

SOLAR ENERGY CORPORATION OF INDIA LTD.			
NEW DELHI			
SECI/C&P/HPD/RfS/T3/Amendment-03			dated 24.04.2020
Amendment-03 to the RfS for 1200 MW ISTS Connected Wind-Solar Hybrid Power Projects (Tranche-III)			
RfS No. SECI/C&P/HPD/T3/1200MW/RfS/012020 dated 14.01.2020			
Sr. No.	Clause No.	Existing Clause	Amended Clause
1.	General	Reference no. of Amendment-02 issued on 19.03.2020 is to be read as SECI/C&P/HPD/RfS/T3/Amendment-02.	
Amendment in the PPA document			
1.	Article 12	<p>Modified as follows:</p> <p>ARTICLE 12: CHANGE IN LAW</p> <p>12.1 Definitions</p> <p>In this Article 12, the following terms shall have the following meanings:</p> <p>12.1.1 In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after [Insert last date of bid submission] including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Hybrid Power Developer; or (v) any change in the rates of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up the wind power project and supply of power from the Project by the HPD which have a direct effect on the Project.</p> <p>However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the HPD.</p> <p>12.1.2 In the event of occurrence of any of events as provided under Article 12.1.1 which results in any increase/ decrease in the Project Cost (i.e. cost incurred by the HPD towards supply and services only for the Project concerned, upto Scheduled Commissioning Date or extended Scheduled Commissioning Date, as the case may be), the HPD/ SECI / Buying Utility(ies) shall be entitled for compensation by the other party, as the case may be, subject to the condition that the such ‘Change in Law’ is recognized by the Appropriate Commission. Compensation payment on account of such ‘Change in Law’ shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.</p>	

12.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after **[Insert last date of bid submission]** and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 12.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on HPD and Buying Entity.

12.2 Relief for Change in Law

12.2.1 Save and except as provided under Article 12.1.3, the aggrieved Party shall be required to approach the Hon'ble CERC for seeking approval of Change in Law.

12.2.2 The decision of the Hon'ble CERC to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on HPD and Buying Entity.

12.2.3 In case of Change in Law as approved by the Appropriate Commission pursuant to Article 12.2.1 or as provided under Article 12.1.3, the HPD/ SECI/ Buying Entities (as the case may be) shall be entitled for relief as follows:

Every net increase/decrease of Rs.1 lakh per MW in the Project Cost (i.e cost incurred by the HPD for the supply and services in the Project concerned, upto Scheduled Commissioning Date or extended Scheduled Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges, as the case may be), shall be liable for corresponding increase/decrease of an amount equal to Rs 0.005 /kWh.

Any such change, shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.

For e.g. in case the change in tariff payable is calculated as Rs. 0.14678/kWh, it shall be modified as Rs. 0.146/kWh

12.2.4 In case Change in Law results in delay in commissioning or supply of power, where cause and effect between these two can be clearly established, the SECI under intimation to the Buying Entities may provide suitable time-extension in Scheduled Commissioning Date or Scheduled Date of Commencement of Supply of Power, as the case may be.

12.2.5 In the event of any decrease in the project cost by the HPD or any income to the HPD on account of any of the events as indicated above, HPD shall pass on the benefit of such reduction at a rate as provided in Article 12.2.3 to SECI which shall be further

		<p>passed on to the Buying Entity. In the event of the HPD failing to comply with the above requirement, SECI shall make such deductions in the monthly tariff payments on immediate basis. Further, at the time of raising of 1st Monthly Tariff Payment Bill, HPD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 12.</p> <p>12.3 Notification of Change in Law</p> <p>12.3.1 If the HPD is affected by Change in Law in accordance with Article 12 and wishes to claim a Change in Law under this Article, it shall give notice to the SECI and Buying Utility (s) of such Change in Law as soon as reasonably practicable (but no later than 60 days from the date of occurrence of such Change in Law).</p> <p>12.3.2 Any notice service pursuant to this Article 12.3.1 and 12.1.3, shall provide, amongst other things, precise details of the Change in Law and its effect on the Project Cost, supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.</p>
Amendment in the PSA document		
1.	Article 8	<p>ARTICLE 8: CHANGE IN LAW</p> <p>8.1 Definitions</p> <p>In this Article 8, the following terms shall have the following meanings:</p> <p>8.1.1 In this Article 8, the term Change in Law shall refer to the occurrence of any of the following events pertaining to this project only after [Insert last date of bid submission] including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Hybrid Power Developer; or (v) any change in the rates of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up the wind power project and supply of power from the Project by the HPD which have a direct effect on the Project.</p> <p>However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the HPD.</p> <p>8.1.2 In the event of occurrence of any of events as provided under Article 8.1.1 which results in any increase/ decrease in the Project Cost (i.e. cost incurred by the HPD towards supply and services only for the Project concerned, upto Scheduled Commissioning Date or extended Scheduled Commissioning Date, as the case may be), the HPD/ SECI / Buying Utility(ies) shall be entitled for compensation by the other</p>

		<p>party, as the case may be, subject to the condition that the such 'Change in Law' is recognized by the Appropriate Commission. Compensation payment on account of such 'Change in Law' shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.</p> <p>8.1.3 However, in case of change in rates of safeguard duty, GST and basic customs duty after [Insert last date of bid submission] and resulting in change in Project Cost, then such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 8.2.3, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on HPD and Buying Entity.</p> <p>8.2 Relief for Change in Law</p> <p>8.2.1 Save and except as provided under Article 8.1.3, the aggrieved Party shall be required to approach the Hon'ble CERC for seeking approval of Change in Law.</p> <p>8.2.2 The decision of the Hon'ble CERC to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on HPD and Buying Entity.</p> <p>8.2.3 In case of Change in Law as approved by the Appropriate Commission pursuant to Article 8.2.1 or as provided under Article 8.1.3, the HPD/ SECI/ Buying Entities (as the case may be) shall be entitled for relief as follows:</p> <p>Every net increase/decrease of Rs.1 lakh per MW in the Project Cost (i.e cost incurred by the HPD for the supply and services in the Project concerned, upto Scheduled Commissioning Date or extended Scheduled Commissioning Date, for reasons other than those wherein such extension is on account of payment of liquidated damages, penalty or any other charges, as the case may be), shall be liable for corresponding increase/decrease of an amount equal to Rs 0.005 /kWh.</p> <p>Any such change, shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.</p> <p><i>For e.g. in case the change in tariff payable is calculated as Rs. 0.14678/kWh, it shall be modified as Rs. 0.146/kWh</i></p> <p>8.2.4 In case Change in Law results in delay in commissioning or supply of power, where cause and effect between these two can be clearly established, the SECI under intimation to the Buying Entities may provide suitable time-extension in Scheduled Commissioning Date or Scheduled Date of Commencement of Supply of Power, as the case may be.</p>
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FORMAT-6.3 C of the RfS and SCHEDULE 3 of the PPA document

(revised as follows)

Format of Payment on Order Instrument to be issued by IREDA/REC/PFC

(to be submitted separately for each Project)

No.

Date

SECI,

Registered

_____,

Reg: M/s _____(insert name of the PPA signing entity) (Project No. _____(insert project ID issued by SECI) – Issuance of Payment on Order Instrument for an amount of Rs. _____

Dear Sir,

1. The Ministry of New and Renewable Energy, Government of India vide its letter dated 12th March 2020 has decided that to facilitate the promotion of solar and wind power development and implementation of the project by the Solar and Wind Power Developers who have entered into financing and funding agreements with IREDA/REC/PFC, the security by way of PBG in the form of Performance Bank Guarantee given by the Developers be allowed to be substituted by Letter of Undertaking/ Payment on Order Instrument issued by Non-Banking Finance Companies under the control of the Ministry of New and Renewable Energy and Ministry of Power. SECI and other nodal agencies appointed by the Government of India with whom the power developers have entered into Power Purchase Agreement may accept the same in place of PBG. The Ministry of New and Renewable Energy vide letter dated 12.03.2020 has, inter-alia, decided as under:

6. After carefully examining the matter, the Ministry have decided as follows:

- b) (i) SECT or NTPC or any other implementing agency on behalf of MNRE (henceforth called implementing agencies) may release the Performance Bank Guarantee (PBG) of any project if RE developers are able to replace the same with Letter(s) of Undertaking to pay in case situation of default of RE developer in terms of Power Purchase Agreement (PPA) arises, from Indian Renewable Energy Development Agency Limited (IREDA) or Power Finance Corporation Limited (PFC) or REC Limited (REC), the three non-banking financial institutions under Ministry of New & Renewable Energy (MNRE)/ Ministry of Power (MoP). These three financial institutions - IREDA or PFC or REC may issue such Letter(s) of Undertaking to pay only after securing their financial interests taking into account the security(ies) available with them as per their policy and after due diligence. These non-banking financial institutions would ensure that the security(ies) available with them are enough to cover full risk/ or exposure, which may arise on account of issue of such*

Letter(s) of Undertaking. Such Letter(s) may be termed as "Payment on Order instrument" and will have same effect as that of a Bank Guarantee issued by any public sector bank. This "Payment on Order instrument" would have terms and conditions similar to that of any Bank Guarantee given by any public sector bank and would promise to pay the implementing agencies on demand within stipulated time.

(ii) RE developers can seek such Letters(s) by offering due security to the above mentioned three non-banking financial institutions mentioned above (IREDA, PFC & REC) for seeking replacement of their Bank Guarantees already pledged with the implementing agencies.

(iii) For future projects, RE developers would be at liberty to either pledge Bank Guarantee(s) or Letter(s) of Undertaking as stated above towards Performance Bank Guarantee.

(iv) The above decisions may be treated as amendments to the respective Standard Bidding Guidelines (SBG) (solar/wind) and notified accordingly.

(v) Implementing agencies shall not accept the instrument of 'Letter of Undertaking' as described above or in any other form, from any other non- banking financial institutions or bank, except IREDA, PFC & REC.

2. It is to be noted that M/s. _____(insert name of the POI issuing Agency) **(‘IREDA/REC/PFC’)** has sanctioned a non-fund based limit loan of Rs. _____ (Rupees _____ only) to M/s _____ under the Loan Agreement executed on _____ to execute Renewable Energy Projects.
3. At the request of M/s _____, on behalf of _____(insert name of the SPV), this Payment on Order Instrument (POI) for an amount of Rs. _____(Rupees _____(in words)). This Payment on Order Instrument comes into force immediately.
4. In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected Hybrid Power Developer') submitting the response to RfS inter alia for selection of the Project of the capacity of MW, at[Insert name of the place] under RfS for Setting up of 1200 MW ISTS-Connected Wind-Solar Hybrid Power Projects (Tranche-III), for supply of power there from on long term basis, in response to the RfS dated..... issued by Solar Energy Corporation of India Ltd (hereinafter referred to as SECI) and SECI considering such response to the RfS of[insert the name of the selected Hybrid Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Hybrid Power Project of the Hybrid Power Developer and issuing Letter of Award No ----- to (Insert Name of selected Hybrid Power Developer) as per terms of RfS and the same having been accepted by the selected HPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected HPD or a Project Company, M/s ----- {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable]. As per the terms of the RfS, the _____ [insert name & address of IREDA/PFC/REC] hereby agrees unequivocally,

irrevocably and unconditionally to pay to SECI at [Insert Name of the Place from the address of the SECI] forthwith on demand in writing from SECI or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees----- [Total Value] only, on behalf of M/s _____ [Insert name of the selected Hybrid Power Developer / Project Company]

5. In consideration of the above facts, IREDA/REC/PFC, having its registered office at _____, agrees to make payment for the sum of Rs. _____ lakhs (in words.....) to SECI on the following conditions:-

- (a) IREDA/REC/PFC agrees to make payment of the above said amount unconditionally, without demur and without protest within a period of _____ days of receipt of request from SECI within the validity period of this letter as specified herein;
- (b) The commitment of IREDA/REC/PFC, under this Payment of Order Instrument will have the same effect as that of the commitment under the Bank Guarantee issued by any Public Sector Bank and shall be enforceable in the same manner as in the case of a Bank Guarantee issued by a Bank and the same shall be irrevocable and shall be honored irrespective of any agreement or its breach between IREDA/REC/PFC or its constituents notwithstanding any dispute that may be raised by the against SECI;
- (c) The liability of IREDA/REC/PFC continues to be valid and binding on IREDA/REC/PFC and shall not be terminated, impaired and discharged, by virtue of change in its constitution and specific liability under letter of undertaking shall be binding on its successors or assignors;
- (d) The liability of IREDA/REC/PFC shall continue to be valid and binding on IREDA/REC/PFC and shall not be terminated/ impaired/ discharged by any extension of time or variation and alternation made given or agreed with or without knowledge or consent of the parties (SECI and Bidding Party), subject to the however to the maximum extent of amount stated herein and IREDA/REC/PFC is not liable to any interest or costs etc;
- (e) This Payment of Order Instrument can be invoked either partially or fully, till the date of validity;
- (f) IREDA/REC/PFC agrees that it shall not require any proof in addition to the written demand by SECI made in any format within the validity period. IREDA/REC/PFC shall not require SECI to justify the invocation of the POI against the SPV/HPD, to make any claim against or any demand against the SPV/HPD or to give any notice to the SPV/HPD;

- (g) The POI shall be the primary obligation of IREDA/REC/PFC and SECI shall not be obliged before enforcing the POI to take any action in any court or arbitral proceedings against the SPV/HPD;
- (h) Neither SECI is required to justify the invocation of this POI nor shall IREDA/REC/PFC have any recourse against SECI in respect of the payment made under letter of undertaking;
6. Notwithstanding anything contrary contained anywhere in this POI or in any other documents, this POI is and shall remain valid upto _____ and IREDA/REC/PFC shall make payment thereunder only if a written demand or request is raised within the said date and to the maximum extent of Rs.....and IREDA/REC/PFC shall in no case, be liable for any interest, costs, charges and expenses and IREDA's/REC's/PFC's liability in no case will exceed more than the above amount stipulated.
7. In pursuance of the above, IREDA/REC/PFC and SECI have signed an Umbrella Agreement dated ____ setting out the terms and conditions for issue of letter of undertaking by IREDA/REC/PFC to SECI and the said terms and conditions shall be read as a part of this letter of undertaking issued for the project of the project of PP mentioned above.

Thanking you,

Yours faithfully

For and on behalf of

M/s. _____

(name of the POI issuing agency).

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General Manager (TS)

Copy to:-

M/s. __PP_____

_____ As per their request

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General Manager (TS)