

ఆంధ్ర ప్రదేశ్ ఆంధ్ర ప్రదేశ్ ANDHRA PRADESH

Serial No: 2984

Purchased By :

ASHOK KUMAR GUPTA

S/O SH SURENDRA KUMAR

(LATE)

SECUNDERBAD

Denomination: 100

For :

NTPC LTD

SECUNDRABAD

Date 04-06-2018

Stamp S. no

BZ 431841

BZ 431841

Sub Registrar

Ex. Officio Stamp Vendor

SRO Gunadala

POWER SALE AGREEMENT

FOR

SALE OF SOLAR POWER ON LONG TERM BASIS

Between

NTPC Limited

And

Eastern Power Distribution Company of Andhra Pradesh Ltd.

And

Southern Power Distribution Company of Andhra Pradesh Ltd.

This Power Sale Agreement is made on the 04th day of June 2018 at Vijayawada,

Between

मनोज माथुर/MANOJ MATHUR

महाप्रबंधक (वाणिज्यिक)

General Manager (Commercial)

एनटीपीसी लिमिटेड/NTPC Limited

PAGE 1 OF 24

CHIEF GENERAL MANAGER
P&MM & IPC, APSPDCL
TIRUPATHI

Chief General Manager
Energy Conservation
Corporate Office
APEPDCL, Visakhapatnam

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

Eastern Power Distribution Company of Andhra Pradesh Ltd., a company incorporated under the Companies Act 1956, having its registered office at Vishakapatnam, Andhra Pradesh (hereinafter referred to as "APEPDCL" or "AP 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.

And

Southern Power Distribution Company of Andhra Pradesh Ltd., a company incorporated under the Companies Act 1956, having its registered office at Kesavayanagunta, Tiruchanoor Road, Tirupathi, Andhra Pradesh (hereinafter referred to as "APSPDCL" or "APdiscom" 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 AP Discom are individually referred to as 'Party' and collectively referred to as 'Parties' and the two Discom(s) are collectively referred to as AP Discom(s)

WHEREAS:

- A. NTPC is a Government of India Undertaking and intends to facilitate the development of Solar Power projects in India and for sale of Solar Power generated to the Distribution Licensees in the State to enable them to procure Solar Power including for due fulfillment of the Renewable Purchase Obligations;
- B. NTPC has agreed to facilitate the development of the Solar Power in line with the provisions of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects, issued by Ministry of

Power, vide resolution no.23/27/2017-R&R dated 03.08.2017,

- C. NTPC has agreed to act as an intermediary Agency / Procurer for the procurement of power from the Solar PV Power Projects to be established, operated and maintained by the Solar Power Developers on Built, Owned and Operate basis in pursuance to a competitive bid process to be held for the purpose and the Distribution Licensees desirous of purchasing Solar Power including for the purpose of fulfilling the Renewable Purchase Obligations in accordance with the scheme and objective of the Electricity Act, 2003, the Policies of the Government of India and the Policies of the State Governments.
- D. At the instance of AP Discom(s), NTPC initiated a competitive bid process for selection of a Solar Power Developer to set up the Solar Power Project in the State of Andhra Pradesh;
- E. AYANA RENEWABLE POWER PRIVATE LIMITED, a company incorporated under the Companies Act 1956 or the Companies Act 2013 as applicable, having its registered office at 3rd Floor, Sheraton Grand hotel, Brigade Gateway, 26/1, Dr. Rajkumar road, Malleshwaram West, Bangalore – 560055, (hereinafter referred to as “Solar Power Developer or SPD”), has been selected in a Tariff Based Competitive Bid Process initiated by NTPC inviting proposal from all interested entities and on the basis that the tariff terms and conditions quoted by the SPD in comparison to others, werethe most economical and least cost;
- F. The SPD has agreed to establish a Solar Power PV Power Project with an installed capacity of 250 MW on built, owned and operate basis located in the Solar Park at NP Kunta, Anthapuramu, Andhra Pradesh and agreed to sell the power generated from the project to NTPC to enable onward sale to the distribution licensees of Andhra Pradesh i.e. AP Discom(s) on the terms and conditions contained in the PPA,finalized and initialed between NTPC and SPD, (hereinafter referred to as ‘NTPC- SPD PPA’) a copy of the said PPA is attached hereto and marked as **Schedule `A`** to this PSA.
- G. AP Discom(s) have examined the entire process by which SPD was selected, the Letter of Intent was issued by NTPC to the SPD and the PPA has come to be initialed between NTPC and the SPD and to be entered into providing for the purchase of electricity

generated at the project and resale of the same to AP Discom(s) including the terms and conditions for such purchase, rights and obligations assumed by NTPC and the SPD under the PPA and the consequences of the default by either of parties to the PPA;

- H. AP Discom(s) acknowledges and accepts that NTPC is only an Intermediary Company and is facilitating the purchase of sale of electricity generated from the Solar PV Projects and, therefore, cannot assume independently, any obligation, financial or otherwise, either to the SPD or to AP Discom(s), (unless otherwise specifically provided otherwise in the PPA), except on a back to back basis, namely, that whatever obligation is enforced by the SPD under the PPA against NTPC, AP Discom(s) shall be bound to fulfil the obligation on a back to back basis towards NTPC and similarly, whatever rights that AP Discom(s) may claim under this Agreement against NTPC, shall be subject to due enforcement of the corresponding rights on a back to back basis by NTPC against SPD, without an independent obligation on the part of NTPC;
- I. AP Discom(s) further acknowledges and accepts that NTPC shall proceed to sign the PPA with SPD solely on the basis of the agreement reached with AP Discom(s) for signing of this Agreement;
- J. NTPC has agreed to sell and make available to AP Discom(s) the entire agreed Contracted Capacity agreed to between NTPC and the SPD which is 250 MW entirely on a back to back basis of the terms and conditions contained in the PPA to be entered into between NTPC and SPD,
- K. NTPC Vidyut Vyapar Nigam Limited (NVVN) on behalf of NTPC, will be the trading licensee for the purchase of Solar Power from SPDs and resale if such Power to Discom(s). Further, on behalf of NTPC, NVVN will facilitate billing, realization, data submission, and other associated day to day activities for fulfilling the obligations of NTPC as assigned in this agreement.
- L. The Parties had agreed that the execution of the PSA between NTPC and the AP-Discoms is a pre-condition for NTPC to sign the PPA with the SPD.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND MUTUAL AGREEMENTS, COVENANTS AND CONDITIONS SET FORTH HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

- I This Agreement shall come into effect from signing of this Agreement by both the parties and such date shall be the Effective Date for the purpose of this Agreement.
- II Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that within two (2) months from the Effective Date, the AP Discoms shall duly obtain the order of the Andhra Pradesh Electricity Regulatory Commission adopting the Tariff and the trading margin of NTPC and approving the procurement of the contracted capacity on the terms and conditions contained in this Agreement entered into between NTPC and AP Discom(s) read with the terms and conditions contained in the PPA to be entered into between NTPC and the SPD
- III The parties agree that in the event, the order of adoption of Tariff, trading margin and the Agreements for procurement of Power, as mentioned above is not given by the Andhra Pradesh Electricity Regulatory Commission within the time specified above, this Agreement as well as the Power Purchase Agreement entered into between NTPC and the SPD shall stand cancelled and terminated with no liability of either party to the other or vis a vis the SPD, unless the parties and the SPD mutually agree to extend the time for fulfilling the Conditions Precedent.
- IV The duration of this Agreement shall be coextensive with the duration of the Power Purchase Agreement to be entered into between the NTPC and the SPD for all intent and purposes.
- V Subject to the terms and conditions contained herein, NTPC hereby agrees to sell and make available the electricity procured by NTPC from the 250 MW Solar PV Power Project to be set up by the SPD at Ananthapuramu Solar Park, Andhra Pradesh on the terms and conditions contained in the PPA to be entered into between NTPC and the SPD, as per the PPA (Schedule "A") on a back to back basis, to AP Discom(s).
- VI. AP Discom(s) hereby acknowledge and accept that NTPC is an Intermediary to facilitate the promotion of Solar Power Projects and to purchase and re-sell the electricity to the distribution licensees to enable them to fulfill the Renewable Purchase Obligation and, therefore, the sale of electricity by NTPC to AP Discom(s) under this

Agreement shall be entirely on a back to back basis to the purchase of electricity by NTPC from the SPDs under the NTPC- SPD PPA, with the intent that there shall be no residual liability on the NTPC towards the SPD which will not be fulfilled by the AP Discom(s).

- VII. In accordance with the above and except as otherwise specifically provided in this agreement, the rights and obligations of AP Discom(s) under this agreement shall be available and enforceable entirely and effectively on a back to back basis to the rights and obligations of the NTPC in the NTPC – SPD PPA and in the event NTPC is not in a position to enforce its rights against the SPD or is subject to any obligation to be performed towards SPD, AP Discom(s) shall be liable to perform such obligation or shall be entitled to such rights only on a mutatis mutandis basis, without any additional or independent exposure whatsoever to NTPC.
- VIII. Except as otherwise specifically provided in this agreement, AP Discom(s) acknowledges and accepts that the terms and conditions of the NTPC- SPD PPA shall mutatis mutandis apply to this Agreement between the parties. AP Discom(s) agrees to correspondingly fulfill, on back to back basis, all the obligations assumed by NTPC towards SPD. AP Discom(s) further agree, acknowledge and accept that as an Intermediary, NTPC is not assuming any obligation to AP Discom(s) over and above the obligation which the SPD shall duly perform under the NTPC – SPD PPA.
- IX. NTPC has agreed with the SPD in regard to the payment of money becoming due to SPD under the NTPC – SPD PPA and NTPC shall be liable to discharge the payment obligation in terms of the provisions of the NTPC- SPD PPA. Accordingly, AP Discom(s) agrees to effectively securitize the payment of money becoming due from AP Discom(s) to NTPC as detailed in this Agreement
- X. The parties agree that in respect of the obligations other than the payment obligation specifically mentioned herein above, in the event AP Discom(s) has any claim against NTPC in regard to the performance of any obligation of NTPC under this Agreement or enforcement of any right of AP Discom(s) against NTPC under this Agreement, the same shall be subject to the ability of NTPC to enforce the corresponding obligations assumed by SPD to NTPC under the NTPC-SPD PPA, NTPC shall not be required to

perform and implement the obligations of NTPC or agree to the enforcement of the rights of AP Discom(s) under this Agreement till such time the corresponding obligations under NTPC – SPD PPA is duly implemented by the SPD and in case of monetary obligations the amount is received by NTPC from the SPD. In the event of any such claim arising at the instance of AP Discom(s), the parties shall discuss on the course of action to be initiated by NTPC against the SPD for enforcement of the corresponding obligation and all proceedings to be initiated by NTPC against the SPD for such enforcement shall be pursued by NTPC in consultation with AP Discom(s).

- XI. The parties hereby agrees that the Liquidated Damages are payable by SPD under the NTPC – SPD PPA for the delay in the commissioning of the Solar PV Projects and for short supply of the contracted capacity of the Solar Power. The amount of such liquidated damages for delay shall be payable to AP Discom(s) only upon the receipt of the amount from the SPD. AP Discoms shall not be entitled to make any deductions towards the claim of liquidated damages against any payment due to NTPC and all such other payments shall be made by AP Discoms by the Due Dates, notwithstanding the status of the pending claims on liquidated damages. The Parties agree that as an intermediary, NTPC shall have no legal obligation to pay any amount towards liquidated damages except when the amount of such liquidated damages has been recovered from the SPD by NTPC without any conditions and encumbrances and the amount is available for appropriation by NTPC.
- XII. The parties agree that the various terms contained in the NTPC – SPD PPA such as Scope of Project, Terms of the Agreement, Performance Guarantee, Conditions Subsequent, Obligations of the respective Parties, Construction of the Power Generation Capacity, Synchronization, Commissioning and Commercial Operation, Operation and Maintenance, Purchase and Sale of Solar Power, Measuring and Metering and Dispatch of Power, Billing and Power Accounting and payments, Liabilities, Force Majeure, Events of Default, Termination, Transfer, Change in Law, Indemnity, Insurance, Assignment and Changes, Financing and Bankability, Representations and Warranties, Governing Law, Notices and all other Miscellaneous Terms provided in the NTPC-

SPD PPA shall mutatis mutandi apply to this agreement between NTPC and AP Discom(s).

- XIII. The AP Discom(s) shall be responsible to for directly coordinating and dealing with the SPD, State Load Dispatch Centers/APSPCL, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Solar Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the SPD and AP Discom(s) are the Grid connected entities and NTPC/NVVN as intermediary procurers/trading licensee is not a Grid connected entity in respect of the Solar Power contracted under this Agreement;

Article 1. APPLICABLE TARIFF

- 1.1 The Tariff applicable for the sale of Solar Power by NTPC to the AP Discom(s) under this Agreement shall be the Tariff @ Rs. 2.73/unit for payment by NTPC to SPD under the terms of the Power Purchase Agreement between NTPC and the SPD and in addition thereto a trading margin of 7 paise/kWh payable by the AP Discom(s) to NTPC which NTPC shall be entitled to appropriate as its income.

Article 2. BILLING AND PAYMENT

2.1 General

From the commencement of supply of power by NTPC, the AP Discom(s) shall pay to NTPC the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in Article 1. All Tariff Payments by the AP Discom(s) shall be in Indian Rupees. Monthly bill /s shall be raised by NTPC based on JMR (joint Meter reading) signed between SPD and AP Discoms/REA as the case may be.

2.2. Payment of Monthly Bills

- 2.2.1 The Discom(s) shall pay the amount payable under the Monthly Bill on or before the Due Date to such account of NTPC, as shall have been previously notified to the Discom(s) in accordance with Article 2.2.2 below.
- 2.2.2. NTPC shall open a bank account at New Delhi ("NTPC's Designated Account") for all Tariff Payments to be made by the Discom(s) to NTPC, and notify the Discom(s) of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Discom(s) shall also designate a bank account at (the Discom(s) inform NTPC of the details of such account ninety (90) Days before the dispatch of the first Monthly Bill. NTPC and the Discom(s) 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.

2.3 Late Payment Surcharge

In the event of delay in payment of a Monthly Bill by the Discom(s) sixty (60) days from the date of presentation of bill, a Late Payment Surcharge shall be payable by the Discom(s) to NTPC at the rate of 1.5% 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.

2.4 Rebate

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

- a) A Rebate of 2% shall be payable to the Discom(s) for the payments made within a period of 2 days of the date of presentation of bills.
- b) Any payments made beyond a period of 2 days of the date of presentation upto thirty (30) days from date of presentation of bill shall be allowed a rebate of 1%.
- c) 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.
- d) No Rebate shall be payable on the Bills raised on account of taxes, duties, cess etc'

Article 3. Payment Security Mechanism

(A) Letter of Credit (LC)

- 3.1 The AP Discom(s) 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 AP Discom (s), which may be drawn upon by NTPC in accordance with this Article. The AP Discom (s) shall provide NTPC draft of the Letter of Credit proposed to be provided to NTPC two (2) months before the Scheduled Commissioning Date.
- 3.2. Not later than one (1) Month before the Start of Supply, the Discom(s) shall through a scheduled bank at 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 the monthly average billing for the previous Year.
- 3.3 NTPC shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawal in a Month provided that there are no outstanding dues.
- 3.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 3.2 due to any reason whatsoever, the Discom(s) shall restore such shortfall within seven (7) days.
- 3.5 The Discom(s) shall cause the scheduled bank issuing the Letter of Credit to intimate NTPC, in writing regarding establishing of such irrevocable Letter of Credit.
- 3.6 The Discom(s) shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to its expiry.
- 3.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by the Discom(s).

3.8 If the Discom(s) fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 4.1 and 4.2, NTPC may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Discom(s), an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill which has remained unpaid by the Discom(s);
- ii) 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;

(B) Collateral Arrangement

3.9. As a further support for the Discom(s) obligations, on or prior to the expiry of the TPA, the Discom(s) 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(s) shall be routed and used as per the terms of the Default Escrow Agreement. The Discom(s) 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(s) shall agree to hypothecate, Incremental Receivables to the extent as required for the Letter of Credit as per Article 3.2 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(s) 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.

3.10 AP Discom(s) hereby agrees to provide an alternative payment security arrangement before expiry of the TPA or its extension either by efflux of time or otherwise on assignment of bulk purchase functions to a company not owned or controlled by Govt of AP in the form of Escrow Arrangement as a back up to the Letter of Credit. Under this arrangement an Escrow Account in favour of NTPC shall be established through which the Receivables of AP Discoms shall be routed as per the terms of Escrow Agreement.

AP Discoms hereby agrees that NTPC will have first charge on Receivables of AP Discoms however, such first ranking charge shall be on the amounts, in excess of amounts, which have already been charged or agreed to be charged prior to the date of the execution of this Agreement. AP Discoms agrees to enter into a separate 'Agreement to Hypothecate Cum Deed of Hypothecation' whereby, AP Discoms shall hypothecate Receivables to the extent required for Payment of dues of NTPC by AP Discoms including under this Agreement by creation of first charge in favour of NTPC. These Receivables shall be routed through Escrow Account for payment to NTPC in case of default in payments by AP Discoms. "Receivables" for this purpose shall mean all of the present and future receipts, obligations, monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue or be offered or due to the AP Discoms in respect of the sale by the AP Discoms to the consumers of electric capacity, energy and / or services or for any other reason whatsoever and all proceeds thereof.

- 3.11 The Escrow Agreement and Agreement to Hypothecate Cum Deed of Hypothecation shall be established by AP Discoms to the satisfaction of NTPC at least three months before the expiry of the TPA or any extension thereof either by efflux of time or otherwise on assignment of bulk purchase function to a company not owned by Govt of AP. In the event three months before expiry of TPA or its extension thereof, AP Discoms does not sign the 'Escrow Agreement' and 'Agreement to Hypothecate Cum Deed of Hypothecation' or AP Discoms creating any superior charge in favour of any other party on its Receivables, NTPC shall have the right to reallocate part or full contracted capacity of AP Discoms to Third Party(ies). In case of termination of this Agreement or reallocation of capacity due to reasons stated above, AP Discoms shall be liable to pay charges equivalent to average monthly billing of last twelve months for such capacity, till the capacity is reallocated.

Since the payments from AP Discoms are secured as per provisions of TPA, establishment of Escrow Arrangements is not being insisted upon by NTPC presently. AP Discoms and NTPC agree that this Agreement shall deemed to have created a legally binding first charge on AP Discoms, receivables in favour of NTPC. Accordingly, AP Discoms shall not create any encumbrance, charge, and lien or otherwise execute any

instrument which in any way affects the first charge over the Receivables. While creating any subsequent charge on its Receivables or agreeing to provide Escrow cover or any other form of payment security to any other entities like energy supplier(s), banks, and financial institutions etc. during the interim period till signing of Escrow Agreement with NTPC, AP Discoms shall duly inform such energy supplier(s), banks, financial institutions etc. of the legally binding first charge on AP Discoms Receivables in favour of NTPC and the first charge of NTPC shall be in preference to any other charge that AP Discoms may create in favour of any other party.

3.12 AP Discoms agrees to ensure that the successor entities of AP Discoms are duly notified of the above arrangements with NTPC and shall be bound by the terms of this Agreement as if they are parties to this Agreement.

3.13 The Default Escrow would come into operation if,

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

3.14. In the event of the extension of Tri partite Agreement signed between Government of India (GOI), Government of Andhra Pradesh and Reserve Bank of India (RBI) beyond 31.10.2026, it will not be mandatory for AP Discoms to execute the escrow arrangement till the validity of the extended Tripartite Agreement.

hathur

T
P

Q

(C) Payment Security Fund

3.15. In addition to provisions contained in Article 3(A) and (B) above, the AP Discoms shall provide Payment Security Fund, which shall be suitable to support payment of at least 3 (three) months' billing.

(D) Third Party Sales by NTPC

3.16 Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of any of the following event(s), NTPC shall be entitled to {but not an obligation to} regulate power supply from any of the NTPC Stations to the AP Discoms;

- i) Default in making payment by the 60th day from the date of presentation of Bill,
- ii) Non-recoupment of LC by the 7th day of its operation.
- iii) Non-availability of LC for operation and for its required value by the 7th day of the Due Date.

3.17. 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 3rd day.

3.18 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.

3.19 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 AP Discoms'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 AP Discoms 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 AP Discoms's allocation of power to third parties to the extent of 40% (i.e. $10/25 \times 100$).

3.20 NTPC shall have the right to divert the 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.

Provided that such sale of power to third party shall not absolve the AP Discoms from its obligation to pay in full to NTPC for the solar power as per NTPC-SPD PPA.

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

3.22 Further, that the liability of the AP Discoms 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 AP Discoms.

ARTICLE 4 - Disputed Bill

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

4.2 If the AP Discoms 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.

Whathur

- 4.3 If the NTPC agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 4.0, the NTPC shall make appropriate adjustment in the next Monthly Bill. In Surcharge, which shall be applied from the date on which such excess payment was made by the AP Discoms and up to and including the date on which such payment has been received as refund.
- 4.4 If the NTPC does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 4.2, 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.
- 4.5 Upon receipt of the Bill Disagreement Notice by the AP Discoms under Article 4.4, authorized representative(s) or a director of the board of directors/ member of board of the AP Discoms and NTPC shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- 4.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 4.4, the matter shall be referred to Dispute resolution in accordance with governing Laws and Dispute resolution in PPA.
- 4.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the AP Discoms 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.

Article 5: EVENTS OF DEFAULT AND TERMINATION

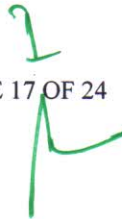
5.1 Discom(s) Event of Default

5.1.1 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(s) Event of Default:

- (i) Any amount subject to Article 4.0 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(s) through the Letter of Credit and Default Escrow Account; or
- (ii) The Discom(s) fails to evacuate power from the Delivery Points for a continuous period of three days subject to cumulative ceiling of fifteen days in a year.
- (iii) If (a) the Discom(s) 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(s), or (c) the Discom(s) 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(s) will not be a Discom(s) 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(s) and expressly assumes all obligations of the Discom(s) under this Agreement and is in a position to perform them; or

- (iv) The Discom(s) 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(s) is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the Discom(s) 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(s).

5.2 Procedure for cases of Discom(s) Event of Default

5.2.1 Upon the occurrence and continuation of any Discom(s) Event of Default under Article 5.1, NTPC shall have the right to deliver to the Discom(s) 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.

5.2.2 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 view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

5.2.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

5.2.4 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(s) 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(s) and

5.2.5 Subject to the occurrence and continuation of default by as contained under Article 5.0,

5.2.5.1 Subject to the prior consent of the NTPC, the AP Discom(s) shall novate its part of the PSA to any third party, including its Affiliates within the period of 210 days beyond the period of 30 days in which NTPC may rectify the breach,

5.2.5.2 In the event the aforesaid novation is not acceptable to the NTPC, or if no offer of novation is made by the defaulting AP Discom(s) within the stipulated period then the NTPC may terminate the PSA and at its discretion require the defaulting AP Discom(s) to either







- (i) Takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 150% (one hundred and fifty per cent) of the adjusted equity or,
- (ii) Pay to the SPD, damages, amount equivalent to the last 6 (six) months average billing, or balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the SPD.

5.3 Termination of back to back agreements

In case of termination of NTPC -SPD PPA, this Agreement shall automatically terminate, Provided that in case of such termination as identified in this Article any pending monetary liabilities of either Party shall survive on the termination of this Agreement. In the event of termination of PPA/PSA, any damages or charges payable to the STU/ CTU if applicable, for the connectivity of the plant, shall be borne by the AP Discom(s).

ARTICLE 6: MISCELLANEOUS PROVISIONS

6.1 Amendment

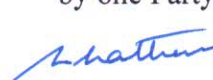
- 6.1.1 This Agreement may only be amended or supplemented by a written agreement between the Parties, with the approval of the Appropriate Commission, if necessary.

6.2 Third Party Beneficiaries

- 6.2.1 This Agreement is solely for the benefit of the Parties, SPD 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.

6.3 Waiver

- 6.3.1 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:
- 6.3.2 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.

6.4 Confidentiality

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

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

6.5 Severability

6.5.1 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.

6.6 Notices

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

6.6.2 If to the AP Discoms, 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 : 1. Chief General Manager,
Energy Conservation,
Eastern Power Distribution Company of Andhra
Pradesh Ltd.,
TPT Colony, Seethammadhara ,
Visakhapatnam – 530 013.

Attention :

Email :

Fax. No. :

Telephone No.:



Address : 2. Chief General Manager
P&MM&IPC,
Southern Power Distribution Company of Andhra
Pradesh Ltd.
Tirupathi - 517503.
gmipcspdcl@gmail.com

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

6.6.3 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:

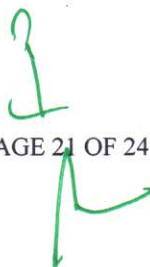
(i) Address : ED (Commercial)
NTPC Limited
NTPC Bhawan
SCOPE Complex, Core-5, IIIrd Floor
7, Institutional Area, Lodhi Road
New Delhi- 110 003

Fax. No. : 011-24361018
E-mail. : ntpccc@gmail.co.in, info@ntpc.co.in

6.7 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 there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

6.8 The duly executed Power Purchase Agreement between NTPC and SPD shall be attached to this Agreement and shall be read along with Agreement as a composite back to back process for Generation and supply of electricity to AP Discom(s) to fulfill the Renewable Purchase Obligations under the provisions of the Electricity Act, 2003 and the Regulations notified thereunder.



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]



Signature with seal

मनोज माथुर/MANOJ MATHUR
महाप्रबंधक (वाणिज्यिक)
General Manager (Commercial)
एनटीपीसी लिमिटेड/NTPC Limited

For and on behalf of
[Eastern Power Distribution Company of
Andhra Pradesh Ltd. (APEPDCL)]



Signature with seal

Chief General Manager
Energy Conservation
Corporate Office
APEPDCL, Visakhapatnam

For and on behalf of
[Southern Power Distribution Company of
Andhra Pradesh. Ltd. (APSPDCL)]



Signature with seal

Chief General Manager
P&MM & IPC, APSPDCL
TIRUPATHI

Witness



Ashok Kumar Gupta
NTPC Ltd.

Witness



(V. S. A. VIJAYA)
ADE/ERC/VS/VJA

SCHEDULE A:

PPA

Whetten

1

2

Sally

SCHEDULE B

PARTICULARS OF THE PROJECT

S No.	Name of the Project	Location	Capacity of the Project
1	AYANA RENEWABLE POWER PRIVATE LIMITED, 3 rd Floor, Sheraton Grand hotel, Brigade Gateway, 26/1, Dr. Rajkumar road, Malleshwaram West, Bangalore – 560055.	Plot No.....	250 MW@ Rs.2.73 per unit

- Out of 250 MW, 0.25 MW is for Auxiliary consumption and 249.75 MW is for export to grid sale to AP Discoms.

