

STANDARD
POWER PURCHASE AGREEMENT
FOR
PROCUREMENT OF MW (ROUND THE CLOCK) RTC POWER
(RE Power complemented with power from Power from any other source or storage
in India)
ON LONG TERM BASIS
Between

..... [Insert Name of RTC Power Developer]

And

..... [Insert the names of all identified Thermal Generators][if applicable]

And

Solar Energy Corporation of India Limited

..... [Insert month and year]

This Power Purchase Agreement is made on the[Insert date] day of[Insert month] of [Insert year] at [Insert place]

Between

..... [Insert name of the RE Power Developer], a Company incorporated under the Companies Act 1956 or Companies Act 2013, having its registered office at [Insert address of the registered office of RE Power Developer] (hereinafter referred to as “**RTC Power Generator**” or **RTC-PG** or “**RE Power Developer**” or “**RTC Power Developer**” or “**RPD**”, 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

Solar Energy Corporation of India Limited, a company incorporated under the Companies Act 1956, having its registered office at 1st Floor, A-Wing, D-3, District Centre, Saket, New Delhi-110017 (hereinafter referred to as “**SECI**”, or “**Intermediary Procurer**” or “**Buyer**” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the **Second Part**

And

..... (Insert the names of each of the identified Thermal Generator(s) as provided in the RfS and the Bid given by the RPD for providing Thermal Generation to complement the Renewable Generators for RTC supply with the status of the company, registered office, authorized person etc.) [hereinafter collectively referred to as the “**Thermal Generator(s)**” 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 **Other Part**; [Applicable only in case of Domestic Coal Based Thermal Projects being one of the RTC Component]

The RPD, Thermal Generators (if applicable) and SECI are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

WHEREAS:

- A. The Government of India has announced the Policy for promotion of the renewable energy based project installation in the country and has provided a target to achieve an aggregate installed capacity of 175 GW by the year 2022.
- B. The Ministry of Power, Government of India has issued the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Round-The-Clock Power from ISTS-connected Renewable (RE) Power Projects (**‘RE Projects’**), complemented/balanced with
(Insert Project ID)

power from any other source based ISTS-connected Power Projects ('**Any other Source Projects**'), vide Gazette Resolution dated 22.07.2020, including subsequent amendments and clarifications thereto.

- C. SECI has been designated as a Nodal Agency for developing and facilitating the establishment of the Grid connected RE Power capacity in India in terms of the Policy of the Government of India;
- D. SECI had initiated a Tariff Based Competitive Bid Process for procurement of 2500 MW of the power generated from the ISTS-connected RE Power Project to be complemented / balanced with Power from any other source on the terms and conditions contained in the Request for Selection (hereinafter referred to as '**RfS**') issued by SECI vide RfS No.....dated..... including its subsequent amendments and clarifications.
- E. The RPD has been selected in the Competitive Bidding Process for supply of Contracted Capacity of _____MW through development, generation and supply of electricity from the [**Insert proposed combined ~~installed~~ RE Capacity**] MW RE Power Project to be established by RPD in India with an obligation on the RPD to arrange for and ensure the Power generation and supply from ISTS-connected any other source oof Power to complement / balance the above RE Power for Round the Clock [RTC] supply to SECI as an Intermediary Agency to enable the onward supply of such electricity by SECI to the Buying Utility(ies) [as defined] on back to back basis under Power Sale Agreement(s) to be finalized and entered into between SECI and such Buying Utility (ies);
- F. The RPD vide its Agreement(s) dated_____ has tied up for power from any other source for complementing / balancing the RE Power for the RTC supply under this Agreement. However, such tie-up for the power from any other source has been carried out by the RPD at its own risk and cost and and holding SECI indemnified and harmless. Irrespective of the contractual arrangement between the RE Power Generator and Power Generator of any other source, all the generator related liabilities, under the Guidelines and the PPA hereunder, shall be of the RPD. .
- G. Details of such tie-ups are annexed in Appendix A to this Agreement.
(Appendix A to give full details of each of such generators including the location of the project, MW capacity contracted, concerned RLDCs to schedule etc.);
- H. [Not Used].
- I. SECI, based on the above, has issued the Letter of Award (LoA) vide No..... dated.....in favour of the RPD for the above purpose and for the development and

establishment RE Project in the State(s) of and in the territory [Insert name of the RLDCs], for a Contracted Capacity ofMW as per the terms and conditions contained in the RfS including amendments and clarifications thereto, the standard draft of this Power Purchase Agreement circulated at the time of the bidding and other bidding documents as well as the conditions contained in the aforementioned Letter of Award;

- J. The RPD has executed independent bilateral agreements on the dates and as per the details mentioned in Appendix A with the Any Other Source Generators for confirmation of their binding obligations to complement /balance the RE Power Generation in the manner specified in this Agreement (read alongwith RfS Documents) with the required Power from Any Other Source to ensure the Round The Clock Power availability and the agreement is attached to this Agreement as **Schedule 6**. Further, the coal being utilized in the Thermal Project shall be of _____(domestic/imported) nature, for the Term of this Agreement.
- K. SECI has agreed to purchase such RE Power complemented / balanced with Power from any other source(s) on RTC basis as an Intermediary Procurer for onward back-to-back sale to Buying Utility(ies) to be identified and with whom SECI is to duly conclude/has concluded a binding and enforceable Power Sale Agreement(s) with due regulatory approvals required to be taken by the Buying Utility(ies), as per the Conditions Precedent contained in this Agreement;
- L. In terms of the RfS and the Bidding Documents, the RPD has furnished the Performance Bank Guarantee/ Payment on Order Instrument, as the case may be, in the sum of Rs..... in favour of SECI as per the format provided as a part of the Bidding Documents and a copy of the Bank Guarantee (/ Payment on Order Instrument / Letter of Undertaking as per RfS, as applicable) provided is in Schedule – 1 (/ Schedule-2) to this Agreement;
- M. The RPD has fulfilled the terms of the bidding and the terms of the Letter of Award for signing this Power Purchase Agreement as a definitive agreement, subject to the Conditions Precedent contained in this Agreement;
- N. The Parties have agreed to execute this Power Purchase Agreement in terms of the provisions of the RfS, the bidding documents and the Letter of Award, the recitals hereinabove, in regard to the terms and conditions for establishment of the RE Power Project at, [Insert name of state and region] and for generation and supply of electricity complemented / balanced with Power from Thermal Project(s) to SECI at the tariff as per Article 9 (herein below) for onward sale to the Buying Entities on back to back basis under respective Power Sale Agreement.

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

ARTICLE 1: DEFINITIONS AND INTERPRETATION**1.1 Definitions**

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

“Act” or “Electricity Act, 2003”	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
“Adjusted Equity”	<p>shall mean the Equity funded in Indian Rupees restricted to the RE Project and adjusted on the first day of the current month (the “Reference Date”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date;</p> <p>On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date;</p> <p>ii. An amount equal to the Adjusted Equity as on COD shall be deemed to be the base(the “Base Adjusted Equity”);</p> <p>iii. After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three three three percent) thereof at the commencement of each month following the COD [reduction of 1% (one percent) per quarter of an year] and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date;</p> <p>For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the PPA period is extended, but the revision on account of WPI shall continue to be made.</p>
Affiliate	shall mean a person who controls, is controlled by, or is under the common control with such Company. The expression ‘control’ shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors;

“Agreement” or “Power Purchase Agreement” or “PPA”	shall mean this Power Purchase Agreement including its recitals and Schedules, Appendixes amended or modified from time to time in accordance with the terms hereof;
“Appropriate Commission”	Unless otherwise stated or the context requires, Appropriate Commission shall mean Central Electricity Regulatory Commission;
“Availability”	<p>Availability of the Contracted Capacity to its full capacity shall, in respect of any 15-minute period or any duration as directed by CERC from time to time (time-block), mean the capacity of the Power (in MW) to the extent it is offered by the RPD to generate and supply electrical power equal to a maximum of Contracted Capacity at the Delivery Point, after accounting for auxiliary consumption, and transmission losses upto the Delivery Point, and for any month or Contract Year, as the case may be, the total such time block during that month or Contract Year- In case of multiple points of injection comprising the Delivery Point, Availability shall be reckoned to the extent of electrical power offered at each point of injection, subject to a maximum capacity equal to Contracted Capacity.</p> <p>For the avoidance of doubt, the Parties agree that Availability shall, during the month and the Contract Year when COD /part commissioning occurs, be determined with reference to the number of remaining time block in such month / Contract Year corresponding to such commissioned full / part Contracted Capacity and shall be determined likewise for any single day of operation.</p> <p>It shall be the obligation of the RPD to arrange for the declaration of a composite availability of the RE Power and the Power from any other source as specified under Appendix A to ensure the RTC supply of the declared availability of the total quantum of power in MW, as per provisions of this Agreement.</p> <p>The Parties also agree that the determination of Availability here under shall be solely for the purposes of this Agreement and shall not in any manner affect the rights and obligations of the Supplier for and in respect of scheduling and dispatch of electricity under Applicable Laws and the rules and regulations thereunder.</p>
“Awarded capacity”	Shall mean MW [enter the capacity as awarded by SECI as per the LoA]
“Backdown”	Means part of Contracted capacity available for scheduling but not scheduled based on instructions from /Buying Utility/SLDC /RLDC, as the case may be;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;

“Business Day”	shall mean with respect to RPD and SECI, a day other than Saturday, Sunday or a statutory holiday, on which the banks remain open for business in Delhi and [insert name of State where RPD Registered Office is located] both;
“CERC”	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
“CTU” or “Central Transmission Utility”	shall mean the Government Company notified by the Central Government under Sub-Section (1) of Section 38 of the Electricity Act, 2003.
“Change in Law”	shall have the meaning ascribed thereto in Article 12 of this Agreement;
“Commissioning”	The RE Project will be considered as commissioned if all equipment as per rated Project Capacity along with proportionate capacity from any other source (as detailed under Appendix-A) as declared in the RTC configuration, has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the PPA read along with RfS.
“Commercial Operation Date (COD)”	shall mean the date on which the commissioning certificate is issued upon successful commissioning (as per provisions of this Agreement) of the Project or the last part capacity of the Project as the case may be and regular supply of power from the RE Project complemented / balanced with the quantum of Power supply from any other source (as detailed under Appendix-A) for RTC supply as per provisions of this Agreement. Such date of the issuance of Commissioning Certificate shall be deemed to be the date on which RPD has successfully demonstrated the compliance of the all requirements for the commissioning as well as commercial operation for the entire Contracted Capacity as per provisions of this Agreement read along with provisions of the RfS.
“Competent Court of Law”	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
“Consents, Clearances and Permits”	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
“Consultation Period”	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a RPD Preliminary Default Notice or SECI Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

“Contract Year”	<p>shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that:</p> <p>(i) in the financial year in which commissioning of the first part capacity of the Contracted Capacity would occur, the Contract Year shall commence from the date of commissioning of first capacity and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and</p> <p>(ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement</p>
“Contracted Capacity”	shall mean [Insert capacity as per LOA] MW contracted with SECI for supply by the RPD to SECI at the Delivery Point from the Project.
“Cumulative Availability”	Shall mean for any period, the average of the daily Availability for all the time blocks during the such period / Contract Year (as applicable) expressed as percentage of the Contracted capacity in MW
“Day”	shall mean a day, if not a Business Day, the immediately succeeding Business Day.
“Debt Due”	<p>shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:</p> <p>i. The principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the ‘Principal’) but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;</p> <p>ii. All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (i) above until the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Utility Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost.</p> <p>Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken.</p> <p>Provided further that the Debt Due, on or after COD, shall in no case exceed 80% (eighty percent) of the Total Project Cost.</p>

“Declared Capacity” or “Offered Capacity” or “Offered Power”	shall mean the schedule (in MW) as declared by the developer at the Delivery Point (ISTS Substation) for any time-block of the day as defined in the Grid Code.
“Delivery Point” / “Interconnection Point”	<p>“Delivery Point” shall in the case of RE Project mean a single point or multiple points at the voltage level of 220 kV or above of the ISTS Sub-station including the dedicated transmission line connecting the RE power Projects with the substation system as specified in the RfS document. Metering shall be done at this interconnection point where the power is injected into. For interconnection with grid and metering, the RPD shall abide by the relevant and applicable regulations, Grid Code notified by the CERC or and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time, or orders passed thereunder by the appropriate commission or CEA.</p> <p>“Delivery Point” for the supply of power from any other sources (as detailed under Appendix-A) shall mean the inter-connection point at ISTS network, as detailed under Appendix-A.</p> <p>Pursuant to Article 4.2.6, all charges and losses related to Transmission of power from project up to Delivery Point (including but not limited to open access, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, RLDC/SLDC charges etc.) as notified by the competent authority / regulator shall be borne by the RPD and beyond the Delivery Point all charges and losses as notified by the competent authority / regulator from time to time shall be borne by the Buying Utilities.</p>
“Discoms” or “Distribution Licensees” or “Buying Entity (ies)” or “Buying Utility(ies)” or “Procurer(s)”	shall mean the Buying Entity or the distribution utilities who have signed/will sign the back to back PSA(s) with SECI for purchase of Power. It is clarified that all obligations of SECI under this Agreement shall be deemed to be the obligations of Buying Entities with which SECI has signed/will sign Power Sale Agreement.
“Dispute”	shall mean any dispute or difference of any kind between SECI and the RPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement. It is clarified and confirmed by the Parties that in all such disputes, RPD shall have the absolute authority to represent the Power Generators as mentioned under Appendix-A in so far as SECI is concerned and SECI will not be required to or otherwise will have to deal with the such other power Generators, notwithstanding, any difference or dispute between the RPD and/or the such power Generators.;

"Due Date"	Due Date shall mean the seventy-fifth (75th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hard copy and duly acknowledged by the SECI or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the SECI.
"Effective Date"	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Accounts"	shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof or where such regional energy accounts/ state energy accounts are not issued, Joint Meter Reading (JMR) will be considered; SECI reserves the right to choose from any of the above, i.e. JMR/SEA/REA, based on the acceptance of the same by the Buying Utility;
"Energy Storage Systems" or "ESS"	shall mean the system(s) installed in addition to the RE power capacity as part of the Project, that can capture energy produced at one time for use at a later time;
"Event of Default"	shall mean the events as defined in Article 13 of this Agreement;
"Expiry Date"	Shall mean the date occurring twenty-five (25) years from the Scheduled Commercial Operation Date unless extended by the Parties as per this Agreement;
"Financial Closure"	shall mean compliance with the requirements under Article 3.1 of this Agreement;
"Financing Agreements"	shall mean the agreements pursuant to which the RPD has sought financing for the RE Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of SECI;
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 11 of this Agreement;
"Guidelines" or "Scheme"	shall mean the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Round-The-Clock Power from Grid Connected Renewable Energy Power Projects, complemented with Power from Coal Based Thermal Power Projects issued by the Ministry of Power on 22.07.2020 including subsequent amendments

	and clarifications issued / notified till the last date of Bid submission against the referred RfS;
"Grid Code" / "IEGC" or "State Grid Code"	shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub- section (1) of Section 86 of the Electricity Act 2003, as applicable;
"Indian Governmental Instrumentality"	shall mean the Government of India, Governments of state(s)..... [Insert the name(s) of the state(s) in India, where the Power Project, Thermal Power Project, SECI and RPD are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the above state Government(s) or both, any political sub-division of any of them; including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
"Insurances"	shall mean the insurance cover to be obtained and maintained by the RPD in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on RPD's side and/or the power generator(s) of any other source (as under Appendix-A), as the case may be, of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;
"Intermediary agency" or "Intermediary nodal agency" or "Intermediary Procurer"	shall mean Solar Energy Corporation of India Limited (SECI);
"Invoice" or "Bill"	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
"Joint Control"	shall have same meaning as defined in RfS Document;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;

"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"MNRE"	shall mean the Ministry of New and Renewable Energy, Government of India;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Security Mechanism"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Performance Bank Guarantee" or "PBG"	shall mean the irrevocable unconditional bank guarantee, submitted by the RPD to SECI in the form attached hereto as Schedule 1;
"Payment on Order Instrument" or "POI"	shall mean the irrevocable unconditional letter of undertaking issued by M/s Indian Renewable Energy Development Agency/ M/s Power Finance Corporation Limited/ M/s Rural Energy Corporation Limited, submitted by the RPD in place of PBG to SECI in the form attached hereto as Schedule 2;
"Pooling Substation/ Pooling Point"	means a point where more than one power Project may connect to a common transmission system. Multiple Projects can be connected to a pooling substation from where common transmission system shall be constructed and maintained by the RPD (s) to get connected to the Delivery Point. The voltage level for such common line shall be as per the voltage level specified in "Interconnection Point". Further, the metering of the pooled power shall be done at the injection point, i.e. the ISTS substation. However, the voltage level of transmission system of individual projects up to the pooling substation may be at 33 kV and above. Sub-meters shall be installed at the pooling substation for metering and forecasting and scheduling of individual projects. The losses in the common transmission system up to the injection point shall be apportioned to the individual Projects for the purpose of billing. In such case, it shall be responsibility of the RPD to obtain and furnish the meter reading jointly by the RPD and any competent authority (State Government or Central Government) (if applicable).

<p>“RE Project” or “Project” or “Project Capacity”</p>	<p>shall mean the renewable energy generation facility of Capacity of[Insert capacity as per RTC Configuration, separately for Wind and Solar] MW, located at[Insert names of Village(s), Tehsil(s), District(s) and State(s)] comprising wind and/or solar power generating systems , for supply of RE power, including ESS, if any, complemented / balanced with Power from any other source(s) as detailed under Appendix-A, having single or multiple point(s) of injection into the grid at Interconnection/ Delivery/ Metering Point, or in case of sharing of transmission lines, by separate injection at Pooling Point and having separate control system, metering, and single or multiple point(s) of injection into the grid at Delivery/Interconnection/Metering point at ISTS substation or in case of sharing of transmission lines, by separate injection at pooling point..</p> <p>This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement.</p> <p>It may be noted that the sources of generation and ESS, if any, may be co-located, or may be located at different locations, to be considered a single Project. However, it is clarified that ESS charged using a source other than RE power would not qualify as RE power. In case of power being injected from the ESS at a location different than that of the RE components, applicable transmission charges and losses for transmission of power from such ESS, if any, will be borne by the RPD.</p> <p>It is clarified that arithmetic summation of the rated capacities of Wind and/or Solar PV components of the Project and from any other sources (as mentioned under Appendix-A) can be more than the Contracted Capacity.</p> <p>It is further clarified that the summation of generation schedule of RE Power and Power from any other source cannot be more than the Contracted Capacity in any time block. Therefore, the Generator may apply for Long Term Access (LTA) accordingly.</p>
<p>“Peak Hours”</p>	<p>shall mean the four hours of scheduling hours of a Day as declared by RLDCs as per the relevant CERC regulation .</p>

“Power Sale Agreement” or “PSA”	shall mean the back to back power sale agreement entered between the Buying Entity and SECI (Buyer-Buying Entity(ies) PSA) for onward sale of power being procured under this Agreement as per the provisions of Guidelines and forms Schedule-_____ of this Agreement;
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 13 of this Agreement;
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted within India from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: i) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project; ii) the requirements of Indian Law; and the physical conditions at the site of the Power Project
“RBI”	shall mean the Reserve Bank of India;
“RE Power”	shall mean the power generated from an RE Project;
“RTC Configuration”	<p>Shall mean the rated capacities of the various Project components are for achieving the Contracted capacity shall be as follows: Solar PV component: _____MW (AC) and _____ MWp (DC) (DC/AC Ratio: _____) Wind power component: _____ MW ESS component: _____MW/MWh Power from any other sources _____MW (if applicable) (to be filled as per project configuration)</p> <p>Proportion of Energy to be supplied by the RPD under this Agreement:</p> <p>RE Sources: Non-RE Sources:</p> <p>It is clarified that there can be only one Non RE fuel source. The source and quantum of tied up capacity from any other source cannot change during the PPA tenure.</p>
“Rebate”	shall have the same meaning as ascribed thereto in Article 10.3.5 of this Agreement;
“Request for Selection / RfS/Bidding Documents”	shall mean Request for Selection Documents issued by SECI vide No. _____ dated _____ including subsequent clarifications, amendments and addenda thereto.

"RLDC"	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
"RPC"	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;
"Round-The-Clock" or "RTC"	shall mean the 24-hour period of the day (starting at 00:00 hrs and ending at 24:00 Hrs of that day) during which, the energy as per Contracted Capacity of RE Power to be complemented with the Thermal Power, is to be supplied;
"Rupees", "Rs.", "₹"	shall mean Indian rupees, the lawful currency of India;
"Scheduled Commercial Operation Date" or "Scheduled Commissioning Date" or "SCD" of Contracted Capacity	shall mean [Insert Date as per applicable provisions of the RfS].
"SERC"	shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Subsection (1) of Section 83 of the Electricity Act 2003;
"SLDC"	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
"SLDC Charges"	shall mean the charges levied by the SLDC of the state wherein the RE Power Project is located;
"Solar Photovoltaic Project" or "Solar PV Project"	shall mean the solar photovoltaic power project that uses sunlight for conversion into electricity and that is being set up by the RPD to provide Solar Power to SECI as per the terms and conditions of this Agreement;
"Solar Power"	shall mean power generated from the Solar Photovoltaic Power Project;
"SECI"	shall mean Solar Energy Corporation of India Limited;
"State Transmission Utility" or "STU"	shall mean the Government company notified by the respective State Government as such under Sub-section (1) of Section 39 of the Act;
"Tariff" or "Applicable Tariff"	Shall have the same meaning as provided for in Article 9 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;

“Power Generator of any other source(s) or any other source Generator”	Shall mean the identified Generators who have entered in to binding arrangement with the RTC-PG and as stated in Appendix A, to supply Power to the RTC-PG for complementing / balancing RE power under this Agreement for ensuring RTC supply as per this Agreement;
“Unit/ Part Commissioning”	<p>Subject to the compliance of conditions / procedure as detailed under “Schedule-3-Commissioning Procedure” of this Agreement, Unit / Part Commissioning shall mean the part Contracted Capacity (AC MW) not less than 100 MW to be commissioned as per provisions of this Agreement and RfS document.</p> <p>Illustration:</p> <ul style="list-style-type: none"> • Contracted Capacity 200 MW • RTC Configuration: Solar 400 MW, Wind-200 MW and Any other source: 50 MW • In case part commissioning is of 100 MW, the min. required capacity to be commissioned / demonstrated shall be in the same ratio of RTC Configuration i.e. Solar 200 MW, Wind-100 MW and Any other source- 25 MW
“Unit Commercial Operation Date (UCOD)”	shall mean the date of issuance of commissioning certificate for the respective part(s) of the Contracted Capacity subsequent to the demonstration of the compliance of commissioning as per this Agreement and witnessed by the Committee duly constituted and also start of injection and scheduling power from the Project to the Delivery Point and availability / installation of all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
“Wind Power Project”	shall mean the wind power project that uses wind energy for conversion into electricity through wind turbine generator;

1.2 Interpretation

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

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees", "Rs" or new rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "Winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, Winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;

- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18 For avoidance of any doubt, it is clarified that irrespective of the contractual arrangement between the RE Power Generator and Power Generator of any other source, all the generator related liabilities, under the Guidelines and the PPA hereunder, shall be of the entity signing the PPA, and recognised as ‘RTC Power Generator’ (RTC-PG). Further, subject to the provisions of this Agreement, SECI's liability is limited to RPD only and SECI is not responsible for any dispute between RPD & any other source generator(s). Execution of this Agreement as a tripartite agreement (as applicable) is with an intent of facilitating availability of domestic coal for the any other source generator (if applicable).
- 1.2.19 This Agreement and other documents such as Request for Selection Documents, Letter of Award, Guidelines including subsequent clarifications, addenda, amendments and further clarifications in regard to the tender as well as Power Sale Agreement shall be read in conjunction with each other and interpreted in harmonious manner. However, in case of any mismatch/contradiction between provisions of different documents, following shall be the order of precedence:
1. Power Purchase Agreement read with Power Sale Agreement
 2. RfS Documents

ARTICLE 2: TERM OF AGREEMENT

2.1 *Effective Date*

2.1.1 This Agreement shall come into effect from (Enter the date as on 90th day of the issuance of Letter of Award to the RPD, or any further date and such date shall be referred to as the Effective Date.

2.1.2 The Parties agree that decisions pertaining to adoption of the Tariff and approval of the same, for procurement of contracted capacity, shall be binding on all Parties concerned, as contained in the Electricity Act, 2003 and any amendments thereof.

2.1.3. The Buying Utility(ies), as the case may be shall, upon signing of the PSA between SECI and the Buying Utility(ies), apply to the State Electricity Regulatory Commission within the jurisdiction of which the Buying Utility is operating as a licensee for approval of the power procurement in terms of Rule 8 of the Electricity Rules 2005.

2.1.4 Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be the due fulfillment of the following:

- A. Due Adoption of the Tariff by the Central Electricity Regulatory Commission on the application/Petition filed for the said purpose;
- B. Signing of the Power Sale Agreement between SECI and the Buying Utilities for the entire contracted capacity on the back to back basis with the terms of this Agreement. In case, the PSA is signed only for the part of the capacity with the Buying Utilities, RPD and SECI may mutually agree to implement this agreement limited to the said capacity, in which event the contracted capacity for all intent and purposes considered to be the reduced capacity.

2.1.5. The parties acknowledge and agree that the Scheduled Commercial Operation Date for the RE Project alongwith thermal component (if applicable) has been agreed to in this agreement based on each of the Conditions Precedent contained in Article 2.1.4 being duly accomplished not later than 60 days of submission of such petition by SECI/RPD or within 120 days from the date of signing of PSA, whichever is later. In the event of delay beyond the deadline as above, of such fulfillment of Conditions Precedent, there shall be corresponding extension of Scheduled Commercial Operation date and extension of time for satisfaction of Conditions Subsequent, if the

RPD has not started any work at site. Except for the above extensions of time there shall be no other financial implications on the tariff applicable under this Agreement on account of such delay or extension in time.

- 2.1.6. The parties further acknowledge and accept that in case any of the Conditions Precedent remains to be fulfilled even after one (1) year from the Effective Date, unless the parties mutually agree otherwise, this agreement in regard to sourcing of Power shall stand terminated for all intent and purposes for non-satisfaction of Conditions Precedent with no obligation of any of the Parties.

2.2 *Term of Agreement*

- 2.2.1 Subject to Article 2.3 and 2.4 of this Agreement, this Agreement shall be valid for a term from the Effective Date until the Expiry Date. The Expiry Date of the Agreement may be further extended upto 35 years, on such term and conditions as mutually agreed between the parties and approved by the Appropriate Commissions, provided the arrangements with the land and infrastructure owning agencies, the relevant transmission utilities and system operators permits operation of the Project beyond such extended period.
- 2.2.2 The RPD is free to operate their plants beyond the Expiry Date if other conditions like land lease / Right to Use of Land (as applicable), permits, approvals and clearances etc. allow. In such case unless otherwise agreed by the SECI, SECI shall not be obligated to procure power beyond the Expiry Date.

2.3 *Early Termination*

- 2.3.1 This Agreement shall terminate before the Expiry Date only if either SECI or RPD terminates the Agreement, pursuant to Article 13 of this Agreement and not otherwise.
- 2.3.2 In case the SECI-Buying Entity PSA corresponding to the Contracted Capacity is terminated or modified for a reduced capacity during the Term of this Agreement, the event will result in Termination of this Agreement or pro-rata reduction in Contracted Capacity of this Agreement, as the case may be. In such scenario, any termination compensation payable by the respective Buying Entity, will be passed on to the RPD, after deducting SECI's costs, if any.

- 2.3.3 In case SECI is unable to execute the PSA for the capacity allocated under the RfS Document within 180 days of the Effective Date of this Agreement or any mutually extended period, capacity under this agreement shall stand reduced on prorata basis without creating any liability to either parties In such case, if such reduced capacity turns out to be less than 50% of the awarded Capacity and the RPD desires to abandon/ exit the PPA for such capacity also, RPD shall be allowed to exit this Agreement without any liability to either parties and Instruments provided by the RPD for the Performance of this Agreement i.e. Performance Bank Guarantee shall be released by SECI without any deduction.

2.4 ***Survival***

- 2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 16 (Governing Law and Dispute Resolution), Article 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

ARTICLE 3: CONDITIONS SUBSEQUENT

3.1 Satisfaction of conditions subsequent by the RPD

- i) The RPD agrees and undertakes to duly perform and complete all of the required Project financing arrangements and achieve the Financial Closure at the RPD's own responsibility, cost and risk by [Insert date as per RfS conditions], unless such completion is affected by any Force Majeure event, or for the activities specifically waived in writing by SECI. The RPD shall make Project financing and furnish other supporting documents / certificates to SECI in regard to the due compliance with the Conditions Subsequent within the deadline as above.

3.2 Consequences of non-fulfillment of conditions subsequent and financial closure

- 3.2.1 In case of a failure on the part of RPD to fulfill the condition subsequent and submit the documents as provided in Article 3.1, SECI shall be entitled to encash the Performance Bank Guarantee/Payment on Order Instrument submitted by the RPD, terminate this Agreement and remove the Project from the list of the selected Projects by giving a notice to the RPD in writing of at least seven (7) days, unless the delay (subject to the conditions that RPD has made / is making all possible efforts) is solely on account of delay in allotment of land by the Government not owing to any action or inaction on the part of the RPD or caused due to a Force Majeure. Unless extended as per provisions of Article 3.2.2 (i) of this Agreement in writing, the termination of the Agreement shall take effect upon the expiry of the 7th day of the above Notice.
- 3.2.2 (i) An extension, without any impact on the Scheduled Commercial Operation Date, may however be considered by SECI, on the request of RPD (which is to be made prior to such deadline), on payment of Rs. 1000/- per day per MW of the Contracted Capacity to SECI. Such extension charges are required to be paid by RPD to SECI in advance, for the period of extension sought for. In case of any delay in depositing the extension charge, RPD shall pay an interest on this extension charge for the days lapsed beyond due date of Financial Closure @ SBI-MCLR (1Year). In case such delay in making payment of the extension charges to SECI is more than 7 days, the termination of the Agreement shall take effect upon the expiry of such 7th day.
- (ii) In case of the RPD meeting the requirements of conditions subsequent and financial closure before the last date of such proposed delay period, the excess amount deposited by the RPD shall be returned by SECI to RPD without interest.

(iii) The extension given in terms of this Article will not have any impact on the obligation of the RPD to achieve Commercial Operation by the Scheduled Commercial Operation Date. Any extension charges paid so by the RPD, shall be returned to the RPD without any interest on achievement of successful commissioning within the Scheduled Commercial Operation Date, on pro-rata basis, based on the project capacity commissioned as on Scheduled Commissioned Date. However, in case the RPD fails to commission the Contracted Capacity by Scheduled Commercial Operation Date, the extension charges deposited by the RPD shall not be refunded by SECI.

(iv) Subject to the above the amount recovered by SECI under sub-clause (ii) above will be transferred to the Payment Security Fund maintained by SECI.

3.2.3 For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

3.2.4 In case of inability of the RPD to fulfil the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the Conditions Subsequent and Financial Closure as mentioned in Article 3.1, shall be extended for the period of existence of such Force Majeure event.

Further, any delay in adoption of tariff by the Appropriate Commission, beyond the timelines as indicated in Article 2.1.5, shall entail a corresponding extension in the deadline as stipulated in Article 2.1.5.

3.2.5 Provided that due to the provisions of this Article 3.2.4, any increase in the time period for completion of conditions subsequent and financial closure mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Commercial Operation Date.

3.3 Performance Bank Guarantee / Payment on Order Instrument

3.3.1 The Performance Bank Guarantee (PBG) / Payment on Order Instrument (POI) having validity from the date of submission of PBG/POI until(insert validity period as per RfS conditions) and of Rs. 10 Lakh/MW to be furnished under this Agreement shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement as per format provided in Schedule 1/2.

3.3.2 The failure on the part of the RPD to furnish and maintain the Performance Bank Guarantee / Payment on Order Instrument shall be a material breach of the term of this Agreement on the part of the RPD.

- 3.3.3 If the RPD fails to commence supply of power from the Scheduled Commercial Operation Date specified in this Agreement or any further extension thereof duly granted by SECI, subject to conditions mentioned in Article 4.5, SECI shall encash the Performance Bank Guarantee / Payment on Order Instrument equivalent to the amount calculated as per liquidated damages applicable under Article 4.6 without prejudice to the other rights of SECI under this Agreement. The damages/dues recovered by SECI by encashing the PBG/POI, upon the default of the RPD under the PPA, shall be credited to the payment security fund maintained by SECI.

3.4 Return of Performance Bank Guarantee / Payment on Order Instrument

- 3.4.1 Subject to Article 3.3, SECI shall return / release the Performance Bank Guarantee / Payment on Order Instrument immediately after the successful Commissioning within Scheduled Commercial Operation Date of the Project after taking into account any liquidated damages due to delays in commissioning as per provisions stipulated in this Agreement.
- 3.4.2 The return / release of the Performance Bank Guarantee / Payment on Order Instrument shall be without prejudice to other rights of SECI under this Agreement.

ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 *Obligations of the Parties*

4.1.1 The RPD's Obligation: RPD undertakes to be responsible, at RPD's own cost and risk, for the following:

- a) The RPD shall be solely responsible and shall make arrangements for land & associated infrastructure for development of the ~~RE~~ Project and for Connectivity with the ISTS System (connectivity can be taken by RPD at different Interconnection Points) for confirming the availability of the power system required for evacuation of power by the Scheduled Commercial Operation date and all clearances related thereto;
- b) On or before Scheduled Commercial Operation Date (or date of Commissioning in case of early commissioning), the RPD shall demonstrate possession/right to use of 100% (Hundred Percent) of the land identified for the RE Project in its name for a period not less than the complete Term of this Agreement. In this regard, the RPD shall submit documents/ Lease Agreement to establish possession/ right of use of 100% of the required land in the same of the RPD. Wherever leasing of private land is involved, the lease should allow transfer of land to the lenders or SECI, in case of default of the RPD. The RPD shall submit an undertaking in the form of sworn affidavit from the authorized signatory of the RPD listing the details of the land and certifying that total land required for the Project is under clear possession of the RPD;
- c) Obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. SECI shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the RE Power project. The RPD shall, on his own, obtain permissions/ sanctions from Government authorities, if any required for establishing the project. Any steps that may be taken by SECI in regard to grant of such consents and permits or any other approval to be taken by the RPD shall only be a voluntary facilitating endeavour on the part of SECI with no intention of being bound by any legal or binding obligation.
- d) Designing, constructing, erecting, commissioning, completing and testing the RE Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.

- e) If applicable, RPD shall arrange for the power from any other sources (as detailed under Appendix-A) as per RTC Configuration and make necessary binding arrangement providing absolute indemnity to SECI from such Contract / Contractual Arrangement with such generator(s). For avoidance of doubt, It is clarified that there can be only one Non RE fuel source. The source and quantum of tied up capacity from any other source cannot change during the PPA tenure.
- f) The RPD shall make adequate arrangements to connect the RE Power Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point to connect the Power Project switchyard with the Interconnection Facilities at the Delivery Point.
- g) Obtaining Long Term Access (LTA) and executing transmission service agreement with CTU/STU as the case may be, for evacuation of the Contracted Capacity upto the delivery point and maintaining it throughout the term of the Agreement
- h) The commencement of supply of power up to the Contracted Capacity to SECI no later than the Scheduled Commercial Operation Date and continuance of the supply of power throughout the term of the Agreement including the arrangement of due commencement and maintenance of supply of Thermal Power by the Thermal Generators from the date of Commencement of Supply of Power from the RE Power to the extent required to complement / balance the RE Power to ensure RTC power supply to SECI.
- i) Owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;
- j) Maintaining its shareholding pattern as per provisions of the RfS Document. Any change in shareholding pattern shall be dealt as per provisions of RfS Document. It is also to be noted that M/s [enter name of the successful bidder which has been awarded LoA by SECI] shall ensure that its promoters shall not cede control of the bidding company till 2 (two) years from the COD, except with the prior approval of SECI;
- k) Making a payment security deposit of Rs..... [Insert amount @ Rs 5 Lakhs / MW] to the designated account as intimated by the SECI towards Payment Security Fund as per clause 12 of Section III of RfS.
- l) Fulfilling all obligations undertaken by the RPD under this Agreement and also as per the terms of the RfS/ Bidding Documents.

- m) The RPD shall be responsible for directly coordinating and dealing with the corresponding Buying Utility(ies), any other source generator(s), Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of RE Power as well as other source power and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the RPD, the Any Other Source Generator(s) and the corresponding Buying Utility(ies) are the Grid connected entities and SECI as an Intermediary Procurer/ trading licensee is not a Grid connected entity in respect of the Power contracted under this Agreement.
- n) For the respective Solar and Wind Power generations systems, the RPD shall fulfil the technical requirements according to criteria mentioned under Annexure II–Technical requirement for under “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects” issued by the Ministry of Power vide Resolution dated 03.08.2017 including subsequent amendments and clarifications thereof, ;and the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects” issued by the Ministry of Power vide Resolution No. 23/54/2017-R&R dated 08.12.2017, including subsequent amendments and clarifications thereof. For the solar PV capacity, the cells and modules used in the Project shall be sourced only from the models and manufacturers included in the “Approved List of Models and Manufacturers” as published by MNRE and updated as on the date of commissioning of the Project. In case of wind capacity, the type-certified wind turbine models listed in Revised List of Models and Manufactures (RLMM) issued by MNRE as updated until the date of commissioning of the project will be allowed for deployment under the RfS. Further, the RPD shall also fulfill the “Technical Criteria of Thermal Projects” as per Section IV, Clause B.4 of the RfS and any other applicable criteria (if any)
- o) RPD shall be solely responsible for and obligated to ensure that the Project being implemented under this Agreement shall fulfil the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof,
- p) As part of scheduling of power from the Project, the RPD will be required and shall further ensure the Any Other Source Generator(s) to punch-in their

respective schedules and subsequent revisions, by themselves, at the interfaces of all the RLDCs concerned for the corridor of power flow, including the RLDC of the Buying Entity(ies), as per the Regulations in force, under intimation to SECI. The RPD must intimate SECI in advance (preferably in the first week of the month), the energy transacted in previous month so that it will help to comply statutory obligations of SECI as a trading licensee. The RPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.

- q) In case of power being used from the Any Other Source Generator(s) being utilized the purpose of energy supply under this Agreement, the RPD shall be responsible, for the entire Term of this Agreement, to ensure that all the necessary permits, approvals, clearances, agreements including but not limited to Fuel Supply Agreements etc. and binding arrangement with the owner(s) of the such any other source Projects(s), have been obtained / executed/ in force / maintained to ensure uninterrupted power supply under this Agreement.

4.2 *Information regarding Interconnection Facilities*

- 4.2.1 The RPD shall be required to obtain all information from the STU/CTU/concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the RPD 's side of the Delivery Point to enable delivery of electricity at the Delivery Point. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the RPD at its own cost. It is to be noted that the summation of generation schedule of RE Power and Power from any other source cannot be more than the Contracted Capacity in any time block. Therefore, the Generator may apply for Long Term Access (LTA) accordingly.
- 4.2.2 Penalties, fines and charges etc. imposed by the CTU/ STU under any statute or / guidelines in relation to delay in commissioning of the RE Project shall be entirely dealt by the RPD and any such amounts claimed by such agency(ies) shall be payable by the RPD.
- 4.2.3 The responsibility of getting connectivity with the transmission system up to the Interconnection Point, will lie with the RPD. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the RPD to be obtained at his own cost. The maintenance of

Transmission system up to the designated point as per the applicable terms and conditions shall be also the responsibility of the RPD to be obtained at his own cost. All costs and charges including but not limited to the wheeling charges and losses up to and including at the Interconnection Point associated with this arrangement will also be borne by the RPD.

- 4.2.4 In case of Pooling substation, losses in the transmission line shall be apportioned among the RPDs who share such a Pooling arrangement and duly signed by all RPDs, based on their monthly generation.
- 4.2.5 The arrangement of connectivity shall be made by the RPD through a dedicated transmission line. The entire cost of transmission including cost of construction of line, any other charges, losses etc. from the Project up to the Interconnection Point will be borne by the RPD. In case of non-availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the RPD, provisions of Article 4.10 shall be applicable.
- 4.2.6 ISTS charges and losses on transmission of power, including waiver for RE power, shall be as per extant regulations. Government of India/CERC at their sole discretion, from time to time, issues order for waiver of inter-state transmission system (ISTS) charges and losses on transmission of wind/solar power till a certain date. In case the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver, arising out of any reasons whatsoever, SECI shall bear no liability with respect to transmission charges and losses levied, if any. However, in case the commissioning of the solar / wind power component of the RTC Configuration gets delayed beyond the applicable date of waiver of ISTS charges and losses due to reasons solely attributable to the RPD, the liability of inter-state transmission charges and losses would be of the RPD.

Subject to the above, it is however, clarified that ISTS charges and losses for the any other source(s) component, beyond the Delivery Point(s) and upto the drawl point(s), shall be borne by the Buying Utility upon the execution of the relevant PSA.

4.3 Purchase and sale of Contracted Capacity

- 4.3.1 Subject to the terms and conditions of this Agreement, the RPD undertakes to generate and sell to SECI, RE Power and further, complement / balance the supply of such power with power from any other source (as detailed under Appendix-A) as per the RTC Configuration to ensure RTC supply and SECI undertakes to purchase

such power and pay the Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.

- 4.3.2 Power procured under this Agreement shall on back to back basis be allocated on a pro-rata basis, to all the Buying Entities which have signed their respective Power Sale Agreements with SECI under the referred RfS. Any obligation of SECI being intermediary Procurer shall be deemed to be the obligation of Buying Entity(ies) with which SECI has / will execute Power Sale Agreement.

4.4 *Right to Contracted Capacity, Energy and Availability*

- 4.4.1 Under this Agreement, procurement of contracted capacity shall be in power (MW) terms. The RPD shall offer the Contracted Capacity on a round-the-clock basis and in a manner as specified under RTC Configuration, for scheduling and procurement of power by the Buying Utility as per provisions of this Agreement. The RPD shall deliver the power to the Buying Utility as scheduled by the Buying Utility on a day-ahead basis, as detailed out in Article 6.2 below. Further, the RPD shall be required to offer power in a manner as specified under RTC Configuration including proportion of RE. The Buying Utility shall be entitled to use the power from this Project for fulfillment of its RPO in the proportion of contracted capacity of each component in the Project respectively.

The RPD shall also be obliged to supply the Contracted Capacity in the Round-The-Clock manner, keeping at least 85% Availability annually and also at least 85% Availability annually during the Peak Hours. Peak hours will be four hours out of 24 hours as declared by RLDCs as per the relevant CERC regulation. Further, For the first Contract Year after COD of first part capacity under the PPA, the above performance criteria will be required to be met on a pro-rata basis.

- 4.4.2 The RPD at its own risk and cost is allowed to supply power from the Non RE power plant in excess of contracted capacity, to any third party or power exchange without requiring any No-Objection Certificate (NOC) from the Procurer. The RPD may also sell the power which was offered to Procurer (within Contracted Capacity) but not scheduled by Procurer, to any third party or power exchange without requiring NOC from the Procurer on day ahead basis.

However, in case at any point of time, the peak of capacity at the injection point reached is higher than the Contracted Capacity and causes disturbance in the system at the point where power is injected, the RPD will not undertake the excess generation and reduce the output to the rated capacity and shall further be liable to

pay the penalty/charges (if applicable) as per applicable regulations / requirements / guidelines of CERC / SERC /SLDC or any other competent agency. Any energy produced and flowing into the grid before Scheduled Commercial Operation Date shall not be to the account of or at the cost of SECI/ Buying Entity(ies). SECI may however agree to buy such power at a tariff as agreed to between SECI and the Buying Entity (including SECI's trading margin) as per the PSA, provided the Buying Utility consents for purchase of such power.

4.4.3 Consequences of Shortfall in supplying / offering (as applicable) the Contracted Capacity -Subsequent to commissioning of first part capacity of the Contracted Capacity, if for any Contract Year, for the reasons solely attributable to the RPD (such reasons could be any reason other than Force Majeure, Grid Non-Availability beyond control of the RPD and inability of the Buying Entity to offtake Scheduled Power/ Energy (as applicable):

- i. Annual availability or annual Availability during Peak Hours is less than 85%:
The RPD shall pay to the SECI / Buying Entities (as applicable) for such shortfall in the Availability. Such amount will be pre-estimated damages (liquidated damages) calculated at the rate of 400% (four hundred per cent) of the cost of this shortfall in energy terms, calculated at the Applicable Tariff payable during that Contract Year.
- ii. The RPD shall also be liable to pay pre-estimated damages (liquidated damages) for any shortfall in offering RE power below the committed proportion (as per the RTC Configuration) of the total power offered in a contract year. The liquidated damages corresponding to this shortfall in RE power shall be calculated at 400% of the Applicable Tariff payable during the Contract Year for each unit of shortfall.

An illustration to the effect of (i) and (ii) above is attached at Schedule-4.

The detailed list of documents required for verification of energy supply and performance of the Projects will be intimated to the Developers subsequent to commissioning. For each Contract Year, the above data will be required to be submitted by the respective Developers to SECI within 30 days after expiry of the previous Contract Year, for verification of the performance parameters for calculating applicable compensation on account of shortfall.

4.4.4. The RPD agrees that the methodology specified hereinabove for calculation of compensation in the form of liquidated damages payable by the RPD for shortfall in generation, annual availability, peak-hour availability and/or the shortfall in RE power is a genuine and accurate pre-estimation of the actual loss that will be suffered by SECI / Buying Entities. RPD shall further acknowledge that a breach of any of the obligations contained herein result in injuries and that the amount of the damages or the method of calculating the damages specified in this document is a genuine and reasonable pre-estimate of the damages that may be suffered by the SECI / Buying Entities in each case specified under this Agreement.

4.4.5. The parties agree that damages shall not be applicable in events of Force Majeure identified under the PPA, affecting supply of power by the RPD. RPD shall not be liable to pay any damages whatsoever including consequential damages for any shortfall in generation in excess of what becomes payable under Article 4.4.3.

4.5 Extensions of Time

4.5.1 In the event that the RPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commercial Operation Date due to:

- a) any SECI Event of Default; or
- b) Force Majeure Events affecting SECI/ Buying Entity(ies), or
- c) Force Majeure Events affecting the RPD,

the Scheduled Commercial Operation Date and the Expiry Date shall be deferred, subject to Article 4.5.6, for a reasonable period but not less than 'day for day' basis, to permit the RPD or SECI/ Buying Entity(ies) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the RPD or SECI/Buying Entity(ies), or till such time such Event of Default is rectified by SECI.

4.5.2 Subsequent to grant of connectivity, in case there is a delay in grant/operationalization of LTA by the CTU and/or there is a delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCD of the Project, and it is established that:

- (i) The RPD has complied with the complete application formalities as per RfS,
- (ii) The RPD has adhered to the applicable Procedure in this regard as notified by the CERC/CTU, and
- (iii) The delay in grant of connectivity/LTA by the CTU and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power

evacuation and transmission infrastructure of the ISTS network, is solely attributable to the CTU/transmission licensee and is beyond the control of the RPD;

The above shall be treated as delays beyond the control of the RPD and SCD for such Projects shall be revised as the date as on 30 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or operationalization of LTA. Decision on requisite extension on account of the above factor shall be taken by SECI. For avoidance of any doubt, it is clarified that this provisions of extension shall not be applicable for the capacity which has been tied-up by the RPD under any other source category. Further, that delay in commissioning / operationalization of the any other source category project / capacity, if any, shall not be admissible among the factors warranting an extension in SCD of the Project.

- 4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of 180 days from the date of the Force Majeure Notice, this Agreement may be terminated as per the provisions of Article 11.10 of this Agreement.
- 4.5.4 If the RPD and SECI have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commercial Operation Date or the Expiry Date should be deferred, either Party may raise the Dispute to be resolved in accordance with Article 16.
- 4.5.5 As a result of such extension on account of Article 4.5.1 or Article 4.5.2, the newly determined Scheduled Commercial Operation Date and newly determined Expiry Date shall be deemed to be the Scheduled Commercial Operation Date and the Expiry Date for the purposes of this Agreement.
- 4.5.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commercial Operation Date arising due to any reason envisaged in this Agreement shall not be allowed beyond the date pursuant to Article 4.6.2.
- 4.5.7 Delay in commissioning of the project beyond the Scheduled Commercial Operation date for reasons other than those specified in Article 4.5.1 & Article 4.5.2 shall be an event of default on part of the RPD and shall be subject to the consequences specified in the Article 4.6.

4.6 *Liquidated Damages not amounting to penalty for delay in Commissioning*

4.6.1 The Project shall be fully commissioned within the Scheduled Commercial Operation Date as defined in this Agreement. If the RPD is unable to commission the Project by the Scheduled Commercial Operation Date for any of the reasons other than those specified in Article 4.5.1, and 4.5.2, the RPD shall pay to SECI, damages for the delay in such commissioning and making the Contracted Capacity available for dispatch by the Scheduled Commercial Operation Date as per the following:

(a) Delay beyond the Scheduled Commercial Operation Date upto (& including) the date as on 6 months after the Scheduled Commercial Operation Date or the extended SCD, if applicable: The total PBG / POI amount shall be encashed on per day basis and proportionate to the balance capacity not commissioned. In case of calculation of liquidated damages, a 'month' shall comprise 30 days. For example, in case of a Contracted Capacity of 640 MW capacity, if commissioning of 100 MW capacity is delayed by 18 days beyond the SCD, then the liquidated damages shall be: $\text{PBG/ POI amount} \times (100/640) \times (18/180)$.

4.6.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee / POI shall be limited to 6 months after the SCD/extended SCD of the Project. In case, the Commissioning of the Project is delayed beyond 6 months after the SCD, the Contracted Capacity shall stand reduced / amended to the capacity commissioned within 6 months after the SCD and the PPA for the balance capacity will stand terminated and shall be reduced from the Contracted Capacity. However, SECI has the full right to give extension to RPDs beyond the time line as mentioned above in case reason of delay is beyond the reasonable control of RPD.

4.6.3 The RPD further acknowledges and accept that the methodology specified herein above for calculation of liquidated damages payable by the RPD is a genuine and accurate pre-estimation of the actual loss that will be suffered by SECI. RPD further acknowledges that a breach of any of the obligations contained herein result in injuries and that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the SECI in each case specified under this Agreement.

4.7 Acceptance/Performance Test

- 4.7.1 Prior to synchronization of the Power Project, the RPD shall be required to get / ensure the RE Project / Thermal Component certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or an agency identified by the central government to carry out testing and certification for the RE power projects and / or Thermal Project (as applicable).

4.8 *Third Party Verification*

- 4.8.1 The RPD shall be further required to provide entry to the sites of the Project (from which power under this Agreement is being made available) free of all encumbrances at all times during the Term of the Agreement to SECI and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the RPD at the site of the Power Project.
- 4.8.2 The third party may verify the construction works/operation of the Project being carried out by the RPD / thermal generator and if it is found that the construction works/operation of the project is not as per the Prudent Utility Practices, it may seek clarifications from RPD or require the works to be stopped or to comply with the instructions of such third party.

4.9 *Breach of Obligations*

- 4.9.1 Except as specifically provided under Article 4.4.2 & 4.10.1 (b), the Parties herein agree that during the subsistence of this Agreement, subject to SECI being in compliance of its obligations & undertakings under this Agreement, the RPD would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity of power which is the subject matter of this Agreement. It is the specific understanding between the Parties that such bar will apply throughout the entire term of this Agreement.

4.10 *Generation compensation for Off-take constraints*

- 4.10.1 a) Generation Compensation in offtake constraints due to Grid Unavailability:** During operation, there can be some periods where the Project can generate power but due to temporary transmission unavailability, the power is not evacuated, for reasons not attributable to the RPD. In such cases, subject to the submission of documentary evidences from the competent authority, the generation compensation shall be restricted and payable by the Buying Utility(ies) as under, and there shall be no claim, directly or indirectly against SECI:

Duration of Grid unavailability	Provision for Generation Compensation
Grid unavailability beyond 175 hours in a Contract Year (as defined in Article 1)	<p><i>Generation Compensation =</i></p> <p><i>For RE Component:</i></p> <p><i>((RE Tariff x RE power (MW) offered but not scheduled by Procurer)+ (Non RE Fixed Charge x power from other source (MW) offered but not scheduled by Procurer)) X 1000 X No. of hours of grid unavailability</i></p>

Compensation (if any) calculated as per above provision, will be paid to the RPD on an annual basis.

b) Payment in case of reduced offtake: The RPD and the Buying Entity shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. In case the plant is available to supply power but the off-take of power is not done by the Procurer, including non-dispatch of power due to non-compliance with “Order No. 23/22/2019-R&R dated 28.06.2019 of Ministry of Power regarding Opening and maintaining of adequate Letter of Credit (LC) as Payment Security Mechanism under Power Purchase Agreements by Distribution Licensees” and any clarifications or amendment thereto, considering the principle of ‘must run’ status for RE Power, and the Fixed charges for Non RE Power, the RPD shall be eligible for payment from the Buying Entity, corresponding to the reduced offtake, in terms of following manner. For claiming compensation, the RPD must sell their power in the power exchange as a price taker. Thus, the compensation would be limited to the difference of the actual generation up to declared capacity subject to a maximum of up to the contracted capacity and the quantum of power scheduled by the Buying Entity.

Reduced offtake	Provision for Generation Compensation
	<p>Generation Compensation =</p> <p><i>((RE Tariff x RE power (MW) offered but not scheduled by Procurer) + (Non RE Fixed Charge x power from other source (MW) offered but not scheduled by Procurer)) X 1000 X No. of hours of Reduced Off Offtake</i></p> <p>However, any amount realized by the RPD, by third party sale of such power which was offered but not scheduled, shall be shared with the Procurer in the following manner, after deducting expenses, if any, in such sale, and shall be adjusted against the Generation compensation payable, on monthly basis.</p> <p>(a) For RE Power: 90% of Net realization above RE Tariff</p> <p>(b) For Thermal Power: 50% of Net realization above variable Charges of Non-RE Tariff</p>

Tariff shall be the Tariff as per Article 9.

The RPD shall be eligible for payment from the Buying Entities, corresponding to the reduced offtake of power as per above mentioned methodology. The Payment is to be done as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA). No Trading Margin shall be applicable on this Payment. It is hereby clarified that for the purpose of Article 4.10, “generation” shall mean scheduled energy based on Energy Accounts. The RPD shall not be eligible for any compensation in case the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions or Force Majeure.

ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

5.1 Synchronization, Commissioning and Commercial Operation

- 5.1.1 The RPD shall give the concerned RLDC/SLDC and SECI and also to the Buying Entity at least sixty (60) days' advanced preliminary written notice and at least thirty (30) days' advanced final written notice, of the date on which it intends to synchronize the RE Power Project to the Grid System. Further, to the extent of Any Other Source Component as per the provisions of this Agreement, the RPD shall be required to make necessary arrangement for the demonstration of such tied-up capacity.
- 5.1.2 Subject to Article 5.1.1, the RE Power Project may be synchronized by the RPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System. Further, to the extent of Any Other Source Component as per the provisions of this Agreement, the RPD shall have demonstrated such tied-up capacity.
- 5.1.3 The synchronization equipment and all necessary arrangements / equipment including RTU for scheduling of power generated from the RE Project as well as power from Project (s) of any other source component and transmission of data to the concerned authority as per applicable regulations shall be installed by the RPD at its generation facility at its own cost (similar dispensation would be required for the Project(s) of any other source component also). Further, the RPD shall also ensure availability of any such system/ equipment (if applicable) at Project(s) of any other source component facility. The RPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/Grid System and checking/verification is made by the concerned authorities of the Grid System.
- 5.1.4 The RPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the generation facility including RE Project(s) is electrically connected in accordance with applicable Grid Code under intimation to SECI. In addition, the RPD will inject in-firm power to grid time to time to carry out operational/ functional test prior to commercial operation. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.
- 5.1.5 The RPD shall commission the Project as detailed in "Schedule 3: Commissioning Procedure" withinMonths of the Effective Date. Declaration of COD /

UCOD shall only be done subject to the demonstration of the compliances as per Schedule-3 and subsequent upon the successful visit by the Commissioning Committee.

5.1.6.1 The RPD shall be permitted for full commissioning as well as part commissioning of the Contracted Capacity even prior to the SCD subject to availability of transmission connectivity and Long Term Access (LTA). In cases of early part commissioning, till SCD, the RPD will be free to sell the electricity generated, to any entity other than the SECI/ Buying Entity(ies), only after giving the first right of refusal to the SECI/ Buying Utilities. The Buying Utilities shall provide refusal within 15 (fifteen) Days from the receipt of the request, beyond which it would be considered as deemed refusal. In cases of early commissioning prior to SCD, the Buying Utilities may purchase the generated power till SCD, at the PPA tariff. Even in case of early part commissioning or early full commissioning, the PPA will remain in force for a period of 25 (twenty-five) years from the SCD or the COD whichever is later.

5.6.1.2 There can be part Commissioning of the Contracted Capacity. Part commissioning of the Contracted Capacity shall mean that all equipment corresponding to the such part capacity have been installed and commissioned / demonstrated (as applicable) and corresponding energy has flown into the grid as well as compliances of all requirements as per provisions of this Agreement read alongwith the RfS has been complied and demonstrated. It may be noted that part commissioning of the capacity will be admissible subject to the condition that “Round-the-Clock” supply of power is achieved by the commissioned part-capacity, in line with RfS and PPA conditions including Commission Procedure as provided under this Agreement. In case of part-commissioning of the Contracted Capacity, land corresponding to the such part RE capacity being commissioned, shall be required to be demonstrated by the RPD prior to declaration of commissioning of the said part capacity.

5.1.7 The SECI & RPD agree that for the purpose of commencement of the supply of electricity by RPD to SECI, liquidated damages for delay etc., the Scheduled Commercial Operation Date as defined in this Agreement shall be the relevant date.

ARTICLE 6: DISPATCH AND SCHEDULING

6.1 *Dispatch and Scheduling*

6.1.1 The RPD shall be entirely responsible and shall be required to declare the Availability and Declared Capacity for the RE Project along with power from any other source(s) and arrange for dispatch of Contracted Capacity in a composite manner under this Agreement as per the applicable regulations / requirements / guidelines of CERC / SERC /SLDC / RLDC or any other competent agency and same being recognized by the SLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC/RLDC from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the RPD.

6.1.2 The RPD shall be responsible for directly coordinating and dealing with the Thermal Generator, Buying Entity(ies), State Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the RPD and Buying Entity are the Grid connected entities and SECI as an Intermediary Procurer/ trading licensee is not a Grid connected entity in respect of the power contracted under this Agreement.

6.1.3 The RPD shall be responsible for any deviation from scheduling and for any resultant liabilities on account of charges for deviation as per applicable prevailing regulations. For RE component of the total power supplied, DSM as per RE regulations shall be applicable, and for Thermal component, the DSM as per Thermal regulations shall be applicable Deviation Settlement Mechanism (DSM) charges on this account shall be directly paid by the RPD.

6.1.4 Auxiliary power consumption will be treated as per the concerned Central/ State regulations.

- 6.1.5 It is to be noted that the summation of generation schedule of RE and Power from any other source(s) cannot be more than the Contracted capacity in any 15 minutes' time-block.

6.2 Dispatch of Contracted Capacity

- 6.2.1 The RPD shall install, operate and maintain the RE Project and ensure necessary arrangements for the any other source(s) Component such that the RTC Availability of the Contracted Capacity of the Project is supplied during each Contract Year for the entire Term of this Agreement.
- 6.2.2 Unless otherwise notified by the RPD, the declared Availability shall be deemed to be 100% (one hundred per cent) thereof at all times. The RPD shall confirm the Availability from the RE Project as well as power from any other source component as per Applicable Regulations/Guidelines prevalent from time to time.
- 6.2.3 Void.
- 6.2.4 [Void].
- 6.2.5 [Void].
- 6.2.6 The Buying Utility shall, in accordance with Applicable Laws and Regulations thereunder, issue instructions to the RPD for schedule of electricity and dispatch thereof to the Grid during such period and in such volume as it may specify in its instructions (the “**Dispatch**”). Provided that the Utility shall not as for dispatch in excess of the declared Availability by the RPD, unless mutually agreed between the RPD and the Buying Utility(ies).
- 6.2.7 The RPD shall plan the production and Dispatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Electricity Act, 2003 (as amended) etc.
- 6.2.8 RPD agrees and undertakes that the fundamental and mandatory obligation of the RPD under this Agreement is to make available the Contracted Capacity in the manner specified under this Agreement to provide to the buying utility power on a Round-the-Clock basis.
- 6.2.9 If the RPD is unable to provide any other source component power to the SECI/Procurement up to the Contracted Capacity due to scheduled or unscheduled maintenance of Project(s) of such tied-up capacity, the RPD is free to supply such power to the extent as specified under RTC Configuration from alternative

generation source(s), to meet its obligations under this Agreement. Such power shall be supplied to the SECI at the same Tariff as per the terms of this Agreement. In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power are higher than the applicable Transmission Charges, the RPD would be liable to bear such additional charges. Further, the RPD shall provide documentary evidence for establishing the source of supply for such tie up.

- 6.2.10 For deviations from schedule, the DSM (Deviation Settlement Mechanism) shall be applicable as per the prevailing regulations. For RE component of the total power supplied, DSM as per RE regulations shall be applicable, and for non-RE component, the DSM as per regulations applicable to non RE power plants shall be applicable. The DSM charges at the generation ends shall be settled by the RTC-PG.

ARTICLE 7: METERING

7.1 *Meters*

- 7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the RPD and SECI shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.
- 7.1.2 The RPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at RPD 's side of Delivery Point.
- 7.1.3 In addition to ensuring compliance of the applicable codes, the RPD shall install Main & Check meters at the Delivery Point, along with Stand-by meter(s) as per the applicable Central/State regulations. Further, it shall be the obligation and responsibility of the RPD, to ensure metering arrangement at any other source component in compliance with the Applicable Regulations, Guidelines & Laws and as per the requirement of this Agreement.
- 7.1.4 In case of pooling of multiple Projects, power from multiple Projects can be pooled at a Pooling Substation prior to the Delivery point and the combined power can be fed at Delivery point through a common transmission line from the Pooling Substation. In such cases, ABT compliant sub-meters as per relevant regulation/approvals are also to be set up at pooling substation for individual projects in addition to the meters at Delivery Point as described in Article 7.1.3.

7.2 *Reporting of Metered Data and Parameters*

- 7.2.1 The grid connected RE power plants will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the RE Project.
- 7.2.2 Online arrangement would have to be made by the RPD for submission of above data from RE Project regularly for the entire period of this Power Purchase Agreement to the SLDC, SECI and the concerned Ministry or concerned agency as per applicable regulation / directions. Further, RPD shall also be responsible for ensuring online arrangement for submission of all required data for the Contracted Capacity as per provisions of this Agreement during entire Term of this Agreement

as per applicable guidelines, regulations, laws to SLDC, SECI and the concerned Ministry or concerned agency

- 7.2.3 Reports on above parameters on monthly basis (or as required by regulation / guidelines) shall be submitted by the RPD to Ministry of New and Renewable Energy/SECI/or authorized agency of SECI/ MNRE for entire Term of this Agreement.

ARTICLE 8: INSURANCES

8.1 *Insurance*

8.1.1 The RPD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, Insurances against such risks to keep the RE Project in good condition and shall take Industrial All Risk insurance policy covering risks against any loss or damage, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements, Implementation and Support Agreement (if applicable) and under the applicable laws. Further, RPD shall also ensure that necessary Insurance coverage is also maintained for the Project(s) of any other source component as per the Prudent Utility Practices and in line with the requirement and compliances of applicable laws.

8.2 *Application of Insurance Proceeds*

8.2.1 In case of the RE Project not being implemented through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

In case of the RE Project being financed through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the RE Power Project or any part of the RE Power Project shall be applied as per such Financing Agreements.

8.2.2 If a Force Majeure Event renders the RE Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, SECI shall have claim on such proceeds of such Insurance limited to outstanding dues of SECI against the Buying Utility(ies) as per PSA entered into and any other dues of the Buying Utility(ies) against RPD.

8.3 *Effect on liability of SECI*

8.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the RPD can claim compensation, under any Insurance shall not be charged to or payable by SECI or Buying Entity(ies). It is for the RPD to ensure that appropriate insurance coverage is taken for payment by the insurer for the entire loss and there is no under insurance or short adjustment etc.

ARTICLE 9: APPLICABLE TARIFF

- 9.1 Subsequent to commercial operation of first part capacity of the Contracted Capacity, and supply of the RE Power and Thermal Power on the terms contained in this Agreement, the RPD shall be entitled to receive the applicable Tariff for the RE as well as Non-RE Component as per “Appendix-B: Schedule of Tariff” for the entire term of this Agreement, with effect from the SCD, as per provisions of this Agreement. Subject to the provisions of this Agreement, the Renewable Energy supplied shall be paid at [Insert Tariff of the RE Component]. For non-RE power, the fixed component of non-RE power shall be paid based on the monthly available capacity from Non RE sources at the rate of non RE power fixed tariff quoted by the RPD applicable for that year. The variable component of non-RE power shall be paid for the energy supplied from other source of energy and shall be paid at the rate of variable component of non-RE power (escalable for fuel), and variable component of non-RE power (escalable for transportation)] tariff applicable for that year after adjusting as per escalation index notified by CERC for payment purposes.
- 9.2 During any Contract Year, the RPD shall be obliged to make the Annual Availability (at least 85%) and Annual Peak Hour Availability (at least 85%) as per provisions of this Agreement. Further, during any Contract Year the RPD shall also be obliged to offer RE Component not less than fraction as specified under RTC Configuration. Non-compliance of any of aforementioned provision shall attract damages as per Article 4.4.3 of this Agreement. The Buying Utility shall be entitled to use the RE power supplied under this Agreement for fulfillment of its RPO of each RE component respectively.
- 9.3 The RPD shall be permitted for full commissioning as well as part commissioning of the Project even prior to the Scheduled Commercial Operation Date, subject to availability of transmission connectivity and Long-Term Access (LTA). Early commissioning of the Project will be allowed solely at the risk and cost of the RPD, and SECI shall purchase the energy from such early commissioned Project at the PPA Tariff, only in case the Buying Utility agrees to purchase power from the Project at an earlier date, and at the PPA tariff plus trading margin. In case SECI does not agree to purchase such energy, early part/full commissioning of the Project shall still be allowed and the RPD will be free to sell such energy to a third party until Scheduled Commercial Operation Date or the date of commencement of procurement of power from the Project as notified by SECI, whichever is earlier.

ARTICLE 10: BILLING AND PAYMENT

10.1 *General*

10.1.1 Pursuant to Article 4.1.1 (k), SECI shall set up a payment security fund for RE Projects in order to ensure timely payment. This fund may have a corpus to cover 3 months' payment.

10.1.2 From the commencement of supply of power, SECI shall pay to the RPD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with Article 9. All Tariff Payments by SECI shall be in Indian Rupees.

10.1.3 Void.

10.1.4 The RPD shall be required to make arrangements and payments for import of energy and other charges (if any) required for supply / offer of the contracted capacity under this Agreement as per applicable regulations.

10.1.5. The obligation of SECI shall be to pay the Applicable Tariff to RPD and it shall be entirely for the RPD to deal with and discharge the charges payable to the any other source generator(s).

10.2 *Delivery and Content of Monthly Bills/Supplementary Bills*

10.2.1 The RPD shall issue to SECI hard copy of a signed Monthly Bill/Supplementary Bill for the immediately preceding Month/relevant period based on the issuance of Energy Accounts along with all relevant documents (payments made by RPD for drawal of power, payment of reactive energy charges, Metering charges or any other charges as per guidelines of SERC/CERC, if applicable.

Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RPC or any other competent authority which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy as per Energy Accounts and the Applicable Tariff. Energy drawn from the grid will be regulated as per the regulations of respective State the Project is located in.

10.2.2 As per applicable regulation(s) of the Appropriate Commission(s)/respective SERC(s), all charges pertaining to obtaining open access and scheduling of power, if any, upto the Delivery Point(s), shall be borne by the RPD.

10.3 ***Payment of Monthly Bills***

10.3.1 SECI shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the RPD, as shall have been previously notified by the RPD as below.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

- i) deductions required by the Law; and
- ii) amount claimed by SECI, if any, from the RPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be applicable on day to day basis.

The RPD shall open a bank account (the “RPD’s Designated Account”) for all Tariff Payments (including Supplementary Bills) to be made by SECI to the RPD and notify SECI of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. SECI shall also designate a bank account at New Delhi (“SECI Designated Account”) for payments to be made by the RPD to SECI, if any, and notify the RPD of the details of such account ninety (90) Days before the Scheduled Commercial Operation Date. SECI and the RPD shall instruct their respective bankers to make all payments under this Agreement to the RPD’s Designated Account or SECI’s Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

10.3.3 **Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by SECI beyond the Due Date, a Late Payment Surcharge shall be payable to the RPD at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis subject to such late payment surcharge being duly received by SECI under the PSA from the Buying Entity(ies). The Late Payment Surcharge shall be claimed by the RPD through the Supplementary Bill.

10.3.4 Subject to the Article 9 of this Agreement, in the event of early Commissioning of the Project and subject to acceptance by SECI, the payment for the power fed to the grid may be accounted from the date of UCOD, and RPD would be allowed to raise Bills against such power as per Article 10.2.1. However, payment against the 1st

such bill raised by the RPD, will be made subject to acceptance of the bill by the Discom.

10.3.5 Rebate

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

- a) A Rebate of 1.5% shall be payable to the SECI for the payments made within a period of 10 (ten) days of the presentation of hard copy of Bill.
- b) Any payments made after ten (10) days of the date of presentation of Bill through hard copy up to the 45th day shall be allowed a rebate of 1 %.
- c) For the above purpose, the date of presentation of Bill shall be the next Business Day of delivery of the physical copy of the Bill at SECI.
- d) No Rebate shall be payable on the Bills raised on account of Change in Law (except annuity payment) relating to taxes, duties, cess etc. and on Supplementary Bill.

For the above purpose date of presentation of bill shall be the same day of delivery in hard copy. However, for consideration of rebate, next business day shall be considered.

10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 SECI shall provide to the RPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit (“Letter of Credit”), opened and maintained which may be drawn upon by the RPD in accordance with this Article.

10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, SECI through a scheduled bank open a Letter of Credit in favour of the RPD, to be made operative from a date 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 renewed annually, for an amount equal to:

- i) for the first Contract Year, equal average monthly bill
- ii) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year.

10.4.3 Provided that the RPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, SECI shall restore such shortfall before next drawl.

10.4.5 SECI shall cause the scheduled bank issuing the Letter of Credit to intimate the RPD, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 SECI shall ensure that the Letter of Credit shall be renewed not later than its current expiry date.

10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by SECI.

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including date as on the Due Date, then, subject to Article 10.4.6 & 10.5.2, the RPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from SECI, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to RPD and;
- ii) a certificate from the RPD 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;

10.5 Disputed Bill

10.5.1 If the SECI does not dispute a Monthly Bill or a Supplementary Bill raised by the RPD within thirty (30) days of receiving such Bill shall be taken as conclusive.

10.5.2 If the SECI disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 50% of the invoice 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.

10.5.3 If the RPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the RPD shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

10.5.4 If the RPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the SECI 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.

10.5.5 Upon receipt of the Bill Disagreement Notice by the SECI under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the SECI and RPD shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

10.5.6 If the RPD or SPD do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.5.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

10.5.7 For the avoidance of doubt, it is clarified the despite a Dispute regarding an invoice, SECI shall, without prejudice to its right to Dispute, be under an obligation to make payment of 50% of the invoice amount in the Monthly Bill.

10.6 Quarterly and Annual Reconciliation

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

10.6.2 RPD and SECI, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the RPD and SECI shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the RPD shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

10.7 *Payment of Supplementary Bill*

10.7.1 RPD may raise a ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Energy Accounts (if applicable); or
- ii) Change in Law as provided in Article 12, or
- iii) Transmission charges and losses, wheeling charges, RLDC/SLDC/Scheduling charges, SOC, MOC, maintenance, etc. and any other charges from the Delivery Point upto the drawl point for the Project including Thermal Power Component, or
- iv) Payment under Article 4.10,

And such Supplementary Bill shall be paid by the other Party.

10.7.2 SECI shall remit all amounts due under a Supplementary Bill raised by the RPD to the RPD 's Designated Account by the Due Date, except RLDC or scheduling charges and transmission charges (if applicable). For Supplementary Bill on account of adjustment required by energy account and payments under Article 4.10, Rebate

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as applicable to Monthly Bills pursuant to Article 10.3.5 shall equally apply. Payment will be made after realization of the same from the Buying Utility under the Power Sale Agreement. No Late Payment Surcharge will be applicable other than that on the monthly energy payment and associated debit and credit note.

ARTICLE 11: FORCE MAJEURE

11.1 *Definition of Force Majeure*

A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof taking place within the Indian territory, that wholly or partly prevents or unavoidably delays the performance by the Party (the Affected Party) of its obligations under the relevant Power Purchase Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices. An Affected Party means SECI or the RPD or the Thermal Generator whose performance has been affected by an event of Force Majeure. For avoidance of any doubt, it is clarified that in regard to the Thermal Component, Force Majeure shall only be considered as per this Article.

11.2 *Categorization of Force Majeure Events:*

11.2.1 Natural Force Majeure Event

- a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of SECI / Buying Utility;
- b) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party;
- c) the discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land; or
- d) any event or circumstances of a nature analogous to any of the events as specified under Article 11.2.1 (a), 11.2.1 (b) and 11.2.1 (c).

11.2.2 Non-Natural Force Majeure Event

- a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;
- b) nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its contractors;
- c) nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the RPD, as a result of which the RPD or its shareholders are deprived (wholly or partly) of their rights or entitlements under the Power Purchase Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the RPD or the RPD related parties;
- d) action of a Government Authority having Material Adverse Effect including but not limited to Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 12 of this Agreement; any unlawful or unauthorised or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the RPD or any of the clearance, license, authorization to be obtained by the contractors to perform their respective obligations under the relevant PPA; provided that such delay, modification, denial, refusal or revocation did not result from the RPD's or any contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, license, authorization, as the case may be.

11.3 Force Majeure Exclusions

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

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
- b. Delay in the performance of any contractor, sub-contractor or their agents;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;

- d. Strikes at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with an Indian Law/ Applicable Law; or
 - iii. Breach of, or default under this Agreement.
- g. Any pre-existing dispute on project land/substation and/or right-of-way or other project related issues

11.3.2 Notwithstanding anything else contained in this Agreement, the non-availability of any other source component power from the Project or the any other source(s) to complement the RE Power for RTC supply shall, under no circumstances, except for Force Majeure events affecting such source of power and events under Article 6.2.9, be considered as a Force Majeure Event, excusing the obligation of the RPD. In such case also, the RPD is free to source affected power from an alternative generation source, to meet its obligations under this Agreement. Such power shall be supplied to the SECI at the same Tariff as per the terms of this Agreement, without creating any additional liability upon SECI/Buying Entity. In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of such affected power are higher than the applicable Transmission Charges, the RPD would be liable to bear such additional charges. Further, the RPD shall provide documentary evidence for establishing the source of supply for such tie up.

11.4 *Notification of Force Majeure Event*

11.4.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than fifteen (15) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. The Party who receives the Force Majeure Notification, shall take a decision on the claim of occurrence of Force

Majeure Event, within 30 days of the receipt of the intimation supported with documentary evidence. It is to be noted that there shall have to be separate Force Majeure notice to be given by the Affected Party for RE and power from other sources components. Consequence of Force Majeure notice of one part shall not have any consequence on the other part unless specified specifically by the Affected Party.

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

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

11.5 Performance Excused

11.5.1 Subject to Article 11.3.2 & 11.4, the Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the PPA as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.

11.5.2 For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the RPD shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commercial Operation Period or the PPA period, as the case may be.

Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.

Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

11.6 No Liability for Other Losses

Save as otherwise provided in this Agreement, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event.

11.7 Resumption of Performance

During the period that a Force Majeure Event is subsisting, the Affected Party shall, in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under the PPA. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

11.8 Duty to Perform and Duty to Mitigate

To the extent not prevented by a Force Majeure Event pursuant to Article 11.2, the Affected Party shall continue to perform its obligations pursuant to this Agreement, in line with provisions of Article 11.5. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.9 Available Relief for a Force Majeure Event

Subject to this Article 11:

- a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.5;
- c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.

- d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

11.10 Termination Due to Force Majeure Event

11.10.1 Termination due to Natural Force Majeure Event

- a) If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Natural Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Natural Force Majeure Event is likely to continue beyond such 180 (one hundred and eighty) Day period or any extended period agreed in pursuance of Article 11.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the PPA, and the termination shall take effect from the date on which such decision is taken.
- b) Without prejudice to the provisions of Article 11.10.1.(a) above, the Affected Party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the PPA in its sole discretion by issuing a notice to that effect.
- c) On termination of the PPA pursuant to Article 11.10.1(b):
 - i. no Termination Compensation shall be payable to the RPD;
 - ii. the RPD shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

11.10.2 Termination due to Non-Natural Force Majeure Event

- a) Upon occurrence of a Non-Natural Force Majeure Event, the RPD shall, at its discretion, have the right to terminate the PPA forthwith after the completion of the period of 180 (one hundred and eighty) Days from the date of the Force Majeure Notice.
- b) Notwithstanding anything in Article 11.6, on termination of the PPA pursuant to Article 11.10.2(a):
 - i. The Buying Entity shall pay to the RPD for RE Project(s), 'Force Majeure Termination Compensation' equivalent to the amount of the Debt Due and the 110% (one hundred and ten per cent) of the Adjusted Equity, as defined in the PPA, for the RE Projects and takeover the RE Project assets.
 - ii. The RPD shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

ARTICLE 12: CHANGE IN LAW

12.1 *Definitions*

In this Article 12, the following terms shall have the following meanings:

12.1.1 In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events enforced by the Government of India and respective State Government(s), after [Insert last date of bid submission], which have a direct effect on the Project (and supply from any other source component Project(s)), 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 a consent, permit or license, not owing to any default of the RPD ; or (v) any change in the rates of any Taxes, duties or cess, which have a direct effect on the Project, along with Thermal Power Component.

However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends.

12.1.2 In the event a Change in Law results in any adverse financial loss/ gain to the RPD then, in order to ensure that the RPD is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the RPD / 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, and any such compensation shall be limited to the RTC configuration corresponding to the Contracted Capacity only

12.1.3 Notwithstanding anything in Clause 12.1.1 above, in case of change in rates of duties and taxes in respect of safeguard duty, GST and basic customs duty, 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/taxes 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 SPD and Buying Entity without the need for approaching the Appropriate Commission.

12.1.4 Compensation Payment on account of 'Change in Law', either as determined by the Appropriate Commission as per Article 12.1.2 above or mutually agreed upon between the RPD and SECI/Buying Utility as per Article 12.1.3 above, can be paid to the affected party, by the other party, in terms of modifications in the PPA tariff.

Notwithstanding anything contained above, the Buying Entity(ies) can also make payment of such Change in Law amount, either wholly or partly, as a onetime lump payment. The balance, if any, may be paid in terms of modifications in PPA.

12.2 *Relief for Change in Law*

12.2.1 The aggrieved Party shall be required to approach the Central Electricity Regulatory Commission for seeking approval of Change in Law.

12.2.2 The decision of the Central Electricity Regulatory Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on RPD and Buying Entities.

12.2.3 In case of Change in Law/ Regulations as approved by the Appropriate Commission pursuant to Article 12.2.1 or as provided under Article 12.1.3, the RPD/ 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 RE Project Cost (i.e. cost incurred by the RPD for the supply and services in the Project concerned, upto Actual Commissioning Date of the last part capacity or Schedule Commissioning Date / extended Schedule Commissioning Date, whichever is earlier, 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 0.0036 /kWh. The above payment shall be billed separately, along with energy billing. For example, in case the Actual Commissioning Date of the last part capacity is 15.04.2022, Scheduled Commissioning Date is 15.03.2022, and extended Scheduled Commissioning Date is 01.04.2022, the Project cost shall be determined as cost incurred by the RPD upto 01.04.2022.

In regard to the thermal component, relief as granted by the Central Electricity Regulatory Commission shall be final and governing on RPD and Buying Entities. 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 RPD or any income to the RPD on account of any of the events as indicated above, RPD shall pass on the benefit of such reduction at a rate as provided in Article 12.2.3 to SECI which shall be further passed on to the Buying Entity. In the event of the RPD 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, RPD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 12.

ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

13.1 *RPD Event of Default*

13.1.1 The occurrence and/or continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by SECI or Buying Entity(ies) of its obligations under this Agreement, shall constitute an RPD Event of Default:

(i) the failure to commence supply of RTC power to SECI upto the Contracted Capacity by the end of the period specified in Article 4, or failure to continue supply of Contracted Capacity to SECI after Commercial Operation Date, or

if

a) the RPD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the RE/RTC Power Project as applicable in contravention of the provisions of this Agreement; or

b) the RPD transfers or novates any of its rights and/or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer

- is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
- is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;

(ii) if (a) the RPD 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 RPD , or (c) the RPD 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 RPD will not be a RPD 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 RPD and expressly assumes all obligations of the RPD under this Agreement and is in a position to perform them; or

- (iii) the RPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from SECI in this regard; or
- (iv) except where due to any SECI's failure to comply with its material obligations, the RPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the RPD within thirty (30) days of receipt of first notice in this regard given by SECI.
- (v) change in shareholding of the RPD before the specified time frame as mentioned in Article 4.1.1 of this Agreement, without prior consent of SECI; or ceding of control by the promoters of by M/s [insert name of the bidding company which was issued LoA by SECI under the RfS] within 2 years of COD, without prior consent of SECI.
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the RPD.
- (vii) except where due to any SECI's failure to comply with its material obligations, the RPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the RPD within thirty (30) days of receipt of first notice in this regard given by SECI.

13.2 *SECI Event of Default*

13.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the RPD of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting SECI:

- (i) SECI fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the RPD is unable to recover the amount outstanding to the RPD through the Letter of Credit,
- (ii) SECI repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the RPD in this regard; or
- (iii) except where due to any RPD's failure to comply with its obligations, SECI is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by SECI within sixty (60) days of receipt of notice in this regard from the RPD to SECI; or

(iv) if

- SECI becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of sixty (60) days, or
- any winding up or bankruptcy or insolvency order is passed against SECI, or
- SECI goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that it shall not constitute a SECI Event of Default, where such dissolution or liquidation of Buyer or SECI is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to SECI and expressly assumes all obligations of SECI and is in a position to perform them; or;

(v) If Buying Entity(ies) are subject to any of the above defaults and SECI does not designate another or other Buying Entity(ies) for purchase of power.

(vi) Occurrence of any other event which is specified in this Agreement to be a material breach or default of SECI.

13.3 *Procedure for cases of RPD Event of Default*

13.3.1 Upon the occurrence and continuation of any RPD Event of Default under Article 13.1, SECI shall have the right to deliver to the RPD , with a copy to the representative of the lenders to the RPD with whom the RPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (SECI Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

13.3.2 Following the issue of a SECI Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as RPD and SECI may agree, shall apply and it shall be the responsibility of RPD and SECI to discuss as to what steps shall

be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

13.3.3 During the Consultation Period, RPD and SECI shall continue to perform their respective obligations under this Agreement.

13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless RPD or SECI shall have otherwise agreed to the contrary or the RPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, SECI may terminate this Agreement under intimation the Buying Entities by giving a written Termination Notice of sixty (60) days to the RPD.

13.3.5 Subject to the terms of this Agreement, upon occurrence of an RPD Event of Default under this Agreement, the RPD shall be liable to pay to SECI, liquidated damages, as provided in Article 4.6 of the PPA for failure to commission within stipulated time and Article 4.4.1 for failure to supply power in terms of the PPA. For other cases, the RPD shall be liable pay to Buying Entity(ies), damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges calculated at Applicable Tariff for its Contracted Capacity. SECI shall have the right to recover the said damages by way of forfeiture of bank guarantee/POI, if any, without prejudice to resorting to any other legal course or remedy. In addition to the levy of damages as aforesaid, the lenders in concurrence with the Buying Entity and SECI, may exercise their rights, if any, under Financing Agreements, to seek substitution of the RPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the RPD and performing the obligations of the RPD. However, in the event the lenders are unable to substitute the defaulting RPD within the stipulated period, SECI may terminate the PPA and the Buying Entity may acquire the RE Project assets for an amount equivalent to 90% of the Debt Due (on the concerned RE Project(s)), failing which, the lenders may exercise their mortgage rights and liquidate the RE Project assets. Provided that any substitution under this Agreement can only be made with the prior consent of SECI including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by SECI and accepts the terms and conditions of this Agreement.

13.3.6 The lenders in concurrence with the Buying Utility and SECI, may seek to exercise right of substitution under Article 13.3.5 by an amendment or novation of the PPA in favour of the selectee. The RPD shall cooperate with SECI/ Lenders to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized..

13.3.7 In the event the lenders are unable to substitute the defaulting RPD within the stipulated period, SECI may terminate the PPA and the Buying Utility may acquire the RE Project assets for an amount equivalent to 90% of the debt due (for the RE Project(s)), failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.

13.4 *Procedure for cases of SECI Event of Default*

13.4.1 Upon the occurrence and continuation of any SECI Event of Default specified in Article 13.2, the RPD shall have the right to deliver to SECI, a RPD Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

13.4.2 Following the issue of a RPD Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the RPD and SECI may agree, shall apply and it shall be the responsibility of the RPD and SECI to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

13.4.3 During the Consultation Period, the RPD and SECI shall continue to perform their respective obligations under this Agreement.

13.4.4 After a period of two hundred ten (210) days following the expiry of the Consultation Period and unless the RPD and SECI shall have otherwise agreed to the contrary or SECI Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, SECI under intimation to the Buying Entity and the RPD shall, subject to the prior consent of the RPD, novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the RPD , or if no offer of novation is made

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by SECI within the stipulated period, then the RPD may terminate the PPA and at its discretion require Buying Entity to either (i) takeover the RE Project assets by making a payment of the termination compensation equivalent to the amount of the Debt Due (on the concerned RE Project) and 110% (one hundred and ten per cent) of the Adjusted Equity (on the concerned RE Project) less Insurance Cover, if any, or, (ii) pay to the RPD , damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the RE Project assets being retained by the RPD .

Provided further that at the end of three (3) months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the RPD.

In the event of termination of PPA, any damages or charges payable to the STU/CTU, for the connectivity of the plant, shall be borne by the Buying Entity.

13.5 Not Used.

ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1 *Indemnity*

14.1.1 The RPD shall indemnify, defend and hold SECI harmless against:

- a) All actions or inactions on part of the any other source generator(s) in regard to the performance of their obligations provided under this Agreement or having consequential effect on SECI by reason of non-performance or breach on part of the Thermal Generator under the bilateral independent agreements entered into between RPD of the one part and the concerned Thermal Generator of the other part;
- b) any and all third party claims against SECI for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the RPD of any of its obligations under this Agreement; and
- c) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by SECI from third party claims arising by reason of a breach by the RPD of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the RPD, for which specific remedies have been provided for under this Agreement).

14.1.2 SECI shall cause the Buying Entity(ies) to indemnify, defend and hold the RPD harmless against:

- a) any and all third party claims against the RPD, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Buying Entity(ies) of any of their obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the RPD from third party claims arising by reason of a breach by Buying Entity(ies) of any of its obligations. SECI shall incorporate appropriate covenants in the PSA for the above obligations of Buying Entity(ies). In so far as indemnity to RPD is concerned, Buying Entity(ies) shall be the indemnifying party and not SECI.

Provided that notwithstanding anything contained in sub-clause a) and b) above, SECI's obligation of indemnification under this Article shall be restricted only

to the RPD and SECI will not in any manner be responsible to indemnify the any other source Generator(s). The rights and claims of the such Generators shall be restricted to RPD in terms of the independent bilateral agreements between RPD and the Thermal Generators.

14.2 Procedure for claiming Indemnity

14.2.1 *Third party claims*

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or 14.1.2(a) in respect of which it is entitled to be indemnified.

Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

- i) SECI or RPD choose to refer the dispute in accordance with Article 16.3.2; and
- ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

- b. The Indemnified Party may contest the claim by referring to the Appropriate Commission for which it is entitled to be Indemnified under Article 14.1.1(a) or 14.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its

obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

14.3 *Indemnifiable Losses*

14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of nonpayment of such losses after a valid notice under this Article 14.3, such event shall constitute a payment default under Article 13.

14.4 *Limitation on Liability*

14.4.1 Except as expressly provided in this Agreement, neither the RPD nor SECI nor Buying Entity(ies) nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Buying Entity(ies), the RPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise-.

14.4.2 SECI shall have no recourse against any officer, director or shareholder of the RPD or any Affiliate of the RPD or any of its officers, directors or shareholders for such claims excluded under this Article. The RPD shall have no recourse against any officer, director or shareholder of Buyer or Buying Entity(ies), or any affiliate of

Buyer or any of its officers, directors or shareholders for such claims excluded under this Article.

14.5 SECI's Liability

14.5.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and accept that the SECI is an Intermediary Company to purchase and resell the electricity to the Buying Utility(ies) to enable them to fulfill the Renewable Purchase Obligations (RPO) and power demand, therefore, the performance of the obligations of SECI under this Agreement shall be subject to the ability of SECI to enforce the corresponding obligations assumed by the Buying Utility(ies) on re-sale under the Power Sale Agreement to be entered into by the Buying Utility(ies) with SECI. It is however, specifically agreed that in the event of the Buying Entity(ies) defaulting or delaying the payment of the amount becoming due to SECI to enable SECI to effectively pay the amount to the RPD, the payment of money becoming due from the SECI to the RPD under this Agreement for supply of RE Power to the extent of the Contracted Capacity shall be as per:

(i) the recourse under the Payment Security Mechanism provided in the PPA and PSA, as follows:

- a) Letter of Credit;
- (b) State Government Guarantee/ Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government of the Buying Entity, covering security for payment of energy charges, as applicable;
- (c) Payment Security Fund provided by the Buying Entity, and

(ii) Payment security fund as referred in Article 10.1.1 of the PPA.

SECI shall discharge the tariff payment obligation in terms of the provisions of this Agreement.

Accordingly, in the event of the failure on the part of Buying Entity(ies), SECI shall proceed to take recourse to the above and make efforts for the payment of the principal amount to the RPD at the earliest possible time..

14.5.2 The parties agree that in respect of the obligations other than the tariff payment obligation specifically mentioned herein above, in the event the RPD has any claim against the SECI in regard to the performance of any obligation of SECI under this

Agreement or enforcement of any right of the RPD against the SECI under this Agreement, the same shall be subject to the ability of the SECI to enforce the corresponding obligations assumed by the Buying Utility(ies) under the Power Sale Agreement to be entered into between the SECI and the Buying Utility(ies) on resale on mutatis mutandis basis and not otherwise.

14.6 Duty to Mitigate

14.6.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 14.

ARTICLE 15: ASSIGNMENTS AND CHARGES

15.1 *Assignments*

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party, except to the Project Lenders or Lender's Representative as security for their debt under the Financing Agreements, other than by mutual consent between RPD and SECI to be evidenced in writing. Such assignment shall be agreed to by SECI subject to the compliance of provisions contained in this Agreement and more specifically to the provisions of Article 4.1.1 of this Agreement. In no case, such assignment shall be permissible prior to the declaration of COD.

Provided that, SECI shall permit assignment of any of RPD's rights and obligations under this Agreement in favour of the lenders to the RPD, if required under the Financing Agreements.

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

The enforcement of the rights and obligation between the RPD and the Buying Utility (ies) provided in this Agreement and in the PSA shall not be treated as an assignment but an enforcement of the terms agreed under this Agreement.

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between RPD and SECI may be required to execute a new agreement on the same terms and conditions as are included in this Agreement. An amount of Rs. 15 Lakh per Transaction as Facilitation Fee (non-refundable) shall be deposited by the RPD to SECI. Provided further that, such consent shall not be withheld by the RPD if SECI seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

15.2 *Permitted Charges*

15.2.1 The RPD shall not create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement, other than as set forth in Article 15.1 and the Guidelines.

ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION

16.1 *Governing Law*

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

16.2 *Amicable Settlement and Dispute Resolution*

16.2.1 *Amicable Settlement*

- i. SECI or the RPD as the case maybe is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (“Dispute”) by giving a written notice (Dispute Notice) to the other (“Noticee”), 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 Noticee shall, within thirty (30) days of issue of Dispute Notice issued under Article 16.2.1(i), 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) days of issue of Dispute Notice by the Party issuing the Notice pursuant to Article 16
 - (i) if the Noticee does not furnish any counter claim or defence under Article 16
 - (ii) or thirty (30) days from the date of furnishing counter claims or defence by the Noticee, both the Parties to the Dispute shall meet to settle such Dispute amicably. If SECI and RPD fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 16.2.1.
 - (iii) the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

16.3 *Dispute Resolution*

16.3.1 Dispute Resolution by the Appropriate Commission

- i) All Dispute or differences arising in relation to this agreement of any nature whatsoever including the construction, interpretation or implementation of the provisions of this agreement, shall be referred to adjudication by the Central Electricity Regulatory Commission. Appeal against the decisions of the Central Electricity Regulatory Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.
- ii) SECI shall be entitled to co-opt the Buying Entity(ies) and/or the lenders (if any) as a supporting party in such proceedings before the Appropriate Commission.

16.3.2 MNRE vide its Order No.283/124/2018-GRID SOLAR dated 18.06.2019 has set up a Dispute Resolution Committee (**DRC**). The RPD may approach DRC for resolving disputes as per provisions notified by MNRE in regard to DRC.

16.4 *Parties to Perform Obligations*

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

ARTICLE 17: MISCELLANEOUS PROVISIONS

17.1 *Amendment*

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

17.2 *Third Party Beneficiaries*

17.2.1 Subject to provisions contained in this agreement relating to back to back implications of the PPA as well as PSA, this Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

17.3 *Waiver*

17.3.1 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 authorised representative of such Party.

17.3.2 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.

17.4 *Confidentiality*

17.4.1 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.

17.5 *Severability*

17.5.1 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.

17.6 *Notices*

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

17.6.2 If to the RPD, 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 :
Attention :
Email :
Fax. No. :
Telephone No. :

17.6.3 If to SECI, 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 :
Attention :
Email :
Fax. No. :
Telephone No. :

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

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

17.6.6 Notwithstanding the above, SECI shall not be required to give any Notice to the Thermal Generator in regard to any matter and the Notice given by SECI to the RPD shall be sufficient. It shall be for the RPD to deal with the Thermal Generator in regard to any matter for which SECI has sent the Notice to the RPD. Further, the Thermal Generator shall not be entitled to send any Notice to SECI and all matters in relation to this Agreement shall be entertained by SECI only as per a Notice received from RPD.

17.7 Language

17.7.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the

Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

17.7.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

17.8 *Restriction of Shareholders / Owners' Liability*

17.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder(s) of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 2013.

17.9 *Taxes and Duties*

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

17.9.2 SECI shall be indemnified and held harmless by the RPD against any claims that may be made against SECI in relation to the matters set out in Article 17.9.1.

17.9.3 SECI shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the RPD by SECI on behalf of RPD.

17.10 *Independent Entity*

17.10.1 The RPD shall be an independent entity performing its obligations pursuant to the Agreement.

17.10.2 Subject to the provisions of the Agreement, the RPD shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the RPD or contractors engaged by the RPD in connection with the performance of the Agreement shall be under the complete

control of the RPD and shall not be deemed to be employees, representatives, contractors of SECI and nothing contained in the Agreement or in any agreement or contract awarded by the RPD shall be construed to create any contractual relationship between any such employees, representatives or contractors and SECI.

17.11 *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.

17.12. The duly executed Power Sale Agreement between SECI and Buying entity(s) as attached to this Agreement shall be read along with this Agreement as a composite back to back agreement for Generation and supply of electricity to the Buying entity(ies), particularly, to fulfill the Renewable Purchase Obligations under the provisions of the Electricity Act, 2003 and the Regulations notified thereunder.

17.13 *Breach of Obligations*

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

17.14 *Order of priority in application*

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

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

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
[SECI]

For and on behalf of
[RPD]

Name, Designation and Address

Name, Designation and Address

Signature with seal

Signature with seal

Witness:

Witness:

1.

1.

2.

2.

(For and behalf of Thermal Generator) (Applicable only in case
of Thermal Generator of Domestic Coal]

SCHEDULE 1: FORMAT OF THE PERFORMANCE BANK GUARANTEE

(to be submitted separately for each Project)

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution.)

In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected RE 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[Insert name of the RfS], 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 RETC Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the RE Power Project of the RE Power Developer and issuing Letter of Award No ----- to (Insert Name of selected RE Power Developer) as per terms of RfS and the same having been accepted by the selected RPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected RE Power Developer 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 bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to SECI at [Insert Name of the Place from the address of the SECI] without demure 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 RE Power Developer / Project Company]

This guarantee shall be valid and binding on this Bank up to and including..... and shall not be terminable by notice or any change in the constitution of the Bank or the term of contract or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. _____ only.

Our Guarantee shall remain in force until..... SECI shall be entitled to invoke this Guarantee till

The Guarantor Bank hereby agrees and acknowledges that SECI shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by SECI, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to SECI.

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The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by -----[Insert name of the selected RE Power Developer / Project Company as applicable] and/or any other person. The Guarantor Bank shall not require SECI to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against SECI in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Delhi shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly SECI shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the selected RE Power Developer / Project Company , to make any claim against or any demand on the selected RE Power Developer / Project Company or to give any notice to the selected RE Power Developer / Project Company or to enforce any security held by SECI or to exercise, levy or enforce any distress, diligence or other process against the selected RE Power Developer / Project Company .

This BANK GUARANTEE shall be effective only when the Bank Guarantee issuance message is transmitted by the issuing Bank through SFMS to IDFC First Bank and a confirmation in this regard is received by SECI.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to SECI and may be assigned, in whole or in part, (whether absolutely or by way of security) by SECI to any entity to whom SECI is entitled to assign its rights and obligations under the PPA.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. _____ (Rs. _____ only) and it shall remain in force until (Provide for two additional months after the period of guarantee for invoking the process of encashment) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if SECI serves upon us a written claim or demand.

Signature _____
Name _____
Power of Attorney No. _____

For

SECI-RPD PPA

_____ [Insert Name of the Bank] _____

E-mail ID of the bank:

Banker's Stamp and Full Address.

Dated this _____ day of _____, 20____

Witness:

1.
Signature

Name and Address

2.
Signature

Name and Address

Notes:

1. The Stamp Paper should be in the name of the Executing Bank and of appropriate value.
2. The Performance Bank Guarantee shall be executed by any of the Scheduled Commercial Banks as listed on the website of Reserve Bank of India (RBI) and amended as on the date of issuance of Bank Guarantee. Bank Guarantee issued by foreign branch of a Scheduled Commercial Bank is to be endorsed by the Indian branch of the same bank or State Bank of India (SBI).

**SCHEDULE 2: FORMAT OF THE PAYMENT ON ORDER INSTRUMENT TO BE
ISSUED BY IREDA/REC/PFC**

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), it is now intended and proposed to issue this Payment on Order Instrument (POI) for an amount of Rs. _____ (Rupees _____ (in words)).
4. In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected RE 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, 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 RE Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the RE Power Project complemented with Coal based Thermal Power Project of the RE Power Developer and issuing Letter of Award No ----- to (Insert Name of selected RE Power Developer) as per terms of RfS and the same having been accepted by the selected RPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected RE Power

Developer 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 RE 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 on 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 them 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.

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IREDA/REC/PFC shall not require SECI to justify the invocation of the POI against the SPV/RPD, to make any claim against or any demand against the SPV/RPD or to give any notice to the SPV/RPD;

- (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/RPD;
- (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).

()
General Manager (TS)

Copy to:-

M/s. __PP_____

_____ As per their request

()
General Manager (TS)

SCHEDULE 3: COMMISSIONING PROCEDURE:

To be notified within 90 days (of signing of this Agreement) or any extended date but not later than 60 days prior to the SCD

SCHEDULE 4: ILLUSTRATION (Please refer Article 4.4.3)**❖ Assumptions**

- Each month consists of 12 time-blocks.
- The data below is identical for all the months in a year.
- Each month has 2 time blocks designated as "Peak Hours"
- Declared rated capacities of RE and non-RE components (MW):
 - RE: **400 MW** ("Project")
 - Thermal Project: **200 MW**
 - Contracted Capacity: **500 MW** (for which LoA has been issued, and PPA has been signed)
- Committed ratio of annual power offered from RE sources out of total annual power offered: **51%** (not to be changed subsequent to bid submission deadline)
- Considering the 5th Contract Year after COD of last part capacity of the Project.
- Tariff components applicable for that year:
 - Fixed RE component: A₅ : **Rs. 4.2/kWh**
 - Fixed Non-RE component: B₅: **Rs. 2.8/kWh**
 - Variable Non-RE component-Fuel: C₅': **Rs. 0.4/kWh**
 - Variable Non-RE Tariff-Trans: D₅': **Rs. 0.8/kWh**
- The values of C₅' and D₅' for the purpose of calculation of "applicable tariff" for the 5th year, are respectively, the averages of monthly indexed values of C and D for the 5th year, based on the CERC's indexation as applicable.
- Power supply profile for a typical month in the 5th year:

Declared availability in each time block								
Time Block	Duration (hrs)	RE (MW)	Non-RE (MW)	Total (MW)	Offered MWh (RE)	Offered MWh (Thermal)	RE %	Availability
T1	60	250	200	450	15000	12000	55.6%	90%
T2	60	300	200	500	18000	12000	60.0%	100%
T3	60	350	50	400	21000	3000	87.5%	80%
T4	60	50	140	190	3000	8400	26.3%	38%
T5	60	50	200	250	3000	12000	20.0%	50%
T6	60	50	100	150	3000	6000	33.3%	30%
T7	60	200	200	400	12000	12000	50.0%	80%
T8 (Peak hours)	60	150	200	350	9000	12000	42.9%	70%
T9 (Peak hours)	60	100	200	300	6000	12000	33.3%	60%
T10	60	50	200	250	3000	12000	20.0%	50%
T11	60	150	200	350	9000	12000	42.9%	70%
T12	60	100	200	300	6000	12000	33.3%	60%
Total		1800	2090	3890	108000	125400		
Total MWh offered					233400			
Average (=Monthly availability)							40.87%	64.83%

- Average monthly Peak Hour availability: 65%
- % of RE offered over total Power offered (monthly): 46.27% (not “average”)

- **Annual availability (=Average of monthly availabilities): 64.83%**
- **Annual Peak Hour availability (=Average of monthly Peak Hours availabilities): 65%**
- **% of RE offered over total power offered annually: 46.27%**

❖ **Liquidated damages on account of shortfall in Power offered**

Shortfall in annual availability

- Average Power offered in a typical time block = (Average annual availability x Contracted capacity) = 324.17 MW
- Min. required average Power to be offered in a typical time block (@85% availability) = (0.85 x Contracted Capacity) = 425 MW
- Shortfall in average power offered in a typical time block = 425-324.17 = 100.83 MW
- Split of average power shortfall into RE and non-RE power (based on ratio submitted by the bidder) = 100.83 x 0.51 (for RE power) and 100.83 x 0.49 (for non-RE power), i.e. 51.4233 MW (for RE power) and 49.4067 MW (for non-RE power)
- **Damages for shortfall in annual availability** = (Shortfall in average power offered in a time block split into RE and non-RE x no. of hours in the year x tariff applicable for RE and non-RE components x 4 x 1000) = 8640 x 4 x [(51.4233 x 4.20) + (49.4067 x (2.8 + 0.4 + 0.8))] x 1000 = **Rs. 14,29,41,77,049.60/-**

Shortfall in annual peak hour availability

- Average Power offered in a typical Peak Hour time block = (Average annual Peak hour availability x Contracted capacity) = 325 MW
- Min. required average Power to be offered in a typical Peak hour time block (@85% availability) = (0.85 x Contracted Capacity) = 425 MW
- Shortfall in average power offered in a typical time block = 425-325 = 100 MW
- Split of average power shortfall into RE and non-RE power (based on ratio submitted by the bidder) = 100 x 0.51 (for RE power) and 100 x 0.49 (for non-RE power), i.e. 51 MW (for RE power) and 49 MW (for non-RE power)
- **Damages on account of shortfall in Peak hours availability** = (Shortfall in average power offered in a time block split into RE and non-RE x no. of hours in the year x tariff applicable for RE and non-RE components x 4 x 1000) = 8640 x 4 x [(51 x 4.20) + (49 x (2.8 + 0.4 + 0.8))] x 1000 = **Rs. 14,17,65,12,000/-**

Shortfall in annual offering of energy from RE sources

- Total RE offered (MWh) for the corresponding month = 1,08,000 MWh
- Total RE offered (MWh) for the year = (Summation of RE (MWh) offered for each month) = 108000 x 12 = 12,96,000 MWh
- Total energy offered during the year = (Summation of energy offered (MWh) for each month) = 233400 x 12 = 28,00,800 MWh
- Min. energy to be offered through RE in the year = 0.51 x 2800800 = 14,28,408 MWh
- Shortfall in energy offered through RE in the year = 1428408 – 1296000 = 1,32,408 MWh

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- Damages due to shortfall in RE offered for the year = (Annual shortfall x Applicable RE Tariff x 4 x 1000) = 132408 x 4.20 x 4 x 1000 = **Rs. 2,22,44,54,400/-**

As per the provisions of the RfS and PPA, maximum of the above three damages will be levied on the developer for the corresponding Contract Year

Note: The above illustration has been provided for a sample monthly data, based on assumptions as indicated. Actual calculations for liquidated damages will be made for the yearly data as per REA.

SCHEDULE 5: POWER SALE AGREEMENT(S)

Annexure-A: Copy of Binding Arrangement / Agreement BETWEEN RPD AND THERMAL GENERATOR

APPENDIX A: Details of Generators of Any other Source Component

Appendix-B: Schedule of Tariff (as per Article-9)