

Non-Disclosure Undertaking Format

(To be submitted by each bidder on its Letter Head)

Ref. No. _____

Date: _____

From (Receiving Party):

_____ (Insert name and address of Successful Bidder/ PPA entity)

Tel. #: Fax#:

E-mail address#

For (Disclosing Party):

_____ (Insert the name of the Client Organization under MHA)

Tel. #: Fax#:

E-mail address#

[To be filled at later stage]

To

Solar Energy Corporation of India Limited

6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar, New Delhi - 110 023

**Sub: Non-Disclosure Undertaking (“Undertaking”) from [insert name of the Successful Bidder]
 (“Receiving Party”)**

Dear Sir/ Madam,

1. We refer to RfS No. SECI/C&P/IPP/14/0005/22-23 dated: 23.09.2022 issued Solar Energy Corporation of India Limited, inviting bids for “Selection and Empanelment of Solar Power developers for setting up of Grid Connected Rooftop Solar PV Projects on Government buildings of Ministry of Home Affairs under RESCO mode through Tariff-Based Competitive Bidding”. In terms of the RfS and PPA Document, we are interested in participating in the tender and wish to receive confidential and proprietary information in relation to Grid-Connected Rooftop Solar PV (RTSPV) Projects.
2. This Undertaking is being furnished by us in consideration of the premise as set forth above. Vide this Undertaking, we, the Receiving Party, hereby agree, undertake, acknowledge and confirm that:
 - (a) The Receiving Party would be receiving Confidential Information (as defined below) in relation to setting up of Grid-Connected Rooftop Solar PV (RTSPV) Projects, the client organization under MHA (individually referred to as “Disclosing Party”, and collectively referred to as “Disclosing Parties”);
 - (b) “Confidential Information” includes:

- (i) All information, discussions, progress and status with respect to Grid-Connected Rooftop Solar PV (RTSPV) Projects;
 - (ii) All information, data, reports, analyses, advices, interpretations, studies, forecasts, records, documents and/or materials, whether made available in writing or electronically to the Receiving Party by the Disclosing Parties in relation to Grid-Connected Rooftop Solar PV (RTSPV) Projects, becoming available to the Representatives (as defined below) of the Receiving Party;
 - (iii) any financial, technical, business, operational, assets and liabilities related information, any analysis that integrally incorporates and/or discloses any Confidential Information; and
 - (iv) any information exchanged between parties with respect to Grid-Connected Rooftop Solar PV (RTSPV) Projects, or documents reflecting or generated from such information, and any information or document that the Disclosing Party considers confidential, but excluding information that: (i) at the time of supply to the Receiving Party is in the public domain or otherwise lawfully known to the Receiving Party; (ii) becomes lawfully available to the Receiving Party or its Representatives from a third party who to the best of the Receiving Party's knowledge does not owe any party an obligation of confidence in relation to such information; (iii) is independently developed by the Receiving Party or its Representatives without any reference to the Confidential Information, and without violating any obligations hereunder; or (iv) is approved for disclosure in writing by the Disclosing Parties or a Disclosing Party;
- (c) the Confidential Information with respect to Grid-Connected Rooftop Solar PV (RTSPV) Projects shall be shared only with affiliates or partners who shall be potentially participating in equity or debt funding and the directors, partners, officers, agents, employees or advisors (such as financial advisors, attorneys, bankers, consultants and accountants) of the Receiving Party/their affiliates/partners (collectively referred to as the "Representatives") who need to know such information for the purpose of setting up of Grid-Connected Rooftop Solar PV (RTSPV) Projects, on a strictly "need to know" basis; provided, such Representatives are also similarly restricted by the confidential obligations and the conditions set forth in this Undertaking. The Receiving Party agrees that the Receiving Party will be responsible for any breach of the confidentiality and other terms of this Undertaking by any of the Receiving Party's Representatives;
- (d) the Receiving Party shall maintain a digital database of Representatives including the names of the individuals and entities with whom Confidential Information has been shared, and the Receiving Party undertakes to submit the digital database upon receipt of a written request from the Disclosing Party.
3. The Receiving Party agrees and undertakes that it shall, and it shall ensure that its Representatives shall:
- (a) keep confidential all Confidential Information provided to the Receiving Party, unless disclosure is required to satisfy the requirements of any law, legal process, court of competent jurisdiction or any governmental or regulatory agency having the authority to regulate any aspect of the Receiving Party's business. Provided that the Receiving Party may disclose only such Confidential Information that is strictly required to be disclosed to comply with a regulatory requirement, and to the extent legally permissible, the Receiving Party shall notify the Disclosing Parties of such requirements promptly, in advance of the disclosure, so that the Disclosing Parties may seek protective order(s) or other appropriate remedy to protect the secrecy of the Confidential Information;

- (b) use Confidential Information solely for the purpose of evaluating, negotiating or, if selected as the 'Successful Bidder', carrying out the installation of Grid-Connected Rooftop Solar PV (RTSPV) Projects and ensure compliance with applicable laws while dealing with the Confidential Information;
 - (c) not use the Confidential Information to cause an undue gain or undue loss to itself or any other person and without prejudice to anything that is stated herein, ensure that intellectual property rights of the Disclosing Party in any of the data furnished is protected and not misused;
 - (d) not engage with or solicit or attempt to solicit, in any manner whatsoever, any client or vendor of disclosing parties;
- 4. Further, the Receiving Party acknowledges and agrees that:
 - (a) the Confidential Information disclosed under this Undertaking is delivered "as is" and the Disclosing Parties do not make any representation or warranty as to the accuracy, timeliness or completeness of the Confidential Information or its suitability for any particular purpose. No Disclosing Party shall have any liability to the Receiving Party or its Representatives relating to or resulting from the use of the Confidential Information or any omissions or errors therein;
 - (b) the opportunity to participate in the subject tender or grant of access to Confidential Information cannot be construed to grant any rights over disclosing parties or the Confidential Information to the Receiving Party or any person;
- 5. The Receiving Party acknowledges and confirms that:
 - (a) the Confidential Information is the property of the relevant Disclosing Party;
 - (b) in case of any actual or suspected loss, theft, unauthorized disclosure, use or access of Confidential Information in breach hereof or other non-compliance with this Undertaking, to notify the Disclosing Party in writing (including electronically) (along with relevant details), and shall provide all reasonable assistance to the Disclosing Party in connection with any proceedings which the Disclosing Party may institute to protect such Confidential Information;
 - (c) in the event the Disclosing Parties decide not to proceed with installation of Grid-Connected Rooftop Solar PV (RTSPV) Projects either with the Receiving Party or at all, the Receiving Party shall promptly return (if requested by the Disclosing Party) or destroy (if no such request is made) all physical copies of Confidential Information (and delete or make inaccessible all electronic copies thereof). Provided, that the Receiving Party may retain Confidential Information that is required to be retained by: (i) law, regulation, legal or judicial process or any governmental or regulatory authority or document retention policy; and /or (ii) tax, audit or compliance purposes with a prior intimation to the Disclosing Party. The Receiving Party agrees that any Confidential Information retained in accordance with this sub-clause (c) will continue to be subject to the confidentiality restrictions set out in this Undertaking.
- 6. The Receiving Party understands and agrees that monetary damages would not be sufficient remedy for any actual or threatened breach of this Undertaking by the Receiving Party or any of its Representatives and that, in addition to all other remedies available at law and/or in equity, the Disclosing Parties shall be entitled to seek equitable relief, including both preliminary and permanent injunctions and specific performance, as a remedy for any such actual or threatened breach of this Undertaking by the Receiving Party or any of its Representatives.
- 7. The Receiving Party shall at all times hereafter indemnify and keep each Disclosing Party fully indemnified against all claims, demands, actions, proceedings, losses, damages, costs, charges, expenses, interests and disbursements of any nature whatsoever which such Disclosing Party may pay or incur or suffer or sustain or be liable to pay or incur or suffer or sustain as a result

or consequence, direct or indirect, of any breach of the provisions of this Undertaking by the Receiving Party.

8. The Receiving Party hereby irrevocably agrees and warrants that it and its Representatives shall not, directly or indirectly, interfere with, circumvent, attempt to circumvent, avoid or bypass the Disclosing Party or contact any other party with respect to Grid-Connected Rooftop Solar PV (RTSPV) Projects, or obviate or interfere with the relationship of the Disclosing Party and its contacts for the purpose of gaining any benefit, whether such benefit is monetary or otherwise.
9. This Undertaking is governed by, and construed in accordance with the laws of India. Any dispute, difference, controversy or claim arising out of or in connection with this Undertaking, including (but not limited to) any question regarding its existence, validity, interpretation, performance, discharge and applicable remedies, shall be subject to the exclusive jurisdiction of the Courts of the
10. This Undertaking comes into effect upon execution and the obligations set forth herein shall remain irrevocable and binding upon the Receiving Party until superseded in the PPA agreement, if any, executed in respect to Grid-Connected Rooftop Solar PV (RTSPV) Projects. Provided, the obligations of the Receiving Party or its Representatives in terms of Clause 3 shall be valid (a) until the expiry of PPA, or (b) till the expiry of **24 (twenty-four) months** from the date of signing/execution of this Undertaking, whichever is later.
11. In the event that any provision(s) of this Undertaking is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law.
12. Any notices and other communications provided for in this Undertaking shall be in writing, in English, and shall be first transmitted by e-mail and then confirmed by prepaid registered post or by a recognized courier service to the addresses provided by each of the parties.
13. This Undertaking is executed for the benefit of the Disclosing Parties. Any failure or delay in enforcing any provision of this Undertaking shall not constitute a waiver thereof or of any other provision, by a Disclosing Party.

Dated the_____ day of_____, 20....

Thanking you,

[For Bidder]

Name, Designation, Seal and Signature of Authorized Person in whose name Power of Attorney/ Board Resolution/ Declaration.