

**POWER SALE AGREEMENT**  
**FOR**  
**SALE OF [\_\_\_\_\_MW] of RTC Power ON LONG TERM BASIS**  
**Between**  
**Solar Energy Corporation of India Limited**  
**And**  
**[Insert the name of the Buying Entity]**

This Power Sale Agreement is made on the ..... day of ..... of 2022 at .....,

Between

Solar Energy Corporation of India Limited, a company incorporated under the Companies Act 1956, having its registered office at 6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai Nagar, New Delhi-110023 (hereinafter referred to as “SECI”, which expression shall, unless

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repugnant to the context or meaning thereof, be deemed to include its successors and permitted assignees) as a Party of the first part.

And

[Insert the name of the Buying Entity/Utility], a company incorporated under the Companies Act 1956, having its registered office at \_\_\_\_ (hereinafter referred to as **“Buying Entity” or “Buying Utility” or “\_\_\_\_\_”** 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 renewable energy in the country and has set an ambitious target to achieve 500 GW of non-fossil-based installed energy capacity by the year 2030.
- 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 power from any other source or storage (‘Non-RE Projects’), vide Gazette Resolution dated 22.07.2020, including subsequent amendments and clarifications thereto, 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 RE 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 2250 MW of the power generated from the ISTS-connected RE Power Projects complemented / balanced with power from any other source or storage (non-RE Projects) 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, if any;
- E. SECI has signed/will sign Power Purchase Agreements (PPAs) with the RE Power Developers (RPD) selected under the RfS mentioned herein below (hereinafter referred to as “RPDs”) for procurement of \_\_\_\_\_ MW of contracted capacity of RE Power

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complemented / balanced with non-RE power, 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 RE Power complemented / balanced with non-RE power from the SECI under the above RfS and accordingly, SECI has agreed to sign PPAs with RPDs for procurement of \_\_\_\_\_MW RE Power complemented / balanced with non-RE power ensuring RTC supply on a long-term basis, as indicated at Schedule-B of PSA. Copy of the PPA(s) shall be submitted by SECI 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. Subject to the terms and conditions contained herein, SECI hereby agrees to sell and make available the electricity procured by SECI from the RPD on the terms and conditions contained in the PPA to be entered into between SECI and the RPD, as per the initialed PPA (Schedule "A") on a back to back basis, to Buying Entity.
- H. Buying Entity hereby acknowledge(s) and accept(s) that SECI is only an Intermediary Company and is facilitating the purchase and resale of electricity generated from the RE Power complemented / balanced with non-RE power ensuring RTC supply and, therefore, cannot assume independently, any obligation, financial or otherwise, either to the RPD or to Buying Entity(ies), (unless otherwise specifically provided in the PPA or the PSA as the case may be), except on a back to back basis, namely, that whatever obligation is enforced by the RPD under the PPA against SECI, Buying Entity shall be bound to fulfil the obligation on a back to back basis towards SECI and similarly, whatever rights that Buying Entity(ies) may claim under this Agreement against SECI, shall be subject to due enforcement of the corresponding rights on a back to back basis by SECI against RPD, without an independent obligation on the part of SECI.
- I. 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 under abovementioned RfS Documents. 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

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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.

- J. 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.
- K. The Buying Entity shall be responsible to for directly coordinating and dealing with the RPD, State Load Dispatch Centers, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and despatch of RE Power complemented / balanced with non-RE power ensuring RTC supply 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 intermediary procurers/ trading licensee is not a Grid connected entity in respect of the Power contracted under this Agreement.

**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:**

**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>i. 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 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 Sale Agreement” or “PSA”	shall mean this Power Sale 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 of the SECI-RPD PPA to ensure the RTC supply of the declared availability of the total quantum of power in MW, as per provisions of the SECI-RPD PPA.</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>
“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 SECI and Buying Entity, a day other than Saturday, Sunday or a statutory holiday, on which the banks remain open for business in _____ and Delhi and [insert name of State where Buying Entity 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 8 of this Agreement;
“Commissioning”	The 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 of the SECI-RPD PPA) 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 the SECI-RPD PPA) 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 of the SECI-RPD PPA) for RTC supply as per provisions of SECI-RPD PPA. 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 SECI-RPD PPA 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 SECI Preliminary Default Notice or Buying Entity Preliminary Default Notice as provided in Article 9 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
“Contract Year”	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: <ul style="list-style-type: none"> <li>(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</li> <li>(ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement</li> </ul>
“Contracted Capacity”	shall mean ..... [Insert capacity] MW, which is the AC capacity contracted with Buying Entity for supply of power by the SECI to Buying Entity at the Delivery Point.
“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”	shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date: <ul style="list-style-type: none"> <li>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;</li> <li>ii. All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in subclause (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.</li> </ul>

	<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 Substation 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(s) 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 of SECI-RPD PPA) shall mean the interconnection point at ISTS network, as detailed under Appendix-A of SECI-RPD PPA.</p> <p>Pursuant to Article 4.2.6 of the PPA, 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 SECI-RPD PPA 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 Buying Entity, 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 12 of this Agreement.
“Due Date”	Due Date shall mean the thirty (30 <sup>th</sup> ) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill from the date of presentation of bill through e-mail and duly acknowledged by the Buying Entity 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 Buying Entity.
“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;
“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 9 of this Agreement;
“Expiry Date”	Shall mean the date occurring twenty-five (25) years from the Scheduled Commissioning Date or the date of commissioning of full project capacity, whichever is later, unless extended by the Parties as per this Agreement;
“Force Majeure” or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 7 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 any other source or storage 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, Buying Entity 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;
“Interconnection Facilities”	shall mean the facilities on RPD’s side and/or the power generator(s) of any other source (as under Appendix-A of SECI-RPD PPA), as the case may be, of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with the SECI-RPD PPA 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 of the SECI-RPD PPA, the Metering System required for supply of power as per the terms of the SECI-RPD PPA;
“Intermediary agency” or “Intermediary nodal agency” or “Intermediary Procurer” or “SECI”	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 6.3 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 6.5 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 6.5 of this Agreement;
“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).
“RE Project” or “Project” or “Project Capacity”	shall mean as defined in SECI-RPD PPA.
“Peak Hours”	shall mean the four hours of scheduling hours of a Day as declared by RLDCs of the respective Buying Entity(ies) as per the relevant CERC regulation.
“Power Purchase Agreement” or “PPA”	shall mean the back to back power purchase agreement entered between the SECI and RPD for procurement of power by SECI from RPD and annexed hereto as Schedule – A of this Agreement;
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 9 of this Agreement;
“RBI”	shall mean the Reserve Bank of India;
“RE Power”	shall mean the power generated from an RE Project;
“Rebate”	shall have the same meaning as ascribed thereto in Article 6.4 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 Non-RE 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 as defined in SECI-RPD PPA;
“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;
“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 5 of this Agreement;

“Tariff Payment”	shall mean the payments to be made under Monthly Bills as referred to in Article 6 and the relevant Supplementary Bills;
“Termination Notice”	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 9 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 of the SECI-RPD PPA, to supply Power to the RTC-PG for complementing / balancing RE power under the SECI-RPD PPA for ensuring RTC supply as per SECI-RPD PPA;
“Unit/ Part Commissioning”	<p>Subject to the compliance of conditions / procedure as detailed under “Schedule-3-Commissioning Procedure” of SECI-RPD PPA, Unit / Part Commissioning shall mean the part Contracted Capacity (AC MW) not less than 100 MW to be commissioned as per provisions of SECI-RPD PPA and RfS document.</p> <p><b>Illustration:</b></p> <ul style="list-style-type: none"> <li>• Contracted Capacity 200 MW</li> <li>• RTC Configuration: Solar 400 MW, Wind-200 MW and Any other source: 50 MW</li> </ul> <p>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</p>
“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 the SECI-RPD PPA 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

- 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 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 Purchase Agreement shall be read in conjunction with each other and interpreted in harmonious manner.

## **ARTICLE 2. TERM OF AGREEMENT**

### **2.1 Effective Date**

- 2.1.1 This Agreement shall come into effect from date of signing of this Agreement by both the parties and such date shall be the Effective Date for the purpose of this Agreement.
- 2.1.2 SECI/Buying Entity as the case may be, shall obtain the order of the Appropriate Commission adopting the tariff and approving the procurement of the Contracted Capacity on the terms and conditions contained in this agreement entered into between SECI and Buying Entity read with the terms and conditions contained in the PPA to be entered into between SECI and the RPD. The Trading Margin shall be applicable as per Article 5 of the PSA.
- 2.1.3 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 Purchase Agreement between SECI and the RPD for the entire contracted capacity on the back to back basis with the terms of this Agreement.
- 2.1.4 The parties acknowledge and agree that the Scheduled Commercial Operation Date for the RE Project along with thermal component (if applicable) has been agreed to in SECI-RPD PPA based on each of the Conditions Precedent contained in Article 2.1.3 of the SECI-RPD PPA 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. Provided further that in case, the order of adoption of Tariff and/or procurement approval from CERC and/or SERC as required above is not received or delayed, either Party shall not be liable for payment of any compensation to other Party for any loss or damage on account of such delay in availability or non-availability of

the approval of CERC/SERC, as the case may be.

## **2.2 Expiry and 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, for which interested Party shall issue notice for such intension at least one hundred eighty (180) days prior to the Expiry Date or otherwise as may be mutually agreed 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/Buying Entity, SECI/Buying Entity as the case may be shall not be obligated to procure power beyond the Expiry Date.

## **2.3 Timeline of project implementation**

2.3.1 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee/ Payment on Order Instrument 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 under the SECI-RPD PPA 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 under the SECI-RPD PPA.

## **2.4 Early Termination**

2.4.1 This Agreement shall terminate before the Expiry Date

- a) if either SECI or RPD terminates the Agreement, pursuant to Article 9 of this Agreement or
- b) If any SECI-RPD PPA gets terminated or modified for a reduced capacity during the Term of this Agreement, the Contracted Capacity under this

Agreement shall automatically be reduced but only to the extent of that particular SECI-RPD PPA capacity.

## **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 7 (Force Majeure), Article 9 (Events of Default and Termination), Article 10 (Liability and Indemnification), Article 12 (Governing Law and Dispute Resolution), Article 13 (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. SUPPLY OF POWER TO BUYING ENTITY**

#### **3.1 Obligations of Buying Entity:**

##### **3.1.1 Buying Entity undertakes that it shall :-**

- (a) Ensure off take of the available capacity from SCD or date of full commissioning of the project capacity, whichever is later.
- (b) Ensure availability of the interconnection facility and evacuation of power from the CTU/STU interface of Buying Entity's state periphery from the Commercial Operation Date of the Project.
- (c) be responsible for payment of the transmission related charges, losses and applicable RLDC/SLDC Charges, limited to the charges applicable to the Contracted Capacity of Buying Entity under this Agreement, as determined by CERC from time to time.
- (d) Make payment of the Monthly Bill/Supplementary Bill by the Due Date.
- (e) Open and maintain Payment Security Mechanism as per Article 6.5 for the entire Term of the Agreement.
- (f) apply for required consent/NOC from STU/SLDC/concerned agencies for availing long term access/scheduling of the power as per applicable regulations, within 30 days of acceptance of such application from the RPD.
- (g) File petition before SERC seeking necessary approval for procurement of Contracted Capacity under this PSA within 30 days from receipt of PPAs annexed to this Agreement.
- (h) be responsible for obtaining Grid Access as per the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 at its own risk and cost.
- (i) Fulfill all the obligations undertaken by Buying Entity under this Agreement.

**3.1.2 Obligations of SECI:**

- (a) SECI shall make efforts to sign PPA with selected RPDs within 30 days from signing of the PSA with Buying Entity(ies) and copy of the same shall be submitted to Buying Entity(ies) within 30 days of signing.
- (b) SECI shall approach the Appropriate Commission with all requisite documents for adoption of tariff in terms of Section 63 of the Act, within one month of signing of all the PPAs or PSAs, whichever is later.

**3.2 Charges:**

- 3.2.1 As per applicable regulation(s) of the Appropriate Commission(s), all charges as determined by Appropriate Commission from time to time pertaining to open access, CTU charges, scheduling charges (if any) and any other charges beyond Delivery Point to the receiving substation(s) of Buying Entity if any, shall be directly paid or reimbursed by Buying Entity. Invoicing for all transmission related charges shall be done through Supplementary Bills.
- 3.2.2 SECI shall neither be liable for obtaining the open access nor for any payments to be made for such open access to the concerned STU/ CTU by Buying Entity.

**3.3 Losses:**

- 3.3.1 Buying Entity shall be liable to bear all the transmission losses as determined by Appropriate Commission from time to time in respect of the power evacuated beyond the Delivery Points to its receiving substation(s). SECI shall bear no liability with respect to transmission charges and losses levied, if any.
- 3.3.2 ISTS charges and losses on transmission of power, including waiver for RE power, shall be applicable as per extant regulations. Government of India/CERC at their sole discretion, from time to time, issue order for waiver of inter-state transmission system (ISTS) charges and losses on transmission of wind and 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.

In case of any extension in SCD beyond 30.06.2025, decision on such extension requests will be taken by MNRE, in line with the OM issued by Ministry of Power vide No. 23/12/2016- R&R dated 30.11.2021, and subsequent amendments/clarifications thereto, read in conjunction with CERC's orders and regulations notified in this regard. The provisions of PPA and PSA in regard to liability of the Buying Entity to pay the ISTS charges and losses shall stand modified by such exemption/waiver provided as per the above Order/Office Memoranda and regulations issued by CERC, as applicable.

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.

It is further clarified that even in a scenario wherein the RE Project components are ready for commissioning but commissioning of the non-RE component gets delayed for reasons solely attributable to the RPD, and as a result, in case commissioning of the Project in terms of the RfS and PPA gets delayed beyond the ISTS-waiver deadline, such ISTS charges and losses for the transmission of RE power, if any, will be levied on the RPD.

Treatment of power supplied from the ESS component, with respect to waiver of ISTS charges and losses, shall be governed by the applicable Rules/Orders issued by Ministry of Power/MNRE, read in conjunction with CERC's Orders and Regulations notified in this regard. Further, it is clarified that in case commissioning of the ESS 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 will be borne by the RPD.

## **ARTICLE 4. METERING, ENERGY ACCOUNTING AND SCHEDULING**

### **4.1 Metering**

- 4.1.1 The metering arrangements for metering the electrical energy supplied at the Delivery Point and the Delivery Point shall be as per the provisions identified in the SECI-RPD PPA respectively. The metering arrangement shall comply with the norms of SERC / CERC/ CEA as applicable.
- 4.1.2 The energy details obtained from Energy Accounts issued by the RPC of the Buying Entity shall be provided to Buying Entity by SECI along with Monthly Bill validating the total energy for which the Monthly Bill is generated.
- 4.1.3 Energy Accounts shall be binding on both the Parties for billing and payment purposes.

### **4.2 Energy Accounting and Scheduling**

- 4.2.1 The scheduling and energy accounting of Power shall be as per the provisions of the SECI-RPD PPA and Grid Code.
- 4.2.2 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 Non-RE component including Thermal component, the DSM as per respective regulations shall be applicable. Deviation Settlement Mechanism (DSM) charges on this account shall be directly paid by the RPD.
- 4.2.3 The RPD shall be responsible for any deviation related to scheduling and actual generation.
- 4.2.4 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/Buying Entity. SECI/Buying Entity may facilitate in identification of any discrepancy and assist the RPD for its early rectification without any liability on Buying Entity/SECI. The RPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.



**Article 5. APPLICABLE TARIFF**

5.1 The Tariff applicable for the sale of Power by SECI to the Buying Entity under this Agreement shall be the Tariff as applicable for payment by SECI to RPD under the terms of the Power Purchase Agreement between SECI and the RPD (Individual RPDs tariff as per schedule B) 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.

5.2 As per provisions of the PPA, the RPDs are permitted for full as well as part commissioning of the Project even prior to the SCD. In case of early part/full commissioning of the Project(s) prior to SCD, Buying Entity shall have the first right of refusal and Buying Entity may purchase the power at the Applicable tariff as per the PPA, plus SECI's Trading Margin of Rs 0.07/kWh, (Seven Paise per kWh)]. Subsequent 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.

However, energy procurement from the Project upon early part/ full commissioning of the Project shall be subject to the approval of the Buying Entity. Such intimation regarding consent to procure energy from early commissioning shall be provided by the Buying Entity within 15 days of receipt of the request being made by SECI, beyond which, it would be considered as deemed refusal on part of the Buying Entity.

5.3 In case of Project components being located at multiple locations, and in case one of the Project components (wind or solar PV) is ready for injection of power into the grid, but the remaining component is unable to get commissioned, the RPD will be allowed for commissioning of such component which is ready outside the ambit of the SECI-RPD PPA, and the RPD at its sole discretion, may sell such power to any third party till the operationalization of GNA. Following should be noted under this scenario:

- a) First right of refusal for such power shall vest with Buying Entity, and if agreed by Buying Entity, power procurement from such component will be undertaken at 50% of the Applicable Tariff as per the SECI-RPD PPA. In case the same is procured through SECI, trading margin of 7 paise/unit will be applicable on such power procurement.
- b) Subsequent to refusal of such power by the Buying Entity, the second right to refusal shall vest with SECI. In this case if SECI buys it outside the PPA then the

same shall be bought at 50% of the Applicable Tariff as per PPA. Trading margin of 7 paise/unit will be applicable on such power procurement.

- c) The above scenario does not qualify under the provisions of Part/Early Commissioning under the RfS, PPA and PSA. This is a special case wherein in case a project component is ready, the generation from such component is not wasted.
- d) The terms “COD” and “commissioning” as per the RfS, PPA and PSA will not be applicable for such component. Commissioning/injection of power from such component will be allowed only if the same is allowed as per the applicable regulations.

The above scenario will be applicable until the RPD is ready to commission the Project as per the provisions of “Early and/or Part Commissioning” of the Project.

## **Article 6. BILLING AND PAYMENT**

### **6.1 General**

6.1.1 The Parties acknowledge and accept that the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified vide G.S.R 416(E) on 03.06.2022 by the Central Government in exercise of the power conferred by Sub-section (1) of Section 176 of the Electricity Act, 2003 shall apply and govern the terms and conditions of this Agreement in regard to matters contained in the said Rules including but not limited to the Late Payment Surcharge, adjustment towards the Late Payment Surcharge, Payment Security mechanism-its operations and consequences, actions of Defaulting Entities, supply obligation of RPD, power not requisitioned by the Buying Entity, the order of payment and adjustment towards late payment surcharge and indemnification. In case of any inconsistency in the Guidelines and/or the provisions of this Agreement, with the provisions of the above Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 will supersede and be applicable and govern the terms and conditions of this Agreement. The above shall apply both in regard to the present agreement as well as on mutatis mutandi and back to back basis to the PPA. The Rules referred to hereinabove being statutory shall, to the extent applicable, supersede any provisions in the PPA and PSA which are inconsistent or contrary to the provisions of the Rules.

6.1.2 The Parties acknowledge and accept that the Electricity (Promotion of Generation of Electricity from Must-Run Power Plants) Rules, 2021 notified vide G.S.R. 752(E) dated 22.10.2021 by the Central Government in exercise of the power conferred by Sub-section (1) of Section 176 of the Electricity Act, 2003 shall apply in regard to the Must-Run Power Plants forming part of this Agreement, including in regard to curtailment, the regulation of power supply and sale of power to the power exchange and consequential adjustment of the recoveries. In case of any inconsistency in the Guidelines and/or the provisions of this Agreement, with the provisions of the above Electricity (Promotion of Generation of Electricity from Must-Run Power Plants) Rules, 2021, the Electricity (Promotion of Generation of Electricity from Must-Run Power Plants) Rules, 2021 will supersede and be applicable and govern the terms and conditions of this Agreement. The above shall apply both in regard to the present

agreement as well as on mutatis mutandi and back to back basis to the PPA. The Rules referred to hereinabove being statutory shall, to the extent applicable, supersede any provisions in this Agreement and the PSA which are inconsistent or contrary to the provisions of the Rules.

- 6.1.3 Subject to the above, 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 5. All Tariff Payments by the Buying Entity shall be in Indian Rupees.
- 6.1.4 SECI shall issue to the Buying Entity a signed Monthly Bill every month, either through e-mail or any other means on any business day of the month, prepared based on provisional energy of the preceding month (except for first month which shall be computed based on the quantum of power offered and energy supplied with minimum availability of 90% and RE energy of 51%). However, hard copy of the bill will also be sent by SECI to the Buying Entity, afterwards. The monthly bill shall also include the following:
- i) Monthly bill may be raised based on the provisional REA, the final adjustments in bill if any may be done on the basis of the final REA along with Debit/Credit Note.
  - ii) Late Payment Surcharge if any
  - iii) Taxes, duties Levies etc, as applicable

Final billing may be done based on published REA.

## **6.2. Payment of Monthly Bills**

- 6.2.1 The Buying Entity shall pay the amount payable under the Monthly Bill/Supplementary Bill on or before the Due Date i.e. within 30 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 6.2.2 below.
- 6.2.2. 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's Designated Account) for payments to be made by SECI to Buying Entity, if any. 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'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.

### **6.3 Late Payment Surcharge**

Subject to Article 6.1, In the event of payment of a Monthly Bill by the Buying Entity beyond the Due Date, a Late Payment Surcharge (LPS) shall be payable by the Buying Entity to SECI on the outstanding payment, at the base rate of Late Payment Surcharge applicable for the period for the first month of default. The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent (50 bps) for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time.

“Base rate of Late Payment Surcharge” means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1<sup>st</sup> April of the financial year in which the period lies, plus five percent and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify. Provided, that if the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years.

The Late Payment Surcharge shall be claimed by SECI through the Supplementary Bill. All payments by the Buying Entity to SECI for power procured from it shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.

**Order of payment and adjustment towards Late Payment Surcharge** - All the bills payable by the Buying Entity to SECI for the energy procured from it, shall be time tagged with respect to the date and time of submission of the bill and the payment made by the Buying Entity shall be adjusted first against the oldest bill and then to the

second oldest bill and so on, so as to ensure that payment against a bill is not adjusted unless and until all bills older than it have been paid for.

#### **6.4 Rebate**

For payment of any Bill including Supplementary 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 5 days of the date of presentation of bills through e-mail.
- b) Any payments made beyond a period of 5 days upto and including the 20<sup>th</sup> Day from the date of presentation of bills through email, shall be allowed a rebate of 1%.
- c) No Rebate shall be payable on the Bills raised on account of Change in Law, taxes, duties, cess etc., Late Payment Surcharge and transmission & scheduling related charges, RLDC/SLDC charges, CTU/STU charges, open access charges etc.
- d) The bill receipt date shall be considered as zero date.

Illustration – For the invoice received on the 1<sup>st</sup> January, the Due Date shall be the 31<sup>st</sup> January considering the bill receipt date as zero date and 30<sup>th</sup> day as the Invoice Due Date.

#### **6.5 Payment Security Mechanism**

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

- 6.5.1 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.
- 6.5.2 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 renewed annually for an amount equal to:

- i) for the first Contract Year, equal to 110% of the estimated average monthly billing;
- ii) for each subsequent Contract Year, equal to 110% of the average of the monthly billing of the previous Contract Year.

6.5.3 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.

6.5.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 6.5.2 due to any reason whatsoever, the Buying Entity shall restore such shortfall within seven (7) days of receipt of such information from SECI.

6.5.5 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.

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

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

6.5.8 If the Buying Entity fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 6.5.3 and 6.9, 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 as per the provision of this PSA;

**(B) 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 RPD(s), to the extent the payments to the RPD(s) in terms of the PPA are due. Provided that in cases where the Buying Entity is neither covered by the TPA nor is able to provide the State Government Guarantee, the Buying Entity shall pay to SECI an additional risk premium of Rs. 0.10/kWh which shall be credited to the payment security fund maintained by the SECI, in addition to Letter of Credit to be maintained by the Buying Entity as per Article 6.5.2 above.

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

**(C) Payment Security Fund**

In addition to provisions contained in Article 6.5 above, the Buying Entity may also choose to 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.

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.

**6.6 Third Party Sales by SECI**

- 6.6.1 Notwithstanding anything to the contrary contained in this Agreement, SECI shall be entitled to but not obligated to regulate supply of Power of the Buying Entity in case of Default in making payment by the 30<sup>th</sup> day after the Due Date of the Buying Entity. 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.



6.6.2 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.

6.6.3 In order to avoid any doubts, it is illustrated that:

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 power to third parties to the extent of 40% (i.e.  $10/25 \times 100$ ). SECI/RPD shall have the right to divert the Power or part thereof and sell it to any third party namely;

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

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 Power as per Schedule-A & B of this Agreement and any other outstanding payment liability of Buying Entity as per this Agreement.

6.6.4 The gains from the diversion and sale of such power to third party, which shall be the difference between selling price of such power in the power exchange and the expense borne for such power sale including energy charges, transmission charges; other incidental charges and shall be adjusted in accordance with Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 and subsequent amendments thereof and the deficit if any shall be made good by the Buying Entity.

6.6.5 Sale to any third party shall cease and regular supply of electricity to the Buying Utility shall commence and be restored within five (5) days from the date of clearing all outstanding dues payable to SECI for the Power under this Agreement.

6.6.6 Further, the liability of the Buying Entity 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 RPD for usage by the Buying Entity.

## **6.7 Disputed Bill**

6.7.1 If the Buying Entity does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party within fifteen (15) days of receiving such Bill shall be taken as conclusive and binding.

- 6.7.2 If Buying Entity disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay undisputed 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.
- 6.7.3 If the SECI agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.7.2, the SECI shall make appropriate adjustment in the next Monthly Bill. In such a case excess amount shall be refunded by SECI to Buying Entity 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 Entity and up to and including the date on which such payment has been received as refund. Similarly, in case, an amount becomes payable by the Buying Entity to SECI from the disputed amount in the invoice after the dispute is resolved, then the same shall be paid along with interest at the same rate as Late Payment Surcharge, which shall be applied from the Due Date.
- 6.7.4 If the SECI does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.7.2 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.
- 6.7.5 Upon receipt of the Bill Disagreement Notice by the Buying entity under Article 6.7.4, 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.
- 6.7.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 6.7.4, the matter shall be referred to Dispute resolution in accordance with governing Laws and Dispute resolution in PSA.

- 6.7.7 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 undisputed invoice amount in the Monthly Bill.

#### **6.8 Quarterly and Annual Reconciliation**

- 6.8.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation and adjustment, if any, within thirty (30) days of the end of the quarter at the beginning of the following 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.

- 6.8.2 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., 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 from 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 12.

#### **6.9 Renewable Purchase Obligation**

- 6.9.1 The Buying Utility may identify the energy procured from the RPD Delivery Point to meet its renewable purchase obligations (as mandated by the Appropriate Commission).
- 6.9.2 SECI shall provide such certificate identifying the quantum of RE energy (Solar & Wind & ESS component charged with RE sources) supplied by SECI and being met by the Buying Utility for each Contract Year not later than 30 days of the reconciliation for such Contract Year.

- 6.9.3 The provisions of Article 4.4 of the PPA shall be applicable mutatis mutanda to this Agreement.
- 6.9.4 The compensation as per Article 4.4.3 of the PPA shall be applied to the amount of shortfall in generation, annual availability along with monthly availability for at least 11 months in a Contract Year, annual peak hour availability and/or the shortfall in RE power during any Contract Year. SECI shall pass such compensation recovered from RPD under the SECI-RPD PPA to Buying Entity not later than 15 days of receipt of the same from RPD under the SECI-RPD PPA. However, this compensation shall not be applicable in events of Force Majeure identified under this Agreement affecting supply of power by SECI/RPD, Grid Non-Availability beyond control of the RPD (as applicable).

#### **6.10 Payment of Supplementary Bill**

6.10.1 SECI may raise a “Supplementary Bill” for payment on account of:

- i) Change in Law as provided in Article 8 of PSA, or
- ii) Any subsequent revision in energy account by concerned RLDC/SLDC, as applicable, or
- iii) Payment under Article 6.11 and other charges, if any.

and such Supplementary Bill shall be paid by the Buying Entity.

6.10.2 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.

6.10.3 In the event of delay in payment of a Supplementary Bill by Buying Entity beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 6.3.

#### **6.11 Offtake constraints due to Transmission Infrastructure /Grid Unavailability & Backdown**

6.11.1 Generation Compensation in offtake constraints due to Grid Unavailability: During the operation of the Project, 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 as under, and there shall be no other claim, directly or indirectly against SECI:

<b>Duration of Grid unavailability</b>	<b>Provision for Generation Compensation</b>
Grid unavailability beyond 175 hours in a Contract Year, as defined in SECI-RPD PPA	$\text{Generation Compensation} = ((\text{RE Tariff} \times \text{RE power (MW) offered but not scheduled by Procurer}) + (\text{Non-RE Fixed Charge} \times \text{power from other source (MW) offered but not scheduled by Procurer})) \times 1000 \times \text{No. of hours of grid unavailability}$

The above compensation will be paid to the RPD on an annual basis.

#### 6.11.2 [Void].

**6.11.3 Payment in case of reduced offtake:** The RPD and the Buying Utility 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 Buying Entity, 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, if any, the RPD shall be eligible for payment from the Procurer, 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 Procurer.

<b>Reduced offtake</b>	<b>Provision for Generation Compensation</b>
	<p><b>Generation Compensation =</b></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 Buying Entity)) X 1000 X No. of hours of Reduced Offtake</i></p> <p>However, any amount realized by the RPD, by third party sale or sale in the power exchange as price taker for RE power or sale in the power exchange for non-RE power of such power which was offered but not scheduled, shall be shared with the Buying Entity 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><b>(a) For RE Power:</b> 95% of realization after deducting actual expenses, if any, in such sale</p> <p><b>(b) For Non-RE Power:</b></p> <ol style="list-style-type: none"> <li>i. In case of no outstanding payment liability on SECI/Buying Entity as applicable - 95% of realization above variable Charges of Non-RE Tariff after deducting actual expenses, if any, in such sale.</li> <li>ii. In case of outstanding payment liability on SECI/Buying Entity as applicable-             <ol style="list-style-type: none"> <li>a. Payment to the RPD of upto 3 paise/unit.</li> <li>b. Recovery of fixed charges by the RPD.</li> <li>c. Liquidation of overdue amount</li> <li>d. The balance shall be shared in the ratio of 50:50 between SECI/Buying Entity and the RPD.</li> </ol> </li> </ol>

The Tariff shall be the Applicable Tariff as per Article 9 of PPA.

The RPD shall be eligible for payment from the Buying Entity, 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.

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. The Generation Compensation shall be paid as part of the energy bill for the successive month after receipt of Energy

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Accounts (REA). No Trading Margin shall be applicable on the Generation Compensation.

It is hereby clarified that for the purpose of Article 6.11 “generation” shall mean scheduled/actual energy as applicable based on Energy Accounts.

## **ARTICLE 7: FORCE MAJEURE**

### ***7.1 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 Buying Entity 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.

Provisions of Force Majeure provided in SECI-RPD PPA shall mutatis-mutandis apply to this Agreement and all associated obligations and liabilities shall be implemented on back to back basis. Further, in case Force Majeure provisions detailed hereunder are in conflict with SECI- RPD PPA provisions, the provisions detailed in the SECI-RPD PPA shall prevail.

### **7.2 Force Majeure Events:**

- 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 and only if it is declared / notified by the competent state / central authority / agency (as applicable);
- b) 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 if and only if it is declared / notified by the competent state / central authority / agency (as applicable); or
- c) 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.

- d) An event of Force Majeure identified under SECI-RPD PPA, thereby affecting delivery of power from RPD to Buying Entity(ies).

### **7.3 Force Majeure Exclusions**

7.3.1 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

7.3.2 Notwithstanding anything else contained in this Agreement, the non-availability of any other source component power from the Project of 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 of SECI-RPD PPA, be considered as a Force Majeure Event, excusing the obligation of the RPD. In such case also, the RPD is free to such 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.

#### **7.4      *Notification of Force Majeure Event***

- 7.4.1 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 15 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.
- 7.4.2 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.
- 7.4.3 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.

## **7.5 Performance Excused**

7.5.1 Subject to Article 7.3.2 & 7.4, the Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the PSA 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.

7.5.2 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.

## **7.6 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.

## **7.7 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 PSA. 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.

## **7.8 Duty to Perform and Duty to Mitigate**

To the extent not prevented by a Force Majeure Event pursuant to Article 7.2, the Affected Party shall continue to perform its obligations pursuant to this Agreement,

in line with provisions of Article 7.5. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

**7.9 Available Relief for a Force Majeure Event**

Subject to this Article 7:

- 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 of PPA;
- 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.

**7.10 Available Relief & Termination Due to Force Majeure Event**

- a) If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a 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 7.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the PSA, and the termination shall take effect from the date on which such decision is taken.
- b) Without prejudice to the provisions of Article 7.10.(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 PSA in its sole discretion by issuing a notice to that effect.
- c) On termination of the PSA pursuant to Article 7.10.(b):
  - i. no Termination Compensation shall be payable to the RPD/SECI.

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- ii. the SECI shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

## **ARTICLE 8: CHANGE IN LAW**

### **8.1 Definitions**

8.1.1 In this Article 8, the term “Change in Law” shall refer to the occurrence of any of the following events pertaining to this project only after the date of e-Reverse Auction (e-RA), including any enactment or amendment or repeal of any law, leading to corresponding changes in the cost requiring change in tariff, and includes-

- a) a change in interpretation of any law by a competent court or
- b) a change in any domestic tax, including duty, levy, cess, charge or surcharge by the Central Government, State Government or Union territory administration leading to corresponding changes in the cost,
- c) a change in any condition of an approval or license obtained or to be obtained for purchase, supply or transmission of electricity, unless specifically excluded in the agreement for the purchase, supply or transmission of electricity, which results in any change in the cost,

but does not include-

- a) Any change in any withholding tax on income or dividends distributed to the shareholders of the generating company or transmission licensee; or
- b) change in respect of deviation settlement charges or frequency intervals by an Appropriate Commission.

8.1.2 The term “law” in this Article includes any Act, Ordinance, order, bye-law, rule, regulation, notification, for the time being in force, in the territory of India.

### **8.2 Relief for Change in Law**

8.2.1 On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 notified by the Ministry of Power on 22.10.2021 (and subsequent amendments, if any) to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

8.2.2 For the purposes of 8.2.1 above, the affected party, which intends to adjust and recover the costs due to change in law, shall give a 21 days prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

- 8.2.3 The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of 21 days from the date of the notice referred to in 8.2.2 above, whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.
- 8.2.4 The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.
- 8.2.5 The amount of the impact of change in law to be adjusted and recovered, shall be calculated in accordance with the formula given here under to calculate adjustment in the monthly tariff due to impact of change in law, which is non-recurring in nature.

Let financial impact of change in law=P

Then the modification in the monthly tariff (MT) for compensating the financial impact is given by  $MT=(Y/X)$

Where X= estimated monthly electricity generation in kWh =  $(1/12) \times [\text{Contracted Capacity of the power plant as per the Agreement (in MW)} \times \text{Normative Plant Load Factor (PLF) or Availability factor* or Capacity Utilisation Factor (CUF) (in case of RE), as per the Agreement (in \%)} \times 8760 \text{ hours} \times 10]$ ;

(\*in case PLF and CUF is not provided, the availability factor mentioned in the agreement may be considered. However, it will be trued up with reference to the actual generation on annual basis.)

$$Y = \frac{(P \times M_r)(1 + M_r)^n}{(1 + M_r)^n - 1}$$

Where, -

n=No. of months over which the financial impact has to be paid (subject to maximum of 180 months in case of the non-recurring fixed amount but in case of recurring impact it will be till the impact persists);

$M_r$  =monthly rate of interest= $R/(12 \times 100)$  and

R = annual rate of interest on loan component (in %) as considered by the CERC in its order for Tariff Determination from Conventional or Renewable Energy Sources (Whichever is applicable) for the year in which the Project is commissioned. In absence of relevant orders of CERC for the concerned year, the interest rate shall be average interest rate plus 200 basis points above the average State Bank of India marginal cost of funds based leading rate, of one-year tenor, prevalent during the last available six months for such period.

Further, generating company or intermediary procurer or the trading licensee shall true up the MT annually based on actual generation of the year so as to ensure that the payment to the affected party is capped at the yearly annuity amount.

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*

- 8.2.6 The recovery of the impacted amount, in case of the fixed amount shall be,
- a. In case of generation project, within a period of one-hundred eighty months; or
  - b. In case of recurring impact, until the impact persists.
- 8.2.7 The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under clause 8.3.1.
- 8.2.8 After the adjustment of the amount of the impact in the monthly tariff or charges under clause 8.2.7, the RPD, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.
- 8.2.9 If 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 8.2 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 8.



### **8.3 Notification of Change in Law**

- 8.3.1 The RPD shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.
- 8.3.2 Any notice service pursuant to this Article 8.3.1, shall provide, amongst other things, precise details of the Change in Law and its effect on the Project Cost, supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.
- 8.3.3 “Project Cost” wherever applicable under this Article, shall mean the cost incurred by the RPD towards supply and services only for the Project concerned, upto the Actual Commissioning Date of the last part capacity or Scheduled Commissioning Date or extended Scheduled Commissioning Date, whichever is earlier. 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 the cost incurred by the RPD upto 01.04.2022.

## **ARTICLE 9: EVENTS OF DEFAULT AND TERMINATION**

### **9.1 Buying Entity Event of Default**

9.1.1 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 (with respect to a Monthly Bill or a Supplementary Bill) subject to Article 6.7 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;
- (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 SECI'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.

## **9.2 SECI Event of Default**

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

- i. SECI fails to supply power to the Delivery Points for a continuous period of one year.
- ii. if (a) the 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 thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the SECI, or (c) the SECI 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 SECI will not be a SECI's Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the SECI and expressly assumes all obligations of the SECI under this Agreement and is in a position to perform them; or
- iii. SECI repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Buying Entity in this regard; or
- iv. except where due to any Buying Entity's failure to comply with its material obligations, the SECI is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SECI within thirty (30) days of receipt of first notice in this regard given by the Buying Entity.
- v. Occurrence of any other event which is specified in this Agreement to be a material breach or default of SECI.

## **9.3 Procedure for cases of Event of Default**

- 9.3.1 Upon the occurrence and continuation of any Event of Default under Article 9.1 & 9.2, the Party affected by such occurrence, shall have the right to deliver to the other Party a notice, stating its intention to terminate this Agreement ( Preliminary Default

Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

- 9.3.2 Following the issue of 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.
- 9.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 9.3.4 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 affected party may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the other party.
- 9.3.5 Subject to the occurrence and continuation of default by as contained under Article 9.1 & 9.2 and before expiry of time period of 30 days as per Article 9.3.4 of this Agreement.
- 9.3.6 In case of Buying Entity's Event of Default, subject to the prior consent of 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 Article 9.3.4.
- 9.3.7 In the event the aforesaid novation is not acceptable to SECI, or if no offer of novation is made by the defaulting Buying Entity within the stipulated period as per Article 9.3.6, then SECI may terminate the PSA and at its discretion require the defaulting 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) to RPD less Insurance Cover, if any as per PPA, or

- (ii) pay to the RPD/SECI, 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 RPD.

9.3.8 In the event of occurrence of an RPD Event of Default under the SECI-RPD PPA, the RPD shall be liable to pay to SECI, liquidated damages, as provided in the PPA for failure to commission within stipulated time and failure to supply power in terms of the PPA. For other cases, the RPD shall be liable pay to SECI/Buying Entity, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity. SECI/Buying Entity shall have the right to recover the said damages by way of forfeiture of bank guarantee/ Payment on Order Instrument, if any, without prejudice to resorting to any other legal course or remedy.

9.3.9 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), failing which, the lenders may exercise their mortgage rights and liquidate the 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.

#### **9.4 Termination of back to back agreements**

In case of termination of SECI-RPD PPA, this Agreement shall automatically terminate, to the extent of particular SECI-RPD PPA. 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 on account of Event of Default by the Buying Entity, any damages or

charges payable to the STU/ CTU, for the connectivity of the plant, shall be borne by the Buying Entity.

#### **9.5 Specific Performance of the Agreement law**

- 9.5.1 The Parties acknowledge that a breach of the obligations contained herein would result in injuries. The parties hereby also agree that this Agreement is specifically enforceable at the instance of either Party.
- 9.5.2 Subject to Applicable Law and as granted by the court of appropriate jurisdiction, Parties acknowledge that either party shall be entitled to seek specific performance of this Agreement in the event of a breach of the obligations or the terms and conditions contained herein.
- 9.5.3 Further, Parties hereby agree that nothing mentioned herein under this Agreement shall be taken to mean or construe that any penalty or damages shall be adequate compensation for the breach of the obligations or the terms & conditions contained herein.

## **ARTICLE 10: LIABILITY AND INDEMNIFICATION**

### **10.1 Indemnity**

10.1.1 The Buying Entity shall indemnify, defend and hold SECI/RPD harmless against:

- a) any and all third party claims against SECI/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 the Buying Entity of any of its obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by SECI/RPD from third party claims arising by reason of a breach by the Buying Entity of any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by the Buying Entity, for which specific remedies have been provided for under this Agreement).

10.2.1 SECI shall cause the RPD to indemnify, defend and hold the Buying Entity harmless against:

- a) any and all third party claims against the Buying Entity, 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 RPD 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 Buying Entity from third party claims arising by reason of a breach by RPD of any of its obligations. SECI shall incorporate appropriate covenants in the PPA for the above obligations of RPD. In so far as indemnity to Buying Entity is concerned, RPD shall be the indemnifying party and not SECI.

### **10.2 Procedure for claiming Indemnity**

#### **10.2.1 Third Party Claims**

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 10.1.1(a) or 10.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 10.1.1(a) or 10.1.2(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) The parties choose to refer the dispute in accordance with Article 12.3; 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 10.1.1(a) or 10.1.2(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.

### **10.3 Indemnifiable Losses**

- 10.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 10.1.1(b) or 10.1.2(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 10.3, such event shall constitute a payment default under Article 9.



**10.4 Limitation on Liability**

10.4.1 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.

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

**10.5 Duty to Mitigate**

10.5.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 10.

## **ARTICLE 11: ASSIGNMENT AND CHARGES**

### **11.1 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 other than by mutual consent between the Parties to be evidenced in writing. Provided that, such consent shall not be withheld if SECI seeks to transfer to any affiliate all of its rights and obligations under this Agreement. 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.

### **11.2 Permitted Charges**

Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

## **ARTICLE 12: GOVERNING LAW AND DISPUTE RESOLUTION**

### **12.1 Governing Law**

12.1.1 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.

### **12.2 Amicable Settlement and Dispute Resolution**

#### **12.2.1 Amicable Settlement**

- i. SECI or the Buying Entity 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 12.2.1(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 12
  - (i) if the Noticee does not furnish any counter claim or defence under Article 12
  - (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 Buying Entity fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 12.2.1.
  - (iii) the Dispute shall be referred for dispute resolution in accordance with Article 12.3.

**12.3 Dispute Resolution**

**12.3.1 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.

**12.3.2 Not used**

**12.4 Parties to Perform Obligations**

- 12.4.1** 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 13: MISCELLANEOUS PROVISIONS**

### **13.1 Amendment**

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

### **13.2 Third Party Beneficiaries**

13.2.1 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.

### **13.3 Waiver**

13.3.1 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:

13.3.2 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.

### **13.4 Confidentiality**

13.4.1 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.

### **13.5 Severability**

13.5.1 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.

### 13.6 Notices

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

13.6.2 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. :

13.6.3 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, 6th Floor, Plate-B,  
NBCC Office Block Tower-2,  
East Kidwai Nagar, New Delhi-  
110023

Email:

Fax. No:

Telephone No

13.6.4 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.

13.6.5 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.

### **13.7 Languages**

13.7.1 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.

13.7.2 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.

### **13.8 Restriction of Shareholders / Owners' Liability**

13.8.1 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.

### **13.9 Taxes and Duties**

13.9.1 The Buying Entity shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Buying Entity, contractors or their employees that are required to be paid by the Buying Entity as per the Law in relation to the execution of the Agreement.

13.9.2 SECI shall be indemnified and held harmless by the Buying Entity against any claims that may be made against SECI in relation to the matters set out in Article 13.9.1.

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

### **13.10 No Consequential or Indirect Losses**

13.10.1 The liability of Buying Entity and SECI shall be limited to that explicitly provided in

this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall SECI or Buying Entity claim from one another any indirect or consequential losses or damages.

### **13.11 Order of priority in application**

13.11.1 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;

### **13.12 Independent Entity**

13.12.1 The Buying Entity shall be an independent entity performing its obligations pursuant to the Agreement.

13.12.2 Subject to the provisions of the Agreement, the Buying Entity/SECI shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Buying Entity in connection with the performance of the Agreement shall be under the complete control of the Buying Entity and shall not be deemed to be employees, representatives of SECI and nothing contained in the Agreement or in any agreement or contract awarded by the Buying Entity shall be construed to create any contractual relationship between any such employees, representatives or contractors and SECI.

### **13.13 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.



SECI-Buying Entity PSA

**13.14** The duly executed Power Purchase Agreement between SECI and RPD 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(ies), particularly, 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

1. Witness

## **SCHEDULE A**

PPA

## **SCHEDULE B**

(List of RE Power Developers)

## **SCHEDULE C: Billing Methodology**

### **AMOUNT REALISATION FOR SALE OF POWER**

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

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

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

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

Where,

A<sub>p</sub> = Provisional Billing amount (in Rs.) for Power for the applicable Month;

E<sub>p</sub> = No. of units (kWh) as per the REA/SEA/JMR

T<sub>p</sub> = 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 Final REA for applicable month