

POWER SALE AGREEMENT
FOR
SALE OF WIND POWER ON LONG TERM BASIS

Between

Solar Energy Corporation of India Limited

And

_____ **[Enter name of the Buying Entity/Utility]**

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

Between

Solar Energy Corporation of India Limited, a company incorporated under the Companies Act 1956, having its registered office at 6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai Nagar, New Delhi - 110023 (hereinafter referred to as “SECI”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assignees) as a Party of the first part.

And

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

SECI and Buying Entity are individually referred to as ‘Party’ and collectively referred to as ‘Parties’

WHEREAS:

- A. The Government of India has announced the Policy for promotion of the Wind Power in the country and has provided a target to achieve an aggregate installed capacity of 60 GW by the year 2022.
- B. The Ministry of Power, Government of India has issued the Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid connected Wind Power Project vide Resolution dated 8th December 2017, including subsequent amendments and clarifications thereof, if any, issued until _____ [Enter the last date of bid submission of the RfS].
- C. SECI has been designated as a Nodal Agency for developing and facilitating the establishment of the Grid connected Wind Power capacity in India in terms of the above Policy of the Government of India;
- D. SECI had initiated a Tariff Based Competitive Bid Process for procurement of 1200 MW of the power generated from the Grid connected Wind Power Project on the terms and conditions contained in the Request for Selection (herein after referred to as '**RfS**') issued by SECI vide RFS No. _____ Dated _____ and subsequent amendment if any;
- E. SECI has signed/will sign Power Purchase Agreements (PPAs) with the Wind Power Developers (WPD) selected under the RfS mentioned herein below (hereinafter referred to as "WPDs") for procurement of _____ MW Wind Power or the total capacity of projects selected under the provisions of Request for Selection No. _____ dated _____ and subsequent amendment if any) based on the above Guidelines, if it is less than _____ MW, on a long-term basis, as indicated at Annexure-B of PSA;
- F. Buying Utility has agreed to purchase Wind power from the SECI under the above RfS and accordingly, SECI has agreed to sign Power Purchase Agreements (PPAs) with Wind Power developers (hereinafter referred to as "WPDs") for procurement of _____MW Wind Power on a long-term basis, as indicated at Schedule B of PSA. Copy of the PPA(s) shall be submitted to Buying Utility within thirty (30) days of the signing of the PPA(s) and such PPA(s) shall become integral part of this Agreement (SECI-Buying Utility PSA).

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

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

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

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

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

Accordingly, Buying Entity agrees to effectively securitize the payment of money becoming due from Buying Entity to SECI as detailed in this Agreement

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

Liabilities, Force Majeure, Events of Default, Termination, Transfer, Change in Law, Indemnity, Insurance, Assignment and Changes, Financing and Bankability, Representations and Warranties, Governing Law, Notices and all other Miscellaneous Terms provided in the SECI- WPD PPA shall mutatis mutandi apply to this agreement between SECI and Buying Entity.

- XIII. The Buying Entity shall be responsible for directly coordinating and dealing with the WPD, Regional Load Dispatch Centers, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and despatch of Wind Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the WPD 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 Wind Power contracted under this Agreement;
- XIV. The Buying Entity undertakes to file petition before SERC seeking necessary approval for procurement of electricity and contracted capacity from SERC, under this PSA within one month from signing of PPA or PSA whichever is later.
- XV. The Buying Entity shall coordinate with the respective STU and facilitate grant of necessary NOC for drawl of power, as required by the WPD.
- XVI. The Buying Entity shall 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, and for obtaining any Grid Access/NOC/clearance from the respective State Transmission Utility (STU)/SLDC, at its own risk and cost. The Buying Entity is required to file the GNA application and NOC application within 30 days of signing of PSA. It is clarified that in case the Detailed Procedure under the GNA regulations are not enforced until the Project commissioning, the WPD and the Buying Entity(ies) shall abide by the current Procedure under applicable CERC regulations. In such a scenario, the responsibility of obtaining LTA will be that of the WPD. In the alternate scenario, no such requirement will be applicable on the WPD.

Article 1. APPLICABLE TARIFF

- 1.1** The Tariff applicable for the sale of Wind Power by SECI to the Buying Entity under this Agreement shall be the Tariff as applicable for payment by SECI to WPD under the terms of the Power Purchase Agreement between SECI and the WPD (Individual WPDs tariff as per schedule B) fixed for entire term of agreement at delivery point, or the Tariff as determined under the Electricity (Amendment) Rules, 2022 issued by Ministry of Power vide Gazette Resolution dated 29.12.2022, including applicable procedure/rules issued thereof, and in addition thereto a trading margin of Seven (7) paisa/kWh shall be payable by the Buying Entity to SECI which SECI shall be entitled to appropriate as its income.
- 1.2** As per provisions of the PPA, the WPDs are permitted for full as well as part commissioning of the Project even prior to the SCD. In case of early part commissioning of the Project(s) prior to SCD, 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 Paisa per kWh)]. However, in case of early full commissioning of the Project(s) prior to SCD, 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 Paisa per kWh)] and post 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.

Article 2. BILLING AND PAYMENT

2.1 General

The parties acknowledge and accept that the Electricity (Late Payment Surcharge and related matters) Rules, 2022 [hereinafter referred to as '**Rules**'] notified 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 (PSA) 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 WPD, power not requisitioned by the Buying Entity, the order of payment and adjustment towards late payment surcharge and indemnification. 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 (PSA) and PPA which are inconsistent or contrary to the provisions of the Rules.

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 1. All Tariff Payments by the Buying Entity shall be in Indian Rupees.

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 based on provisional wind energy of the preceding month (except for first month which shall be computed based on designed CUF and capacity of project). However, hard copy of the bill will also be sent by the SECI afterwards. The monthly bill shall also include the following:

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

2.2. Payment of Monthly Bills

2.2.1 The Buying Entity shall pay the amount payable under the Monthly Bill on or before the Due Date i.e. within 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 2.2.2 below.

2.2.2. SECI shall open a bank account at New Delhi ("SECI's Designated Account") for all Tariff Payments to be made by the Buying Entity to SECI, and notify the Buying

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

2.3 Late Payment Surcharge

In the event of payment of a Monthly Bill by the Buying Entity beyond the Due Date, a Late Payment Surcharge (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. "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 1st 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.

The Late Payment Surcharge shall be claimed by SECI through the Supplementary Bill. Late Payment Surcharge shall be payable on the outstanding payment beyond the Due Date 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:

(a) Provided that, if a distribution licensee has any payment including Late Payment Surcharge outstanding against a bill after the expiry of seven months beyond the Due Date of the bill, it shall be debarred from procuring power from a power exchange or grant of short term open access till such bill is paid.

(b) 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.

(c) 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.

2.4 Rebate

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

- a) A Rebate of 1.5% shall be payable to the Buying Entity for the payments made within a period of 5 days of presentation of bills through email.
- b) Any payments made beyond a period of 5 days upto and including the 20th 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 relating to taxes, duties, cess etc. and Late Payment Surcharge.

2.5 Payment Security Mechanism

(A) Letter of Credit (LC):

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

2.5.2 Not later than one (1) Month before the Start of Supply, the Buying Utility shall through a scheduled bank at _____ open a Letter of Credit in favour of SECI, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be reviewed after every 12 month for an amount equal to:

- i) for the first Contract Year, equal to 110% of the estimated average monthly billing;
 - ii) for each subsequent Contract Year, equal to 110% of the average of the monthly Tariff Payments of the previous Contract Year.
- 2.5.3 SECI shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawal in a Month provided that there are no outstanding dues.
- 2.5.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 2.5.2 due to any reason whatsoever, the Buying Entity shall restore such shortfall within seven (7) days.
- 2.5.5 The Buying Entity shall cause the scheduled bank issuing the Letter of Credit to intimate SECI, in writing regarding establishing of such irrevocable Letter of Credit and any of the changes therein.
- 2.5.6 The Buying Entity shall ensure that the Letter of Credit shall be renewed not later than its expiry.
- 2.5.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by the Buying Entity.
- 2.5.8 If the Buying Entity fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 2.5.3 and 2.9, SECI may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Buying Entity, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
 - i) a copy of the Monthly Bill which has remained unpaid by the Buying Entity;
 - ii) a certificate from SECI to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

2.6 State Government Guarantee

The Buying Utility shall extend the State Government Guarantee, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation if any [for the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges]. SECI shall ensure that upon invoking this guarantee, it shall at once, pass on the same to the WPD(s), to the extent the payments to the WPD(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 open the Letter of Credit for an amount equal to 2.20 times the average monthly billing as follows:

- a) For the 1st Contract Year, equal to 2.20 times the amount corresponding to the maximum energy committed as per the PSA.
- b) For the subsequent years, equal to 2.20 times the average monthly bills of previous year.

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.

2.7 Payment Security Fund

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

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

2.8 Third Party Sales by SECI

2.8.1 Notwithstanding anything to the contrary contained in this Agreement, SECI shall be entitled to but not obligated to regulate supply of Wind Power of the Buying Utility in case of Default in making payment by the 15th day after the Due Date of the Buying Utility. SECI shall issue the Notice for Regulation of Power Supply on the date above and shall give a notice of 15 days to start the regulation on the 16th day thereafter.

2.8.2 Regulation of power supply would be on pro rata basis i.e., in the ratio of amount due and unpaid to total amount due against the relevant Monthly Bill.

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

2.8.4 In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, SECI would have a right to regulate and sell Buying Utility's allocation of the wind power to third parties to the extent of 40% (i.e. $10/25 \times 100$). SECI/WPD shall have the right to divert the Wind 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 Wind Power as per Schedule-A & B of this Agreement and any other outstanding payment liability of Buying Entity as per this Agreement. Further, in such case, Buying Entity shall have the unconditional obligation to provide and facilitate all necessary clearances and support for the evacuation of power to the third party to whom the power is diverted and further to bear any and all incremental charges and losses including but not limited to application fee, connectivity, open access, ISTS charges & Losses, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, RLDC. These obligations are assumed by the Buying Entity as being necessarily arising out of the failure to draw the power generated and duly discharge the payment obligation arising therefrom.

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

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

2.9 Disputed Bill

- 2.9.1 If the Buying Entity does not dispute a Monthly Bill raised by the other Party within fifteen (15) days of receiving such Bill shall be taken as conclusive and binding.
- 2.9.2 If Buying Entity disputes the amount payable under a Monthly Bill it shall pay undisputed amount of the invoice amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:
- i) the details of the disputed amount;
 - ii) its estimate of what the correct amount should be; and
 - iii) all written material in support of its claim.
- 2.9.3 If the SECI agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 2.9.2, the SECI shall make appropriate adjustment in the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the Buying Utility and up to and including the date on which such payment has been received as refund.
- 2.9.4 If the SECI does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 2.9.2 it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:

- i) reasons for its disagreement;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its counter-claim.

2.9.5 Upon receipt of the Bill Disagreement Notice by the Buying entity under Article 2.9.4, authorized representative(s) or a director of the board of directors/ member of board of the Buying entity and SECI shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

2.9.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 2.9.4, the matter shall be referred to Dispute resolution in accordance with governing Laws and Dispute resolution in PPA.

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

2.10 Quarterly and Annual Reconciliation

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

2.10.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Buying Utility and SECI shall jointly sign such reconciliation statement. After signing of a reconciliation statement, the SECI shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Except for the Tariff adjustment made during the period from

commencement of supply to commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI, Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16 of PPA.

2.11. Renewable Purchase Obligation

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

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

2.11.3 (The provisions of Article 4.4.1 of the PPA shall be applicable mutatis mutandi to this Agreement). The WPD will declare the CUF of the Project and will be allowed to revise the same once within first three years after COD of the full project capacity. SECI, in any Contract Year except for the first year of operation, shall not be obliged to purchase any additional energy from the WPD beyond Million kWh (MU). Subsequent to full commissioning of the Project, if for any Contract Year, except for the Contract Year ending on 31st March immediately after COD of the Project, it is found that the WPD has not been able to supply minimum energy ofMillion kWh (MU) on account of reasons solely attributable to the WPD, the noncompliance by WPD shall make the WPD liable to pay the compensation provided in the respective PSA as payable to Buying Entity(ies) by Buyer to enable Buyer to remit the amount to Buying Entity(ies). For the first year of operation, the above limits shall be considered on pro-rata basis. In case of part commissioning of the Project, the above limits shall be considered on pro-rata basis till the commissioning of full capacity of the Project. The lower limit will, however

be relaxable by Buyer to the extent of grid non-availability for evacuation which is beyond the control of the WPD (as certified by the SLDC/RLDC). This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of such compensation shall be calculated @ 50% (fifty percent) of the cost of this shortfall in energy terms, calculated at PPA tariff, and shall be remitted to the Buying Entity. This compensation shall not be applicable in events of Force Majeure identified under PPA with SECI affecting supply of wind power by WPD.

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

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

2.12 Payment of Supplementary Bill

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

- i) Change in Law as provided in Article 12 of PPA, or
- ii) Payment under Article 2.13 and other charges, if any.
- iii) Any subsequent revision in energy account by concerned RLDC/SLDC, as applicable.

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

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

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

2.13 Offtake constraints due to Transmission Infrastructure /Grid Unavailability & Backdown

2.13.1 Not used.

2.13.2 Generation Compensation in offtake constraints due to Grid Unavailability: During the operation of the plant, 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 Wind Power Developer. In such cases, subject to the submission of documentary evidences from the competent authority, the generation compensation from buying utility shall be restricted to the following and there shall be no other claim, directly or indirectly against SECI:

Duration of Grid unavailability	Provision for Generation Compensation
Grid unavailability in a Contract Year as beyond 50 hours in a Contract Year as defined in the PPA:	<p><i>Generation Loss = [(Average Generation per hour during the Contract Year) × (number of hours of grid unavailability during the Contract Year)]</i></p> <p>Where, Average Generation per hour during the Contract Year (kWh) = Total generation in the Contract Year (kWh) ÷ 8766 hours less total hours of grid unavailability in a Contract Year.</p>

The excess generation by the WPD equal to this generation loss shall be procured by the Buying Entity at the PSA tariff so as to offset this loss in the succeeding 3 (three) Contract Years, against the energy supplied over and above maximum energy supply limit i.e. the energy corresponding to 120% of declared CUF.

Alternatively, the Buying Entity may choose to provide Generation Compensation, in terms of PPA tariff, for the Generation loss as defined above, and for Grid unavailability beyond 50 hours in a Contract Year as defined in the PPA.

2.13.3 Offtake constraints due to Backdown: The Wind Power Developer and Buying Entity shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), encourages a status of “must-run” to wind power projects. Accordingly, no wind power plant, duly commissioned, should be directed to back down by a Discom/ Load Dispatch Centre (LDC). In the eventuality of backdown, including backdown on account of non-dispatch of power due to non-compliance with “Order No. 23/22/2019-R&R dated 28.06.2019 of Ministry of Power regarding Opening and maintaining of adequate Letter of Credit (LC) as Payment Security Mechanism under Power Purchase Agreements by Distribution Licensees” and any clarifications or amendment thereto, except for the cases where the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions, subject to the submission of documentary evidences from the competent authority, the WPD shall be eligible for a minimum generation compensation, from Buying Entity, restricted to the following and there shall be no other claim, directly or indirectly against SECI:

Duration of Backdown	Provision for Generation Compensation
Hours of Backdown during a monthly billing cycle.	<p><i>Generation Compensation = 50% of [(Average Generation during the month corresponding to the capacity backed down) X PPA tariff]</i></p> <p>Where, Average Generation during the month corresponding to the capacity backed down (kWh)=(CUF during the month) x \sum(Backed down capacity in MW x corresponding time of backdown in hours x 1000)</p>

The Generation Compensation as calculated above will be limited to the extent of shortfall in annual generation corresponding to the maximum CUF permitted as per Article 2.11.3 and the same will be settled on annual basis.

The WPD 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. The Generation Compensation shall be paid as part of the energy bill for the successive month after receipt of Energy Accounts (REA)/SEA/JMR. No Trading Margin shall be applicable on the Generation Compensation as provided in Article 2.13.3 only.

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

Article 3: EVENTS OF DEFAULT AND TERMINATION

3.1 Buying Entity Event of Default

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

- (i) Any amount subject to Article remains outstanding beyond a period of ninety (90) days after the Due Date and SECI is unable to recover the amount outstanding from the Buying Entity through the Letter of Credit, Payment Security Fund and; or
- (ii) The Buying Entity fails to evacuate power from the Delivery Points for a continuous period of one year.
- (iii) if (a) the Buying Entity becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Buying Entity, or (c) the Buying Entity goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that a dissolution or liquidation of the Buying Entity will not be a Buying Entity Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the Buying Entity and expressly

assumes all obligations of the Buying Entity under this Agreement and is in a position to perform them; or

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

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

- 3.2.1 Upon the occurrence and continuation of any Buying Entity Event of Default under Article 3.1, SECI shall have the right to deliver to the Buying Entity a notice, stating its intention to terminate this Agreement (SECI Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 3.2.2 Following the issue of SECI Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 3.2.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 3.2.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been

remedied, the SECI may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Buying Entity

- 3.2.5 Subject to the occurrence and continuation of default by as contained under Article 3.1 and before expiry of time period of 30 days as per Clause 3.2.4,
- 3.2.6 Subject to the prior consent of the SECI, the Buying Entity shall novate its part of the PSA to any third party, including its Affiliates within the period of 210 days beyond the period as per 3.2.4,
- 3.2.7 In the event the aforesaid novation is not acceptable to SECI, or if no offer of novation is made by the defaulting Buying Entity, then SECI on expiry of 30 days as provided in article 3.2.4 may terminate the PSA and at its discretion require the defaulting Buying Entity to either.
 - (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 150% (one hundred and fifty per cent) of the adjusted equity to WPD less Insurance Cover, if any as per PPA, or
 - (ii) pay to the WPD, 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 WPD.

3.3 Termination due to Force Majeure

If the Force Majeure Event continues even after a maximum period of 180 days from the date of the Force Majeure Notice, any of the Parties may choose to terminate the Agreement. In case neither party terminates the Agreement under this clause, the Agreement shall stand terminated on the expiry of twelve (12) months of the continuation of the Force Majeure event unless the parties mutually agree to extend the Agreement for the further period.

3.4. Termination of back to back agreements

In case of termination of SECI-WPD PPA, this Agreement shall automatically terminate, Provided that in case of such termination as identified in this Article any pending monetary liabilities of either Party shall survive on the termination of this Agreement. In the event of termination of PPA/PSA, any damages or charges

payable to the STU/ CTU, for the connectivity of the plant, shall be borne by the entity due to whose failure, the termination was triggered.

ARTICLE 4: MISCELLANEOUS PROVISIONS

4.1 Amendment

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

4.2 Third Party Beneficiaries

- 4.2.1 This Agreement is solely for the benefit of the Parties, WPD and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

4.3 Waiver

- 4.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorized representative of such Party:
- 4.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

4.4 Confidentiality

- 4.4.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:
- a) to their professional advisors;
 - b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
 - c) disclosures required under Law without the prior written consent of the other Party.

4.5 Severability

- 4.5.1 The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

4.6 Notices

- 4.6.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.
- 4.6.2 If to the Buying entity, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address :
Attention :
Email :
Fax. No. :
Telephone No.:

- 4.6.3 If to SECI, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address below:

Name:
Designation:
Address: Solar Energy Corporation of India Limited,
6th Floor, Plate-B, NBCC Office Block
Tower-2, East Kidwai Nagar, New Delhi-
110023
Email:
Fax. No:
Telephone No

4.7 Compliance with Law

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and

regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

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

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

For and on behalf of
[SECI]

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

Signature with seal

1. Witness

2. Witness

SCHEDULE A

1. PPA

SCHEDULE B

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

SCHEDULE C: Billing Methodology

AMOUNT REALISATION FOR SALE OF WIND POWER

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

1. Provisional Billing for Wind Power for the applicable month-

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

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

Where,

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

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

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

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