

**POWER SALE AGREEMENT**  
**FOR**  
**SALE OF SOLAR 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 2024 at .....,

Between

Solar Energy Corporation of India Limited, a company incorporated under the Companies Act 2013, 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 renewable energy-based project installation 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 Firm and Dispatchable Power from Grid connected Renewable Energy Power Projects with Energy Storage Systems, vide Gazette Resolution dated 09.06.2023, 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 Renewable Energy Implementing Agency (REIA) for developing and facilitating the establishment of the Grid connected Solar 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 2000 MW of the power generated from the Grid connected Solar Power Project with 1000 MW/4000 MWh Energy Storage Systems (ESS) 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 Solar Power Developers (SPD) selected under the RfS mentioned herein below (hereinafter referred to as “SPDs”) for procurement of \_\_\_\_\_ MW Solar Power or the total capacity of projects selected under the provisions of Request for Selection No. \_\_\_\_\_ dated \_\_\_\_\_ and subsequent amendment (if any) based on the above Guidelines, if it is less than \_\_\_\_\_ MW, on a long-term basis, as indicated at Schedule-B of PSA;
- F. Buying Entity has agreed to purchase Solar power from the SECI under the above RfS and accordingly, SECI has agreed to sign Power Purchase Agreements (PPAs) with Solar Power Developers (hereinafter referred to as “SPDs”) for procurement of \_\_\_\_MW Solar 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 Entity 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 under above mentioned RfS Document. 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 The Buying Entity shall, upon signing of this Agreement, apply to the State Electricity Regulatory Commission within the jurisdiction of which the Buying Entity is operating as a licensee for approval of the power procurement in terms of Rule 8 of the Electricity Rules 2005 (if applicable).

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 60 days of submission of application/petition for tariff adoption under Section 63 of the Electricity Act, 2003 in Appropriate Commission or within 120 days from the date of signing of Power Sale Agreements (PSA), whichever is more, SECI shall obtain adoption of tariff from Appropriate Commission, 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 SPD. The Parties agree that in the event the order of adoption of tariff as mentioned above is not issued by the Appropriate Commission within the time specified above, this shall entail a corresponding extension in the Scheduled Commencement of Supply Date (SCSD) of the Projects for equal number of days for which the Appropriate Commission

order has been delayed beyond the above deadline.

- III The duration of this Agreement shall be co-extensive and co-terminus with the duration of the Power Purchase Agreement to be entered into between the SECI and the SPD for all intent and purposes.
- IV Subject to the terms and conditions contained herein, SECI hereby agrees to sell and make available the electricity procured by SECI from the \_\_\_\_\_ MW Solar Power Project to be set up by the SPD 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 SPD, as per the initialed PPA (Schedule "A") on a back to back basis, to Buying Entity.
- V Buying Entity hereby acknowledges and accepts that SECI is an Intermediary to facilitate the promotion of Solar Power Projects and to purchase and re-sell the electricity to the Buying Entities to enable them to fulfill the Renewable Purchase Obligation/ Energy Storage Obligations/ energy demand 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 SPDs under the SECI-SPD PPA, with the intent that there shall be no residual liability on the SECI towards the SPD which will not be fulfilled by the Buying Entity.
- VI 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-SPD PPA and in the event SECI is not in a position to enforce its rights against the SPD or is subject to any obligation to be performed towards SPD, 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.
- VII Except as otherwise specifically provided in this agreement, Buying Entity acknowledges and accepts that the terms and conditions of the SECI-SPD 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 SPD. Buying Entity further agrees, acknowledges and accepts that as an Intermediary, SECI is not assuming any obligation to Buying Entity over and above the obligation which the SPD shall duly performs under the SECI – SPD PPA.

- VIII SECI has agreed with the SPD in regard to the payment of money becoming due to SPD under the SECI-SPD PPA and SECI shall be liable to discharge the payment obligation in terms of the provisions of the SECI-SPD PPA. Accordingly, Buying Entity agrees to effectively securitize the payment of money becoming due from Buying Entity to SECI as detailed in this Agreement
- IX 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 SPD to SECI under the SECI-SPD 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-SPD PPA is duly implemented by the SPD and in case of monetary obligations the amount is received by SECI from the SPD. 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 SPD for enforcement of the corresponding obligation and all proceedings to be initiated by SECI against the SPD for such enforcement shall be pursued by SECI in consultation with Buying Entity.
- X The parties hereby agree that the penalties are payable by SPD under the SECI-SPD PPA for the delay in the commencement of power supply from the Solar Projects and for short supply of the contracted capacity of the Solar Power. Buying Entity shall not be entitled to make any deductions towards the claim of penalties 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 penalties. The Parties agree that as an intermediary, SECI shall have no legal obligation to pay any amount towards penalties except when the amount of such penalties has been recovered from the SPD by SECI without any conditions and encumbrances and the amount is available for appropriation by SECI.
- XI The parties agree that the various terms contained in the SECI-SPD PPA such as Scope of Project, Terms of the Agreement, Performance Guarantee, Performance Security, Obligations of the respective Parties, Construction of the Power Generation Capacity, Synchronization, Commissioning and Commencement of Supply of power, Operation and Maintenance, Purchase and Sale of Solar Power, Measuring and

Metering, Scheduling 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- SPD PPA shall mutatis mutandi apply to this agreement between SECI and Buying Entity.

- XII The Buying Entity shall be responsible for directly coordinating and dealing with the SPD, State/Regional Load Dispatch Centers, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Solar Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the SPD 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 Solar Power contracted under this Agreement;
- XIII 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.
- XIV 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 obtain the open access/grid access application as per extant regulations for power evacuation from delivery point(s). The Buying Entity shall ensure that they obtain the GNA prior to Scheduled Commencement of Supply Date or actual commencement of supply of power under the PSA, whichever is earlier. In case of failure to obtain the GNA by the above deadline, all the charges pertaining to supply of power (including but not limited to t-GNA charges, Power Curtailment Charges (Equivalent to deemed energy) due to merit order dispatch, DSM charges, etc.) shall be borne by Buying Entity.

**Article 1. APPLICABLE TARIFF**

- 1.1 The Tariff applicable for the sale of Solar Power by SECI to the Buying Entity under this Agreement shall be the Tariff as applicable for payment by SECI to the SPD under the terms of the Power Purchase Agreement between SECI and the SPD (Individual SPDs tariff as per Schedule B) fixed for the entire term of agreement at delivery point and in addition thereto a trading margin of Seven (7) paisa/kWh shall be payable by the Buying Entity to SECI which SECI shall be entitled to appropriate as its income.
- 1.2 As per provisions of the PPA, the SPDs are permitted for full as well as part commencement of power supply from the Project even prior to the SCSD. In case of early part/full commencement of power supply from the Project(s) prior to SCSD, 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, energy procurement from the project upon early part/full commencement of power supply from the Project(s) prior to SCSD, shall be subject to the approval of the Buying Entity. Such intimation regarding consent to procure energy from early commencement of power supply shall be provided by the Buying Entity within 7 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.
- 1.3 In case solar PV component is ready for injection of power into the grid, but the corresponding ESS component is unable to commence supply of power, the SPD will be allowed to commence supply of power from such component which is ready outside the ambit of PPA/PSA, with first right of refusal for such power being vested with the Buying Entity. In case the Buying Entity decides to buy such discrete component's power outside the PPA/PSA, such power shall be purchased at 50% of the Applicable Tariff as per Article 1.1 above, for the applicable Contract Year.
- 1.4 As per provisions of PPA & IEGC regulations, SPDs are permitted for scheduling of infirm power during the trial run up to commercial operation. Upon receipt of communication from SECI/SPD regarding start of trial run, Buying Entity shall provide its consent for procurement of infirm power, failing which SPD may be issued NOC prior to sale of infirm power to any third-party prior till declaration of COD.

## ***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, including subsequent amendments and clarifications thereto, 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 SPD, 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 solar 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
- iv) Change in Law if any as applicable



- v) Losses and Transmission Charges as applicable, in accordance with CERC notification and amendments.

## **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’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.

## **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 as per applicable LPS rule notified by MoP or any subsequent amendments, 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 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.

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) 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.

(b) 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.

Supplementary bill for LPS will be issued by SECI based on adjustment of payment towards LPS already done as per LPS rules 2022 including its subsequent amendments and clarifications.

## **2.4 Rebate**

For payment of any Bill including supplementary bill on or before Due Date, the 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 20<sup>th</sup> Day from the date of presentation of bills through email, shall be allowed a rebate of 1%.
- c) Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc.

## **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 SCSD.

2.5.2 Not later than one (1) Month before the Start of Supply, the Buying Entity 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.

Provided that if Buying Entity (Deemed Distribution Licensee) is not covered under the “Implementation of the Electricity (Late Payment Surcharge and related matters) Rules, 2022” issued by Ministry of Power vide OM dated 12.08.2022, the above phrases “110% of the estimated average monthly billing” and “110% of average of the monthly tariff payments of the previous Contract year billing” shall be substituted with “210% of the estimated average monthly billing” and “210% of average of the monthly tariff payments of the previous Contract year” respectively.

Further, provided that if the Buying Entity (Deemed Distribution Licensee) is not covered by the State Government Guarantee (including the Tri-Partite Agreement or TPA) or is unable to provide State Government Guarantee (including the Tri-Partite Agreement or TPA), the above phrases “110% of estimated average monthly billing” and “110% of average of the monthly tariff payments of the previous Contract year billing” shall be substituted with “210% of three times the estimated average monthly billing” and “210% of three times average of the monthly tariff payments of the previous Contract year” respectively.

Furthermore, provided that if the Buying Entity is other than Deemed Distribution Licensee, the above phrases “110% of estimated average monthly billing” and “110% of average of the monthly tariff payments of the previous Contract year billing” shall

be substituted with “210% of six times the estimated average monthly billing” and “210% of six times average of the monthly tariff payments of the previous Contract Year” respectively.

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 Not Used.

2.7 Not Used.

## **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 Solar Power of the Buying Utility in case of:

- a. Default in making payment by the 15th day after the Due Date of the Buying Utility.
- b. non-maintenance of Payment Security Mechanism as per Article 2.5, provided that advance payment of at least one month shall constitute payment security if there are no outstanding dues.

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 in accordance with Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 as amended and notified from time to time.

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:

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 Entity's allocation of the solar power to third parties to the extent of 40% (i.e.  $10/25 \times 100$ ). SECI/SPD shall have the right to divert the Solar 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 Solar Power as per Schedule-A & B of this Agreement and any other outstanding payment liability of Buying Entity as per this Agreement.

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

- 2.8.4 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 Entity. Deficit if any shall be made good by the Buying Entity.
- 2.8.5 Sales to any third party shall cease and regular supply of electricity to the Buying Entity shall commence and be restored within thirty (30) days from the date of clearing all outstanding dues payable to SECI for the Solar Power under this Agreement.
- 2.8.6 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 SPD for usage by the Buying Entity.

## **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 or 50% of the invoice amount, whichever is higher, 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 Entity 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 undisputed amount or 50% of the invoice amount, whichever is higher, 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.

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

2.11.2 SECI shall provide such certificate identifying the quantum of solar energy supplied by SECI and being met by the Buying Entity for each Contract Year not later than thirty (30) days of the reconciliation for such Contract Year.

2.11.3 The provisions of Article 4.4 of the PPA shall be applicable mutatis mutandi to this Agreement. For supply of power in hours other than Peak Hours, as per the terms of PPA maximum energy is \_\_\_\_\_MUs. For these hours, Minimum energy to be supplied till the end of 10 years from the SCSD is \_\_\_\_\_MUs and .....Million kWh (MU) for the rest of the Term of the Agreement.

For supply of power in hours other than Peak Hours, the SPD will declare the CUF of the Project and will be allowed to revise the same once within first year after the



commencement of power supply from the full Project Capacity. Any penalty with respect to shortfall of energy during the hours other than Peak Hours will be dealt as per the terms of PPA.

**Assured peak power supply:**

- i. As part of the total energy supplied from the Project, the SPD shall mandatorily supply energy corresponding to a maximum amount of 2000 kWh per MW of the Contracted Capacity, on daily basis, during Peak Hours, as per the schedule provided by the Buying Entity.

For the purpose of scheduling, a 'day' shall commence from 00:00 hrs. and end at 24:00 hrs. "Peak Hours" in this case, shall be during the evening from 18:00 hrs. to 24:00 hrs. out of the 24 hours of a day, to be chosen by the Buying Entity.

During the Peak Hours, the Buying Entity may choose any 4 hours for off-take of power up to 200,000 kWh for each 100 MW of Contracted Capacity, on a daily basis. Buying Entity shall choose the 4 hours such that there is a continuous supply at least for 1 hour.

It is clarified that the Buying Entity is mandated to off-take the stored energy on a daily basis, and may choose to schedule peak power supply as per its requirement. It is further clarified that the Buying Entities are mandated to off-take energy during Peak Hours @2 MWh for every 1 MW Contracted Capacity from the Project. The discharge of energy during Peak Hours shall be governed by the demand pattern of the corresponding Buying Entity(ies), as per the Buying Entity's schedule. In case of non-receipt of peak hours schedule from the Buying Entity by 6:00 AM in the morning on a particular day, SPD shall supply the peak power as per its own discretion during the Peak Hours of that day.

- ii. The Buying Entity shall be required to intimate its choice of Peak Hours (which shall be 4 hours) and Power requirement in the selected Peak Hours to SECI and SPD on daily basis latest by 06:00 AM of that day, which will be deemed to have been accepted by the SPD for supply of Peak Power.

However with respect to requisition of Drawl Schedule, Buying Entity shall comply with CERC/SERC/Indian Electricity Grid Code (as and when

implemented), regulations on Forecasting, Scheduling and Deviation Settlement, as applicable.

- iii. Shortfall in supply of Peak Power: For shortfall in supply of power during hours other than Peak Hours, the penalty for shortfall in supply of energy corresponding to the minimum annual CUF will be payable by SPD.

Further, for shortfall in supply of power during Peak Hours, as notified by the Buying Entity, from the mandated supply of energy (i.e., up to 200 MWh for each 100 MW capacity), the SPD shall pay a compensation corresponding to the energy shortfall, calculated as 1.5 x PPA Tariff, on a monthly basis. For the purpose of calculation of shortfall in energy supplied during Peak Hours, a 'month' shall be the billing month as defined in the PPA. This penalty will be separate from the penalty for shortfall in meeting the minimum annual CUF requirement, which is applicable for supply of power in hours other than Peak Hours, as per this Article.

Such shortfall shall be permissible up to 30% below the energy requirement by the Buying Entity during Peak Hours, on a monthly basis, and up to 15% below the energy requirement on an annual basis. The monthly shortfall beyond 30% will be calculated on a daily basis, and penalty will be levied on the total shortfall aggregated in a month. For the annual shortfall beyond 15%, penalty will be calculated on annually. In a Contract Year, the higher of these two penalties (monthly shortfall and annual shortfall) shall be applicable, and the remaining penalty amount (based on difference of applicable penalty for that Contract Year and penalty levied for the 11 months in that Contract Year) shall be levied in the last month of the Contract Year.

For e.g. If for a Contract Year, the sum of penalties for all the 12 months comes out to be Rs. 2 Lakhs and the penalty for shortfall in annual shortfall comes out to be Rs. 2.2 Lakhs, the applicable penalty for that Contract Year shall be Rs. 2.2 Lakhs. And if the penalty levied on the SPD till 11 months of that Contract Year is Rs. 1.7 Lakhs, the penalty imposed in the last month will be Rs. 0.5 Lakhs.

2.11.4 Notwithstanding Article 2.11.3, the SECI/SPD 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 SCSD, or date of commencement of power supply from 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 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 penalty 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 solar power by SECI/SPD.

## **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 Grid Unavailability & Reduced Offtake**

2.13.1 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 Solar Power Developer. In such cases, subject to the submission of documentary evidences from the competent authority, the generation compensation from Buying Entity shall be restricted to the following 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-SPD PPA	<p><b><i>Generation Compensation=</i></b>  <b><i>((Tariff X Solar Power (MW) offered but not scheduled by the Buying Entity)) X 1000 X No. of hours of grid unavailability.</i></b></p> <p>However, in the case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realized, after deducting expenses, shall be adjusted against the Generation compensation payable, on monthly basis.</p>

Compensation (if any) calculated as per above provision, will be paid by Buying Entity to the SPD on an annual basis.

2.13.2 Payment in case of reduced off take: 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 “Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified by the Ministry of Power vide Gazette notification dated 3rd June 2022” and any clarifications or amendment thereto, considering the principle of “must run” status for RE Power, the SPD shall be eligible for payment from the Buying Entity, corresponding to the reduced off take, in terms of following manner:

<b>Reduced Off-take</b>	<b>Provision for Generation Compensation</b>
Reduced off-take beyond 175 hours in a Contract Year, as defined in SECI-SPD PPA	<p><b><i>Generation Compensation=</i></b>  <b><i>(Applicable Tariff X Solar PV Power (MW) offered but not scheduled by the Buying Entity) X 1000 X no. of hours of Reduced Off take.</i></b></p> <p>However, in the case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realized, after deducting</p>

	expenses, shall be adjusted against the Generation compensation payable, on monthly basis.
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2.13.3 For claiming either of the above two compensations, the SPD 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 Buying Entity.

2.13.4 The SPD 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.

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

“Tariff/Applicable Tariff” in this Article 2.13 shall mean “Applicable Tariff” as per SECI-SPD PPA.

### ***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 2.9 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; 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 pay to the SPD, damages, equivalent to 24 (twenty-four) months, or balance PPA period, whichever is less, of charges for its Contracted Capacity, with the stipulated minimum CUF.

Further, in the event of termination of PPA, any damages or charges payable to the STU/ CTU, for the connectivity of the plant, shall also be borne by the Buying Entity.

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

If the Force Majeure Event or its effects continue to be present beyond a period as specified in Article 4.5.3 of the PPA; the termination of the PPA shall be caused solely at the discretion of SECI after obtaining consent of Buying Entity. In this case, SECI shall intimate the Buying Entity and the Buying Entity shall provide its response within 30 days, unless extended by SECI. In the absence of any response from the Buying Entity within this period, the Buying Entity will be deemed to have given its consent to SECI's decision in this regard. In such an event, this Agreement shall terminate on the date of such Termination Notice without any further liability to either Party from the date of such termination.

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

In case of termination of SECI-SPD PPA, this Agreement shall automatically terminate to the extent of relevant SECI-SPD PPA(s). 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, SPD 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:

Name :  
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 SPD 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 requirements of the Buying Entity including the Renewable Purchase Obligations or Energy Storage Obligations or demand under the provisions of the Electricity Act, 2003 and the Regulations notified thereunder.

#### **4.9 Indemnity**

4.9.1 Buying Entity shall indemnify, defend and hold SECI/SPD harmless against:

- a) any and all third party claims against SECI/SPD 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/SPD 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 4.9 shall not apply to such breaches by the SECI/SPD, for which specific remedies have been provided for under this Agreement).

4.9.2 SECI shall cause the SPD to indemnify, defend and hold Buying Entity harmless against:

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

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



$E_p$  = 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