

“DRAFT WATER BODY AND LAND RENT AGREEMENT”

THIS AGREEMENT (hereinafter referred called the "Agreement" or “this Agreement “) entered into on this____ day of the month of _____

BETWEEN

Bhakra Beas Management Board (in short BBMB) a statutory body constituted under the provision of section 79 (1) read with section 80 (6) of the Punjab Re-organization Act 1966; having its head office at Plot no. 6- B&C, Sector 19 B, Madhya Marg, Chandigarh -160019 through its_____ (which expression expressions shall unless the context or the subject otherwise demands, includes its successor, executors and assigns) hereinafter referred to as “OWNER” of the **FIRST PART**.

and

Solar Power Developer (in short SPD), a company incorporated under the Companies Act 1956, having its registered office at _____ (hereinafter referred to as “SPD”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assignees) as a Party of the **SECOND PART**.

(Each of the party are individually referred as Party and collectively as the Parties)

WHEREAS,

- A. BBMB, is a statutory body of Ministry of Power and looking after three projects in northern India namely Bhakra Nangal Project, Beas Sutluj link Project and Pong Dam along with approx. 3000 MW generation and distribution of water and power to states of Panjab, Haryana, Rajasthan, Himachal Pradesh, Delhi and Chandigarh.
- B. The Floating solar project will be setup on Build, Own and Operate basis by the solar power developer (SPD) selected by SECI through competitive bidding process as per Standard Bidding Guidelines (SBG) notified under section 61 of Electricity Act 2003 and its amendments. The entire energy generated from the Project shall be bought by the BBMB in accordance with the PPA to be signed between SPD and BBMB. BBMB and the SPD will make petition to the CERC for the adoption of the PPA.
- C. SPD shall Design, Build, Own and Operate the Floating Solar Project(s) of around 15 MW on the offered area in the reservoirs/Dams provided by the BBMB.

D. Whereas the FIRST PART has agreed to grant and the SECOND PART has agreed to accept the water body and land measuring around **45 Acres of water body and 2 acres of land situated** at _____ on Rent on the conditions as per this 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:

DEFINITIONS & INTERPRETATIONS

1.1 Definitions

In this Agreement, following words and expression shall, unless repugnant to the context or meaning thereof, have the meanings hereinafter respectively assigned to them:

- i) **“Agreement”** means this Water body and Land use permission Agreement together with Schedules hereto;
- ii) **“Agreement Period”** Shall have the meaning as ascribed thereto in Article 2.2 of this agreement;
- iii) **“Contracted capacity”** shall have same meaning as defined in the Power Purchase Agreement entered / to be entered (as applicable) between SPD and BBMB.
- iv) **“Commercial Operation Date” or “COD”** shall have same meaning as defined in the Power Purchase Agreement entered / to be entered (as applicable) between SPD and BBMB;
- v) **“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 Governmental Instrumentality for the development, execution and operation of project;
- vi) **“Dismantling”** means disassembly / decommissioning of the “project” after completion of the Agreement period or as mutually agreed term between both the parties or occurrence and continuance of force majeure conditions leading to the Project becoming uneconomical and unviable. Any of the liability arising out of improper handling, workmanship shall be settled by the BBMB and SPD shall be kept indemnified.

- vii) **“Dispute”** means any dispute, difference or disagreement between the Parties arising under or out of, or in relation to, this Agreement and so notified in writing by any party to other party;
- viii) **“Effective Date”** Shall mean the date of signing of this Agreement;
- ix) **“Energy”** means the electrical energy in kilowatt hours (kWh)
- x) **“Force Majeure”** shall have the meaning as ascribed thereto in Article 5 of this Agreement;
- xi) **“GOI”** shall mean the Government of India;
- xii) **“Month”** shall mean a period of 30 (thirty) days from (and excluding) the date of the event, where applicable else an English calendar month.
- xiii) **“Permanent Structures”** shall mean the permanent works forming part of the Project that are required to be constructed ,installed and maintained as such for the implementation of the Project;
- xiv) **“Project”** shall mean the Floating solar PV power project including all Permanent and temporary structures and installations, equipment, plant and machinery and buildings etc. for generation of Contracted Capacity and project capacity of 15 MW will be located at Nangal reservoir/Dam in Una District, HP;
- xv) **“Termination”** means the early termination of this Agreement pursuant to the Termination Notice in accordance with the provisions of this Agreement including the expiry of this Agreement due to efflux of time in the normal course;
- xvi) **“Termination Date”** means the date on which the Termination occurs, which shall not be less than 60 days from the date of termination notice;
- xvii) **“BBMB”** shall mean Bhakra Beas Management Board, who have signed the PPA with SPD for purchase of Power and means the Owner of the water body/reservoir and shall provide the area to SPD required for the project.
- xviii) **“Plot/Premises”** shall mean the demised premises admeasuring cumulative 45 (Forty Five) acres of water body and 2 (Two) acres of land offered by BBMB on _____(site details) for the development, construction and operation of the Project(s).
- xix) **“Works”** shall mean all works including but not limited to Construction activities related to the implementation and development of the Project for generation of Power as per provisions of Power Purchase Agreement executed between SPD

- xx) “**Year**” shall mean the period beginning from the Effective Date (i.e. date of signing of this Agreement) and ending on the immediately succeeding March 31st and thereafter each period of 12 months beginning on April 1st and ending on March 31st.
- xxi) PPA means Power Purchase Agreement between SPD and BBMB of this project.

1.2 Interpretations

In this Agreement unless the context otherwise requires:

1. The reference to persons and words denoting natural persons shall include bodies corporate and partnerships, joint ventures and statutory and other authorities and entities.
2. The nomenclature of the Agreement, headings and paragraph numbers are for the convenience of reference and shall be ignored in construing or interpreting the Agreement.
3. Any reference at any time to any agreement, deed, instrument, license or document of any description shall be constructed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase the liability or obligations of any party hereunder or pursuant hereto in any manner whatsoever.
4. Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days and dates.

TERM OF THE AGREEMENT

2.1 Effectiveness

The Agreement shall come into effect from the date of signing of this Agreement i.e. Effective date of this Agreement.

2.2 Agreement Period

This Agreement shall remain in force till completion of 30 years (project life of 25 years plus grace period of 5 years for installation of the power plant and dismantling of the FSPV plant after completion of PPA terms). This Agreement shall be co-terminus with the Power Purchase Agreement executed between SPD and the BBMB for this Project.

The PPA and this agreement shall be read in harmonious manner and in case of any inconsistencies, provisions of PPA shall prevail.

This Agreement may be extended for a further period, on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date or as agreed between both the parties.

2.3 Water body & Land Use charges

- a) That the SPD shall pay nominal rent of Rs. 100 per acre per year as consideration for a period of 30 Years (project life of 25 years plus grace period of 5 years for installation of the power plant and dismantling of the FSPV plant after completion of PPA terms) for the said Water Body (**45 Acres of water body**) and land (**2 Acres of land**) required for implementation of capacity upto 15 MW FSPV power plant to BBMB. The rent shall be paid by the SPD to BBMB in advance every year.
- b) The charges as aforesaid are exclusive of all kinds of tax/fee/duty which the Municipal Board, Panchayat or any Civil Body imposes or may impose during the period of Agreement in respect of the said Water Body and land. It is clarified that the considered charges remain fixed if there occur any variation in such taxes/fee/duty during the term of this Agreement to be paid by the SPD.

Obligations and Responsibilities

3.1 Obligations of SPD

- a) SPD undertakes to be responsible at its own costs and risk, for execution of the project in a timely manner to be commissioned.
- b) SPD shall own the Project during currency of this agreement and make total investment required for setting up of the Project.
- c) SPD shall obtain and maintain permits, clearances and approvals required for construction and operation of the Project.
- d) SPD shall work with and co-operate in good faith with the BBMB with respect to all of the obligations and rights hereunder.
- e) SPD shall not use the water body and land for any purpose other than for the agreed project. All necessary arrangements towards security and safety of solar power system equipment will be the responsibility of SPD.
- f) SPD shall operate the Project as per the prudent practices throughout the agreement period.

- g) BBMB on its part shall sign long term Power Purchase Agreement for each Project with SPD (or its Special Purpose Vehicle (SPV)) for minimum 25 years for purchase of solar power at a tariff arrived at through agreed process.
- h) The minerals, deposits and other beneficial interest in the water body and land including the trees standing on the said water body/land shall be the property of BBMB and the same shall not be removed or disposed of by SPD without the prior approval in writing from BBMB.
- i) SPD will not mortgage land, with any bank for obtaining the loan to develop the project.

3.2 Obligations of BBMB

a) Obligations as per Standard Bidding Guidelines (SBG)

As per MOP “**Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects**” vide Gazette Resolution dated 03.08.2017. As per clause 3.2.1 of the SBG which states that: “**Project site specified by the Procurer:** The Procurer (BBMB) may choose to locate the Project at a specified site and the same may be specified by the Procurer in the bidding documents. In such cases, to ensure timely commencement of supply of electricity, the Procurer shall ensure that various Project preparatory activities as indicated below have been initiated by the Procurer before issuance of the Request for Selection (RfS). These activities would be required to be completed prior to the PPA being executed.

- (i) Reservoir: Identification of 100% (hundred per cent) reservoir area required for the projects and provision of documents/ agreements to indicate in-principle availability of at least 25% (twenty-five per cent) of reservoir at the initiation of bidding, and possession of 90% (ninety per cent) of reservoir within 1 (one) months of the execution of the PPA and the balance 10% (ten per cent), within 2 (two) months thereafter.
- (ii) No Objection Certificate (NOC)/ Environmental Clearance (if applicable) for the Project.
- (iii) Forest Clearance (if applicable) for the land for the Project.
- (iv) Approval for Water from the concerned authority (if applicable) required for the Project.

- (v) A letter from the State transmission Utility (STU) confirming technical feasibility of connectivity of plant to STU substation, except for the cases where the concerned STU has notified, sub-station wise spare capacities for feasibility of connectivity.”

b) Other Obligations

- (i) BBMB shall ensure availability of non-encumbered, encroachment free and obstructions free water and land area required for the said project.
- (ii) BBMB shall ensure to maintain a minimum water level of 2m at the area required for setting up of FSPV project for the entire life of the project. The minimum water level should be always be maintained irrespective of any site conditions All/any damages/losses/cost incurred in the said by SPD project due to non-maintenance of the required min. water level for the said project shall be borne by BBMB.
- (iii) BBMB shall deliver exclusive and lawful possession of the said Water body and Land on Right to use basis to SPD free from encumbrance on or before the signing of PPA for the Project.
- (iv) BBMB agrees for any solar facilities on the land, with an easement (the “Access Easement”) over, across and on the land for ingress to and egress from the solar Facilities for entire term of this Agreement.
- (v) BBMB shall permit the prime lending institution i.e. Banker/any other lending entity, the “Right to Substitute” Land Use permission during the loan period of the project. The lender will use this right in case SPD is unable to repay the loan and the lender shall transfer the project to the newly substituted agency along with land on “right to use basis”.
- (vi) If BBMB intends to start any activity/construction after/during installation of the project in the said project reservoir/Dam, the same must be brought to the notice of SPD and should be agreed between the parties. Due care against any damages to the solar plant due to the above should taken by the BBMB

Representations and Warranties

4.1 Representations and Warranties of SPD

SPD represents and warrants to BBMB that as of the date hereof:

- a. it has full power and authority to execute, deliver and perform its obligations under this Agreement and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement
- b. it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement
- c. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof
- d. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on SPD's ability to perform its obligations under this Agreement; and
- e. it has complied with Applicable Laws in all material respects.

4.2 Representations and Warranties of BBMB

BBMB represents and warrants to the SPD that as of the date hereof:

- a. it has full power and authority to execute, deliver and perform its obligations under this Agreement and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement.
- b. it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement.
- c. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- d. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on SPD's ability to perform its obligations under this Agreement; and
- e. it has complied with Applicable Laws in all material respects.

5. Force Majeure

Neither party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to Force Majeure Events as given below:

- a) Act of God, including, but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, large floating debris resulting from

- Act of God and hitting the plant, cyclone, typhoon, tornado, resulting in of disrupted power being evacuation from the Delivery Points; or
- b) Explosion, accident or breakage of transmission facilities to deliver power from the Delivery Points to the receiving substation(s); or
 - c) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo;, revolution, riot, insurrection, terrorist or military action making the performance of obligations as specified herein as impossible; or
 - d) 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 Power Project by the Affected Party or those employed or engaged by the Affected Party.
 - e) An event of force majeure affecting the concerned STU/any other transmission utility, as the case may be, thereby affecting the evacuation of power from the Delivery Points by the Buying Utility.
 - f) An event of Force Majeure identified under SPD- BBMB PPA,

Any party claiming the benefit of this clause shall reasonably satisfy the other party of the existence of such an event and give written notice within a reasonable time to the other party to this effect.

6. Termination Due to Force Majeure

If the Force Majeure Event or its effects continue to be present beyond the period of 12 months, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

7. Settlement and Resolution of Disputes

All differences or disputes between the parties arising out of or in connection with this Agreement shall be mutually discussed and amicably resolved within 90 days.

In case the Parties are not able to resolve the dispute within Ninety (90) days after the notice of dispute is given by either Parties, such dispute or difference shall be settled as per procedure laid down by the Department of Public Enterprise, Government of India vide Office Memorandum No. 4(1)/2011-DPE-(PMA)-GL dated 2013 for settlement of disputes between Public Sector Enterprise inter se and Public Sector

Enterprise(s) and Government Department(s). The Parties to the dispute shall share equally the cost of arbitration as intimated by the arbitrator

Miscellaneous

8.1 Assignment

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing. Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

8.2 Governing Law

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 local Area Courts of Punjab and Haryana High court at Chandigarh.

8.3 Amendment

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

8.4 Confidentiality

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.

8.5 Notices

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

- ii) If to the BBMB, 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.:

- iii) If to SPD, 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:

Address:

Attention:

Email:

Fax No.:

Telephone No.:

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORISED REPRESENTATIVES AS OF THE DATE AND PLACE SET FORTH ABOVE,

For and on behalf of SPD

Name, Designation & seal

Witness

1)

2)

For and on behalf of BBMB

Name, Designation & seal

Witness

1)

2)