

**POWER SALE AGREEMENT**  
**FOR**  
**SALE OF WIND-SOLAR HYBRID POWER ON LONG TERM**  
**BASIS**

**Between**

**Solar Energy Corporation of India Limited**

**And**

\_\_\_\_\_ **[Enter name of the Buying Entity/Utility]**

This Power Sale Agreement is made on the ..... day of ..... of 2021 at .....,

Between

Solar Energy Corporation of India Limited, a company incorporated under the Companies Act 1956, having its registered office at ..... (hereinafter referred to as “**SECI**”, 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 first part.

And

.....[Enter name of the Buying Entity/ Utility], a company incorporated under the Companies Act 2013, having its registered office at ..... (hereinafter referred to as “**Buying Entity/ Buying Utility**” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the second part.

SECI and Buying Entity 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 Wind and Solar Power in the country and has provided a target to achieve an aggregate installed capacity of 160 GW out of these two sources by the year 2022.
- B. The Ministry of New & Renewable Energy (MNRE), Government of India has issued the “Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects” issued by the Ministry of New and Renewable Energy vide F.No. 238/78/2017-Wind dated 14.10.2020, under the National Wind-Solar Hybrid Policy issued by MNRE dated 14.05.2018, including subsequent amendments and clarifications, if any, issued until \_\_\_\_\_ [Enter the last date of bid submission of the RfS].
- C. SECI has been designated as a Nodal Agency for developing and facilitating the establishment of the Grid connected Wind-Solar Hybrid Power capacity in India in terms of the above Policy of the Government of India;
- D. SECI had initiated a Tariff Based Competitive Bid Process for procurement of 1200 MW of the power generated from the ISTS-connected Wind-Solar Hybrid Power Project on the terms and conditions contained in the Request for Selection (herein after referred to as ‘RfS’) issued by SECI vide RfS No \_\_\_\_\_ Dated \_\_\_\_\_ and subsequent amendment, if any;
- E. SECI has signed/will sign Power Purchase Agreements (PPAs) with the Hybrid Power Developers (HPD) selected under the RfS mentioned herein below (hereinafter referred to as “HPDs”) for procurement of \_\_\_\_\_ MW Hybrid Power or the total capacity of projects selected under the provisions of Request for Selection No. \_\_\_\_\_ dated \_\_\_\_\_ and subsequent amendment, if any) based on the above Guidelines, if it is less than \_\_\_\_\_ MW, on a long-term basis, as indicated at Schedule-B of PSA;
- F. Buying Utility has agreed to purchase Hybrid power from the SECI under the above RfS and accordingly, SECI has agreed to sign Power Purchase Agreements (PPAs) with Hybrid Power developers (hereinafter referred to as “HPDs”) for procurement of \_\_\_\_\_ MW Hybrid Power on a long-term basis, as indicated at Schedule-B of PSA. Copy of the PPA(s) shall be submitted to

Buying Utility within thirty (30) days of the signing of the PPA(s) and such PPA(s) shall become integral part of this Agreement (SECI-Buying Utility PSA).

- G. Pursuant to the aforesaid objective, the Parties are desirous of entering into a Power Sale Agreement (“PSA”) i.e. a definitive agreement, regarding purchase of Power from the Project. Pending execution of the necessary agreements and other relevant documents in relation to the transaction contemplated herein, the Parties wish to execute this PSA setting out the respective obligations of the Parties and the steps necessary to complete the transactions contemplated herein.

The Parties have accordingly agreed to enter into this PSA to record their understanding and agreement with regard to the purchase of power to be generated from the Project and in respect to the matters incidental or ancillary thereto, upon the terms and conditions set out herein below.

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

- I This Agreement shall come into effect from signing of this Agreement by both the parties and such date shall be the Effective Date for the purpose of this Agreement.
- II Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either Party against the other under this Agreement shall be that, within 120 days after the Effective Date of the PPA, SECI and/or the Buying Entity shall obtain adoption of tariff from its State Electricity Regulatory Commission and/or CERC (as applicable), on the terms and conditions contained in this Agreement read with the terms and conditions contained in the Power Purchase Agreement entered into between SECI and the HPD. The Parties agree that in the event the order of adoption of tariff as mentioned above is not issued by the SERC and/or CERC (as applicable) within the time specified above, this shall entail a corresponding extension in Scheduled Financial Closure and the Scheduled Commissioning Date of the Projects for equal number of days for which the CERC/SERC order has been delayed beyond the above deadline.

- III. The duration of this Agreement shall be coextensive and coterminous with the duration of the Power Purchase Agreement to be entered into between the SECI and the HPD for all intent and purposes.
- V. Subject to the terms and conditions contained herein, SECI hereby agrees to sell and make available the electricity procured by SECI from the \_\_\_\_\_MW Wind-Solar Hybrid Power Project to be set up by the HPD at various places in \_\_\_\_\_ [Enter the location of the Projects] on the terms and conditions contained in the PPA to be entered into between SECI and the HPD, as per the initialed PPA (Schedule "A") on a back to back basis, to Buying Entity.
- VI. Buying Entity hereby acknowledges and accepts that SECI is an Intermediary to facilitate the promotion of Wind-Solar Hybrid Power Projects and to purchase and re-sell the electricity to the distribution licensees to enable them to fulfill the Renewable Purchase Obligation and, therefore, the sale of electricity by SECI to Buying Entity under this Agreement shall be entirely on a back to back basis to the purchase of electricity by SECI from the HPDs under the SECI-HPD PPA, with the intent that there shall be no residual liability on the SECI towards the HPD which will not be fulfilled by the Buying Entity.
- VII. In accordance with the above and except as otherwise specifically provided in this agreement, the rights and obligations of Buying Entity under this agreement shall be available and enforceable entirely and effectively on a back to back basis to the rights and obligations of the SECI in the SECI-HPD PPA and in the event SECI is not in a position to enforce its rights against the HPD or is subject to any obligation to be performed towards HPD, Buying Entity shall be liable to perform such obligation or shall be entitled to such rights only on a mutatis mutandis basis, without any additional or independent exposure whatsoever to SECI.
- VIII. Except as otherwise specifically provided in this agreement, Buying Entity acknowledges and accepts that the terms and conditions of the SECI- HPD PPA shall mutatis mutandis apply to this Agreement between the parties. Buying Entity agrees to correspondingly fulfill, on back to back basis, all the obligations assumed by SECI towards HPD. Buying Entity further agrees, acknowledges and accepts that as an Intermediary, SECI is not assuming any obligation to Buying Entity over and above the obligation which the HPD shall duly perform under the SECI – HPD PPA.

- IX. SECI has agreed with the HPD in regard to the payment of money becoming due to HPD under the SECI-HPD PPA and SECI shall be liable to discharge the payment obligation in terms of the provisions of the SECI-HPD PPA. Accordingly, Buying Entity agrees to effectively securitize the payment of money becoming due from Buying Entity to SECI as detailed in this Agreement.
- X. The parties agree that in respect of the obligations other than the payment obligation specifically mentioned herein above, in the event Buying Entity has any claim against SECI in regard to the performance of any obligation of SECI under this Agreement or enforcement of any right of Buying Entity against SECI under this Agreement, the same shall be subject to the ability of SECI to enforce the corresponding obligations assumed by HPD to SECI under the SECI-HPD PPA. SECI shall not be required to perform and implement the obligations of SECI or agree to the enforcement of the rights of Buying Entity under this Agreement till such time the corresponding obligations under SECI-HPD PPA is duly implemented by the HPD and in case of monetary obligations the amount is received by SECI from the HPD. In the event of any such claim arising at the instance of Buying Entity, the parties shall discuss on the course of action to be initiated by SECI against the HPD for enforcement of the corresponding obligation and all proceedings to be initiated by SECI against the HPD for such enforcement shall be pursued by SECI in consultation with Buying Entity.
- XI. The parties hereby agree that the Liquidated Damages are payable by HPD under the SECI-HPD PPA for the delay in the commissioning of the Wind-Solar Hybrid Projects and for short supply of the contracted capacity of the Hybrid Power. Buying Entity shall not be entitled to make any deductions towards the claim of liquidated damages against any payment due to SECI and all such other payments shall be made by Buying Entity by the Due Dates, notwithstanding the status of the pending claims on liquidated damages. The Parties agree that as an intermediary, SECI shall have no legal obligation to pay any amount towards liquidated damages except when the amount of such liquidated damages has been recovered from the HPD by SECI without any conditions and encumbrances and the amount is available for appropriation by SECI.
- XII. The parties agree that the various terms contained in the SECI-HPD PPA such as Scope of Project, Terms of the Agreement, Performance Guarantee, Conditions Subsequent, Obligations of the respective Parties, Construction of the Power

Generation Capacity, Synchronization, Commissioning and Commercial Operation, Operation and Maintenance, Purchase and Sale of Hybrid Power, Measuring and Metering and Dispatch of Power, Billing and Power Accounting and payments, Liabilities, Force Majeure, Events of Default, Termination, Transfer, Change in Law, Indemnity, Insurance, Assignment and Changes, Financing and Bankability, Representations and Warranties, Governing Law, Notices and all other Miscellaneous Terms provided in the SECI-HPD PPA shall mutatis mutandis apply to this agreement between SECI and Buying Entity.

- XIII. The Buying Entity shall be responsible to for directly coordinating and dealing with the HPD, Regional Load Dispatch Centers, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Hybrid Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the HPD and Buying Entity are the Grid connected entities and SECI as intermediary procurers/ trading licensee is not a Grid connected entity in respect of the Hybrid Power contracted under this Agreement;

***Article 1. APPLICABLE TARIFF***

- 1.1** The Tariff applicable for the sale of Hybrid Power by SECI to the Buying Entity under this Agreement shall be the Tariff as applicable for payment by SECI to HPD under the terms of the Power Purchase Agreement between SECI and the HPD (Individual HPDs tariff as per schedule B) fixed for entire term of agreement at delivery point and in addition thereto a trading margin of Seven (7) paisa/kWh shall be payable by the Buying Entity to SECI which SECI shall be entitled to appropriate as its income.
- 1.2** As per provisions of the PPA, the HPDs are permitted for full as well as part commissioning of the Project even prior to the SCD. In case of early commissioning of the Project(s) prior to SCD, Buying Entity shall purchase the power at the Applicable tariff as per the PPA, plus SECI's Trading Margin of Rs 0.07/kWh (Seven Paisa per kWh).

## ***Article 2. BILLING AND PAYMENT***

### **2.1 General**

From the commencement of supply of power by SECI, the Buying Entity shall pay to SECI the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in Article 1. All Tariff Payments by the Buying Entity shall be in Indian Rupees.

SECI shall issue to the Buying Entity a signed Monthly Bill on the first business day of the month prepared based on provisional wind-solar hybrid energy of the preceding month (except for first month which shall be computed based on designed CUF and capacity of project) and shall also include the following:

- i) Adjustments bill against the Provisional Bills based on applicable energy account/JMR for the power supplied in the preceding months
- ii) Late Payment Surcharge if any
- iii) Taxes, duties Levies etc. as applicable

### **2.2. Payment of Monthly Bills**

2.2.1 The Buying Entity shall pay the amount payable under the Monthly Bill on or before the Due Date i.e. within 60 days of presentation of bill within official hours, to such account of SECI, as shall have been previously notified to the Buying Entity in accordance with Article 2.2.2 below.

2.2.2. SECI shall open a bank account at New Delhi ("SECI's Designated Account") for all Tariff Payments to be made by the Buying Entity to SECI, and notify the Buying Entity of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Buying Entity shall also designate a bank account at \_\_\_\_\_. The Buying Entity shall inform SECI the details of such account ninety (90) Days before the dispatch of the first Monthly Bill. SECI and the Buying Entity shall instruct their respective bankers to make all payments under this Agreement to the Buying Entity' Designated Account or SECI's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

### **2.3 Late Payment Surcharge**

In the event of payment of a Monthly Bill by the Buying Entity beyond the Due Date, a Late Payment Surcharge shall be payable by the Buying Entity to SECI at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by SECI through the supplementary bills.

### **2.4 Rebate**

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

- a) A Rebate of 1.5% shall be payable to the Buying Entity for the payments made within a period of five (5) days of presentation of bills through email.
- b) Any payments made beyond a period of 5 days from the date of presentation of bill through email upto and including the Due Date, shall be allowed a rebate of 1%.
- c) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc. and Late Payment Surcharge.
- d) No Rebate shall be payable on partial payment of Bills.

### **2.5 Payment Security Mechanism**

#### **(A) Letter of Credit (LC):**

2.5.1 The Buying Entity shall provide to SECI, in respect of payment of its Monthly Bills, a single, unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Buying Entity, which may be drawn upon by SECI in accordance with this Article. The Buying Entity shall provide SECI draft of the Letter of Credit proposed to be provided to SECI two (2) months before the Scheduled Commissioning Date.

2.5.2 Not later than one (1) Month before the Start of Supply, the Buying Utility shall through a scheduled bank at \_\_\_\_\_, open a Letter of Credit in favour of SECI, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under

this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be reviewed after every 12 month for an amount equal to:

- i) for the first Contract Year, equal to 1.05 times of the estimated average monthly billing;
- ii) for each subsequent Contract Year, equal to 1.05 times of the average monthly Tariff Payments of the previous Contract Year.

2.5.3 SECI shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawl in a Month provided that there are no outstanding dues.

2.5.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 2.5.2 due to any reason whatsoever, the Buying Entity shall restore such shortfall within seven (7) days.

2.5.5 The Buying Entity shall cause the scheduled bank issuing the Letter of Credit to intimate SECI, in writing regarding establishing of such irrevocable Letter of Credit and any of the changes therein.

2.5.6 The Buying Entity shall ensure that the Letter of Credit shall be renewed not later than its expiry.

2.5.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by the Buying Entity.

2.5.8 If the Buying Entity fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 2.5.3 and 2.9, SECI may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Buying Entity, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill which has remained unpaid by the Buying Entity;
- ii) a certificate from SECI 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.

## **2.6 State Government Guarantee**

The Buying Utility shall extend the State Government Guarantee, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation if any [for the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges]. SECI shall ensure that upon invoking this guarantee, it shall at once, pass on the same to the HPD(s), to the extent the payments to the HPD(s) in terms of the PPA are due.

## **2.7 Payment Security Fund**

In addition to provisions contained in Article 2.6 above, the Buying Entity may provide Payment Security Fund, which shall be suitable to support payment of at least 3 (three) months' billing, of all the Projects tied up with such fund. The parties agree that proceeds of encashment of PBGs upon default of the HPD under the respective PPA shall be passed on to the Buying Utility subsequent to opening of the above Payment Security Fund.

It is hereby clarified that the State Government guarantee shall be invoked only after the SECI has been unable to recover its dues under the PSA by means of the Letter of Credit and the Payment Security Fund.

## **2.8 Third Party Sales by SECI**

- 2.8.1 Notwithstanding anything to the contrary contained in this Agreement, SECI shall be entitled to but not obligated to regulate supply of Hybrid Power of the Buying Utility in case of Default in making payment by the 15<sup>th</sup> day after the Due Date of the Buying Utility. SECI shall issue the Notice for Regulation of Power Supply on the date above and shall give a notice of 15 days to start the regulation on the 16<sup>th</sup> day thereafter.
- 2.8.2 Regulation of power supply would be on pro rata basis i.e., in the ratio of amount due and unpaid to total amount due against the relevant Monthly Bill.
- 2.8.3 In order to avoid any doubts, it is illustrated that:
- 2.8.4 In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, SECI would have a right to regulate and sell Buying Utility's allocation of

the hybrid power to third parties to the extent of 40% (i.e. 10/25x100). SECI/HPD shall have the right to divert the Hybrid Power or part thereof and sell it to any third party namely;

- i) Any consumer, subject to applicable Law; or
- ii) Any licensee under the Act;

SECI shall request the concerned SLDC/RLDC to divert such power to third party as it may consider appropriate.

Provided that such sale of power to third party shall not absolve Buying Entity from its obligation to pay in full to SECI for the obligation for the purchase of Hybrid Power as per Schedule-A & B of this Agreement and any other outstanding payment liability of Buying Entity as per this Agreement. Further, in such case, Buying Entity shall have the unconditional obligation to provide and facilitate all necessary clearances and support for the evacuation of power to the third party to whom the power is diverted and further to bear any and all incremental charges and losses including but not limited to application fee, connectivity, open access, ISTS charges & Losses, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, RLDC. These obligations are assumed by the Buying Entity as being necessarily arising out of the failure to draw the power generated and duly discharge the payment obligation arising therefrom.

The rights of SECI under this clause is without prejudice to other rights provided under the Agreement.

- 2.8.5 The amount realized from the diversion and sale of power to third party over and above the Applicable Tariff, any charges including open access charges and other costs shall be adjusted first against the pending liability of the Buying Utility. Deficit if any shall be made good by the Buying Utility.
- 2.8.6 Sales to any third party shall cease and regular supply of electricity to the Buying Utility shall commence and be restored within thirty (30) days from the date of clearing all outstanding dues payable to SECI for the Hybrid Power under this Agreement.
- 2.8.7 Further, the liability of the Buying Utility to make the Tariff Payments to SECI as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available by HPD for usage by the Buying Utility

## **2.9 Disputed Bill**

- 2.9.1 If the Buying Entity does not dispute a Monthly Bill raised by the other Party within fifteen (15) days of receiving such Bill shall be taken as conclusive and binding.
- 2.9.2 If Buying Entity disputes the amount payable under a Monthly Bill it shall pay undisputed amount 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.
- 2.9.3 If the SECI agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 2.9.2, the SECI shall make appropriate adjustment in 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 Buying Utility and up to and including the date on which such payment has been received as refund.
- 2.9.4 If the SECI does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 2.9.2 it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:
- i) reasons for its disagreement;
  - ii) its estimate of what the correct amount should be; and
  - iii) all written material in support of its counter-claim.
- 2.9.5 Upon receipt of the Bill Disagreement Notice by the Buying entity under Article 2.9.4, authorized representative(s) or a director of the board of directors/ member of board of the Buying Entity and SECI shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

2.9.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 2.9.5, the matter shall be referred to Dispute resolution in accordance with governing Laws and Dispute resolution in PPA.

2.9.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Buying entity 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.

## **2.10 Quarterly and Annual Reconciliation**

2.10.1 The Parties acknowledge that all payments made against Monthly Bills shall be subject to quarterly reconciliation and adjustment, if any, within thirty (30) days of the end of the quarter of each Contract Year and annual reconciliation and adjustment, if any, at the end of each Contract Year within thirty (30) days thereof to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement. Late Payment Surcharge shall not be applicable on SECI from commencement of supply to commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI.

2.10.2 The Parties, 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 Buying Utility and SECI shall jointly sign such reconciliation statement. After signing of a reconciliation statement, the SECI shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Except for the Tariff adjustment made during the period from commencement of supply to commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI, 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 of PPA.

## **2.11. Renewable Purchase Obligation**

2.11.1 The Buying Utility may identify the energy procured from the HPD Delivery Point to meet its renewable purchase obligations (as mandated by the Appropriate Commission). Provided that the renewable purchase obligation of the Buying Utility shall be considered to be met by the Buying Utility only if there is no payment default for such energy procured by the Buying Utility and a certificate to such effect shall be provided by SECI to the Buying Utility.

2.11.2 SECI shall provide such certificate identifying the quantum of hybrid energy supplied by SECI and being met by the Buying Utility for each year within thirty (30) days after the end of such year.

2.11.3 (The provisions of Article 4.4.1 of the PPA shall be applicable mutatis mutandis to this Agreement). The Bidder has declared the annual CUF of the Project(s) during the submission of the Bid as mentioned in Schedule-I of the PPA and the HPD will be allowed to revise the same once within first three years after COD of the Project. For any Contract Year, the HPD shall maintain generation so as to achieve annual energy supply not less than \_\_\_\_\_MUs (Individual MUs i.e Solar & wind energy components to be mentioned along with total MUs) corresponding to the minimum annual CUF of \_\_\_\_\_% (insert declared Minimum annual CUF) and not more than \_\_\_\_\_MUs (Individual MUs i.e Solar & wind energy components to be mentioned along with total MUs) corresponding to the maximum annual CUF of \_\_\_\_\_% (insert Maximum annual CUF) and Buying Entity shall be obligated to purchase the same during the entire Term of this Agreement.

If for any Contract Year, except for the Contract Year ending on 31st March immediately after the COD of the Project it is found that the HPD has not been able to supply at Delivery Point to Buying Entity, minimum annual energy corresponding to Minimum annual CUF on account of reasons solely attributable to the WPD, the WPD shall be liable to pay a compensation to Buyer to enable the Buyer to remit such compensation to Buying Entity. It is clarified that the shortfall in energy supply will be calculated based on the total annual energy commitments, and not on the solar and wind energy units as indicated above. The energy corresponding to Minimum CUF as well as Maximum CUF will, however be relaxable by Buyer to

the extent of Generation Compensation due to grid non-availability to the Project for evacuation which is beyond the control of the HPD as determined under provisions of Article 4.10. The amount of such compensation shall ensure the Buying Entity to offset for all potential costs associated with low generation and supply of power from the Project(s) under the PSA. The amount of such compensation shall be calculated @ 50% (fifty percent) of the PPA Tariff for the shortfall in energy terms, which shall be passed on to the Buying Entity as provided. This compensation shall not be applicable in events of Force Majeure identified under PPA with SECI affecting supply of power by HPD.

2.11.4 Notwithstanding Article 2.11.3, the SECI/HPD is free to sell such power to any third party which is in excess of the quantum of power as per Article 2.11.3 of this Agreement from SCD, or date of commissioning of the full Project capacity, whichever is earlier. Any power which is in excess of the quantum of power agreed to be supplied under this Agreement shall be offered to the Buying Utility at 75% of the Applicable Tariff as per Article 1.1, and in case the Buying Utility does not accept the same, SECI shall take appropriate action as per PPA.

2.11.5 The compensation as per Article 2.11.3 shall be applied to the amount of shortfall in generation during the year. However, this compensation shall not be applicable in events of Force Majeure identified under this Agreement affecting supply of hybrid power by SECI/HPD.

## **2.12 Payment of Supplementary Bill**

2.12.1 SECI may raise a "Supplementary Bill" for payment on account of:

- i) Change in Law as provided in Article 12 of PPA, or
- ii) Payment under Article 2.13 and other charges, if any.

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

2.12.2 Buying Entity shall remit all amounts due under a Supplementary Bill raised by the SECI to the SECI's Designated Account by the Due Date.

2.12.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 2.3.

## 2.13 Offtake constraints due to Backdown

2.13.1 Offtake constraints due to Backdown: The HPD and the Buying Entity shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), provides for status of “must-run” to wind and solar power projects. Accordingly, no wind-solar hybrid power plant, duly commissioned, should be directed to back down by a Discom/ Load Dispatch Centre (LDC). In case such eventuality of Backdown arises, 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, except for the cases where the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions, the Buying Entity shall pay to the HPD, a Minimum Generation Compensation, from the Procurer, in the manner detailed below:

<b>Duration of Backdown</b>	<b>Provision for Generation Compensation</b>
Hours of Backdown during a monthly billing cycle.	<p><b>Minimum Generation Compensation = 100% of [(Average Generation per hour during the month) (number of backdown hours during the month) X PPA tariff</b></p> <p>Where, Average Generation per hour during the month (kWh) = <math>\frac{\text{Total generation in the month (kWh)}}{\text{Total hours of generation in the month}}</math></p>

The Generation Compensation as calculated above will be limited to the extent of shortfall in annual generation corresponding to the maximum CUF permitted as per Article 2.11.3 and the same will be settled on annual basis. No trading margin shall be applicable on the Generation Compensation provided as per Article 2.13.1 only.

The Generation Compensation is to be paid as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA)/SEA/JMR.

No compensation shall be payable, however, if the backdown/ curtailment is on account of considerations of grid security/ safety. Such a backdown will be recorded and reported to RLDC/ NLDC. RLDC/ NLDC will examine the issue of grid safety/ security and give a finding that the issue of grid safety existed.

It is hereby clarified that for the purpose of Article 2.13 “generation” shall mean scheduled/actual energy as applicable based on Energy Accounts.

### ***Article 3: EVENTS OF DEFAULT AND TERMINATION***

#### ***3.1 Buying Entity Event of Default***

3.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a Buying Entity Event of Default:

- (i) Any amount subject to Article remains outstanding beyond a period of ninety (90) days after the Due Date and SECI is unable to recover the amount outstanding from the Buying Entity through the Letter of Credit, Payment Security Fund and; or
- (ii) The Buying Entity fails to evacuate power from the Delivery Points for a continuous period of one year.
- (iii) if (a) the Buying Entity 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 Buying Entity, or (c) the Buying Entity 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 Buying Entity will not be a Buying Entity 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 Buying Entity and expressly assumes all obligations of the Buying Entity under this Agreement and is in a position to perform them; or

- (iv) the Buying Entity 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

- (v) except where due to any Buying Entity's failure to comply with its material obligations, the Buying Entity is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the Buying Entity within thirty (30) days of receipt of first notice in this regard given by SECI.
- (vi) Occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Buying Entity.

### **3.2 *Procedure for cases of Buying Entity Event of Default***

- 3.2.1 Upon the occurrence and continuation of any Buying Entity Event of Default under Article 3.1, SECI shall have the right to deliver to the Buying Entity 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.
- 3.2.2 Following the issue of SECI Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 3.2.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 3.2.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the SECI may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Buying Entity.
- 3.2.5 Subject to the occurrence and continuation of default by as contained under Article 3.1 and before expiry of time period of 30 days as per Clause 3.2.4,
- 3.2.6 Subject to the prior consent of the SECI, the Buying Entity shall novate its part of the PSA to any third party, including its Affiliates within the period of 210 days beyond the period as per 3.2.4,

3.2.7 In the event the aforesaid novation is not acceptable to SECI, or if no offer of novation is made by the defaulting Buying Entity, then SECI on expiry of 30 days as provided in article 3.2.4 may terminate the PSA and at its discretion require the defaulting Buying Entity to either.

(i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 110% (one hundred and ten per cent) of the adjusted equity to HPD less Insurance Cover, if any as per PPA, or

(ii) pay to the HPD, damages, amount equivalent to the last 6 (six) months average billing, or balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the HPD.

### **3.3 Termination due to Force Majeure**

If the Force Majeure Event or its effects continue to be present beyond a period of twelve (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 without any further liability to either Party from the date of such termination.

### **3.4. Termination of back to back agreements**

In case of termination of SECI-HPD PPA, this Agreement shall automatically terminate, Provided that in case of such termination as identified in this Article any pending monetary liabilities of either Party shall survive on the termination of this Agreement. In the event of termination of PPA/PSA, any damages or charges payable to the STU/ CTU, for the connectivity of the plant, shall be borne by the Buying Entity.

## ***ARTICLE 4: MISCELLANEOUS PROVISIONS***

### **4.1 Amendment**

4.1.1 This Agreement may only be amended or supplemented by a written agreement between the Parties, with the approval of the Appropriate Commission, if necessary. Subject to the provisions of the RfS Document and keep this Agreement as principle

Agreement, both Parties may execute further Agreement on similar terms and conditions.

#### **4.2 Third Party Beneficiaries**

4.2.1 This Agreement is solely for the benefit of the Parties, HPD 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.

#### **4.3 Waiver**

4.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorized representative of such Party:

4.3.2 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.

#### **4.4 Confidentiality**

4.4.1 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.

#### **4.5 Severability**

4.5.1 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.

#### **4.6 Notices**

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

- 4.6.2 If to the Buying entity, 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.:

- 4.6.3 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 below:

Name:

Designation:

Address: Solar Energy Corporation of  
India Limited, 1<sup>st</sup> Floor, A-Wing,  
D-3, District Centre, Saket,  
New Delhi-110017

Email:

Fax. No:

Telephone No

#### **4.7 Compliance with Law**

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

- 4.8 The duly executed Power Purchase Agreement between SECI and HPD shall be attached to this Agreement and shall be read along with Agreement as a composite back to back process for Generation and supply of electricity to Buying Entity to fulfill the Renewable Purchase Obligations under the provisions of the Electricity Act, 2003 and the Regulations notified thereunder.

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of  
[SECI ]

For and on behalf of  
[.....]

\_\_\_\_\_  
Signature with seal

1. Witness

2. Witness

**SCHEDULE A**

1. PPA

## SCHEDULE B

Energy committed by the HPDs as per their covering letters and subsequent mails- _____ MW Wind-Solar Hybrid Power Projects					
HPD	Project Capacity (MW)	Energy (MUs)			Rate(Rs/kWh)
		Declared	Min. (-10%) from COD till 25 years of PPA	Max. (+20%) from COD till 25 years of PPA	
	<b>Total (MUs)</b>				

## SCHEDULE C: Billing Methodology

### AMOUNT REALISATION FOR SALE OF HYBRID POWER

- The billing to Buying Entity shall be done by SECI for realization of amount for hybrid Power.
- The payments to be made by Buying Entity to SECI for the Hybrid Power in a Monthly Invoice shall comprise of amounts to be realized for Hybrid Power.
- The Bills shall be raised by SECI to Buying Entity as mentioned under:

#### 1. Provisional Billing for Hybrid Power for the applicable month-

(a)Provisional Amount for hybrid power based on previous month invoice

$$A_p = (E_p \times T_p)$$

Where,

$A_p$  = Provisional Billing amount (in Rs.) for Hybrid Power for the applicable Month;

$E_p$  = No. of units (kWh) as per the SEA/JMR

$T_p$  = tariff (in Rs./kWh) of the respective Project as per Schedule B + Trading Margin of SECI @ Rs 0.07/kWh i.e Rupees Seven Paisa/kWh)

(b) Final billing will be computed through Credit/Debit note as applicable based on actual generation of plants for applicable month

**SCHEDULE D: “NO OBJECTION CERTIFICATE” FROM CORRESPONDING  
STU**

**SCHEDULE E: FORMAT of certificate from DISCOM(s) to generation projects  
based on solar and wind resources regarding waiver of transmission charges**

*[to be signed on official letterhead of the concerned Entity(ies) / DISCOM(s)]*

This is to certify that M/s .....(Name of generating company/trader such as SECI/PTC etc..) has entered into PPA/PSA dated.....with.....(name of entity purchasing power/DISCOM) for sale of .....MW power generated from wind/solar/hybrid generation power plant of M/s .....(Name of generating company) situated at.....(location) for compliance of Solar and/or Non-Solar Renewable Purchase Obligations (RPO).

(Signature & Stamp)  
Name of the Authorized Signatory :  
Designation :  
Name of the entity / DISCOM :