPMCL to the Company and/or to RUMSL under the PPA; and
- (ii) no failure or delay on the part of the Company and/or RUMSL in exercising any right, power or privilege hereunder and no course of dealing between the Company and/or RUMSL and the Guarantor, or MPPMCL, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

This Guarantee shall remain in full force and effect from the date hereof until the term of the PPA.

Notwithstanding the foregoing, this Guarantee shall continue in effect until the sums payable under this Guarantee have been indefeasibly paid in full and the Guarantor receives written notice thereof from the Company and RUMSL, such notice to be issued promptly upon such occurrence.

(b) Additional Security: This Guarantee shall be in addition to and not in substitution or derogation of, any other security which the Company and/or RUMSL may at any time hold in respect of the obligations of MPPMCL under the PPA.

(c) Immediate Recourse: Subject to Section 1(b) hereof, the Company or RUMSL shall not be obligated prior to taking steps to enforce this Guarantee to:

- (i) take any action, other than as expressly provided herein, or obtain any judgment against MPPMCL in any court;
- (ii) make or file any claim in bankruptcy of MPPMCL;
- (iii) exercise diligence against MPPMCL; or
- (iv) exercise any legal remedies which may be available to it under or in connection with the PPA, or otherwise.

(d) Taxes and Expenses: The Guarantor shall pay all reasonable expenses (including, without limitation attorney fees) paid or incurred by the Company and/or RUMSL in attempting to collect the obligations of the Guarantor hereunder and in enforcing this Guarantee and any taxes or levies imposed on the Company and/or RUMSL as a result of the Company and/or RUMSL making a call on this Guarantee. If in compliance with the laws of India, any of the taxes mentioned in this clause 3(d) are required to be withheld or deducted by the Guarantor, then the Guarantor shall pay an amount as shall be necessary to ensure that the Company and/or RUMSL, as the case

may be, receives on the due date a net sum equal to such amount as the Company and/or RUMSL, as the case may be, would have received under the PPA.

4. Guarantor's Representations and Warranties

The Guarantor hereby represents, warrants and undertakes to the Company as follows:

- (a) Power and Authority: The Guarantor has full power, authority and legal right to incur the obligations provided for in this Guarantee, to execute and deliver this Guarantee and to perform and observe the terms and provisions hereof.
- (b) Legal Validity: This Guarantee constitutes legal, valid, binding and enforceable obligations of the Guarantor in accordance with the terms.
- (c) Approvals: All necessary action has been taken under the laws of India and the state of Madhya Pradesh to authorise execution, delivery and performance of this Guarantee.
- (d) Direct Obligations: All of the obligations and covenants of the Guarantor contained herein constitute unconditional direct obligations of the Guarantor.

5. Negative Pledge

At any time while this Guarantee remains in effect, the Guarantor shall not take or cause to be taken any action which impairs the Guarantee.

6. Guarantor's Claim

So long as any amount remains due and payable by MPPMCL under the PPA, the Guarantor, upon notification by the Company and/or RUMSL, as the case may be, thereof, shall not by any means (including payment hereunder) or on any ground other than for the purpose of recovery of statutory dues of MPPMCL:

- (a) claim any right of set-off or counterclaim against MPPMCL; or
- (b) so long as any amount is due from MPPMCL to the Company and/or RUMSL, the Guarantor shall not exercise any right of subrogation or any other rights of a guarantor or enforce any guarantee or other right or claim against MPPMCL, whether in respect of its liability under this Guarantee or otherwise, or claim in the insolvency or liquidation of MPPMCL or any such other person in competition with the Company and/or RUMSL.

7. Notices

All notices, demands or other communications required to be given shall be in writing in English language and shall be addressed to the Guarantor, MPPMCL, RUMSL or the Company as the case may be, at the following addresses (or to any other address in India, as provided by either party to the other in writing):

Guarantor: [●]

RUMSL: [●]

MPPMCL: [●]

Company: [●]

8. Miscellaneous Provisions

(a) Waiver, Remedies Cumulative: No failure on the part of the Company and/or RUMSL to exercise, and no delay on the part of the Company and/or RUMSL in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by the Company and/or RUMSL shall be effective unless it is in writing. The rights and remedies of the Company and/or RUMSL herein provided are cumulative and not exclusive of any rights or remedies provided by law.

(b) Assignment: The parties hereto shall not assign or transfer all or any part of their respective rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld.

Notwithstanding the above, the Company shall be permitted to assign its right, interests and benefits under this Guarantee to Lenders as Security for the Financial Assistance, without the prior consent of the GoMP, MPPMCL or RUMSL.

(c) Governing Law and Jurisdiction: The rights and obligations of the parties under or pursuant to this Guarantee shall be governed by and construed in accordance with Indian law and subject to the exclusive jurisdiction of the courts at Jabalpur.

(d) If any one or more of the provisions contained in this Guarantee are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the Guarantor shall enter into good faith negotiations with the Procurer to replace the invalid, illegal or unenforceable provision.

(e) Dispute Resolution:

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

- (A) a description of the Dispute;
- (B) the grounds for such Dispute; and
- (C) all written material in support of its claim.

(ii) The other party shall, within thirty [30 (thirty)] Days of issue of Dispute Notice issued under Clause 8(e)(i) above, furnish:

- (A) counter-claim and defences, if any, regarding the Dispute; and
- (B) all written material in support of its defences and counter-claim.

- (iii) Within thirty [30 (thirty)] Days of issue of Dispute Notice by any party pursuant to clause 8(e)(i) if the other party does not furnish any counter claim or defence under clause 8(e)(ii) or thirty [30 (thirty)] 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 (**Dispute Meeting**). If the parties fail to resolve the Dispute amicably within thirty 30 (thirty) Days from the later of the dates mentioned in this clause, the Dispute shall be referred for dispute resolution in accordance with clause 8(e)(iv).
- (iv) Dispute Resolution through Arbitration
- (A) Arbitration Procedure
- If a Dispute is not resolved within 30 (thirty) Days after the service of a Dispute Notice and, whether or not a Dispute Meeting has been held, any party to the Dispute shall be entitled to refer the Dispute to arbitration (**Notice of Arbitration**) to be finally resolved in the manner set out in this clause 8(e). This Guarantee and the rights and obligations of the parties shall remain in full force and effect pending the award in such arbitration proceeding.
- (B) Appointment of Arbitrators
- If a Dispute is referred to arbitration by any party such Dispute shall be resolved by a sole arbitrator to be appointed by mutual agreement of the parties. If parties fail to appoint an arbitrator within [30 (thirty)] Days after service of the Notice of Arbitration, such arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
- (C) Venue, Language and Rules of Arbitration
- The venue of the arbitration shall be New Delhi and the language of the arbitration shall be English. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, as amended from time to time
- (D) Award and Apportionment of costs
- The arbitration award of the arbitrator shall be final and binding on the Parties and shall be enforceable in accordance with its terms. The arbitrator shall state reasons for its findings in writing. The costs of arbitration and the manner of bearing such costs shall be determined by the arbitrator.
- (v) During the dispute resolution proceedings, the rights and obligations of the parties shall remain in force and the Guarantee will remain operative and no payments due under the Guarantee shall be withheld except any payment in dispute.

- (e) Sovereign Immunity: The Guarantor unconditionally and irrevocably:
- (i) agrees that the execution, delivery and performance by it of this Guarantee do not constitute sovereign acts;
  - (ii) agrees that should any proceedings be brought against it or its assets in any jurisdiction in relation to the Guarantee or any transaction contemplated by this Guarantee, no sovereign immunity from such proceedings shall, to the extent that it would otherwise be entitled to do so under the laws of India, be claimed by it on behalf of itself or with respect to its assets, to the maximum extent permitted by law; and
  - (iii) to the maximum extent permitted by law, waive any right or sovereign immunity which it or any of its assets now has or may acquire in its future in any jurisdiction.
- (f) Subject to any right of appeal, second appeal, revision or any other legal proceedings or remedy available to either party under law, the Company, RUMSL and the Guarantor consents with respect to the enforcement of the final judgment against it in any such proceedings in any jurisdiction in India, to the giving of any relief or the issue of any process in connection with such proceedings (including, without limitation, the making, enforcement or execution against or in respect of any property whatsoever, irrespective of its use or intended use)
- (g) Undertaking: The Guarantor hereby agrees and undertakes that it will not use in its defence with respect to the performance of its obligations under this Guarantee or in any proceedings brought against it, with regard to validity, legality and enforceability of this Guarantee, the PPA, the Coordination and Scheduling Agreement, the Implementation Support Agreement and the Unit LUPA.
- (h) Amendment: Notwithstanding anything contained herein that may be construed to the contrary, this Guarantee may be amended , supplemented or modified only with written consent of the Guarantor, RUMSL and the Company.
- (i) All capitalised terms used in this Guarantee and not defined herein shall have the meanings ascribed to them in the PPA.

IN WITNESS WHEREOF, this Guarantee has been executed as of the day and year first written above.

FOR AND ON BEHALF OF THE GOVERNOR OF MADHYA PRADESH.

Name:

Designation:

Witnesses:

Name:

Name:

Accepted and Agreed:

FOR AND ON BEHALF OF [*Insert name of the Company*]

Name:

Title:

Witnesses:

Accepted and Agreed:

FOR AND ON BEHALF OF M.P. POWER MANAGEMENT COMPANY LIMITED

Name:

Title:

Witnesses:

Accepted and Agreed:

FOR AND ON BEHALF OF REWA ULTRA MEGA SOLAR LIMITED

Name:

Title:

Witnesses: