

**STANDARD**

**POWER PURCHASE AGREEMENT FOR**

**PROCUREMENT OF ..... MW OFFSHORE WIND POWER**

**ON LONG TERM BASIS**

**Between**

**..... [Insert Name of Offshore Wind Power Developer]**

**And**

**Solar Energy Corporation of India Limited**

**..... [Insert month and year]**

This Power Purchase Agreement is entered into on this the ..... [Insert date] day of .....[Insert month], ..... [Insert year] at ..... [Insert place]

Between

..... [Insert name of the Offshore Wind Power Developer] (CIN-\_\_\_\_\_), a Company incorporated under the Companies Act 1956 or Companies Act 2013, having its registered office at ..... [Insert address of the registered office of Offshore Wind Power Developer] (hereinafter referred to as “**Offshore Wind Power Developer or OWPD**”, 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 **First Part**;

And

**Solar Energy Corporation of India Limited** (CIN-\_\_\_\_\_), 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”, or “Procurer” or “Buyer” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the **Second Part**;

The OWPD and SECI 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 New and Renewable Energy (MNRE) published a Strategy Paper for Establishment of Offshore Wind Energy Projects in July 2022, with further revision in September 2023, specifying various business models for establishment of offshore wind projects indicating a bidding trajectory of 37 GW capacity / site allocation till 2030. One of the business models described in the Strategy Paper includes provision of Central Financial Assistance for offshore wind energy projects through a Viability Gap Funding (VGF) mechanism.

- C. “Guidelines for Competitive Bidding Process for Award of Offshore Wind Power Projects under Viability Gap funding (VGF) Scheme” vide O.M. No. 244/3/2022-Wind dated 11.09.2024 including subsequent amendments and clarifications thereof, if any, issued until \_\_\_\_ [Enter the last date of bid submission of the RfS].
- D. SECI has been designated as a Renewable Energy Implementing Agency (REIA) for developing and facilitating the establishment of the Grid connected Offshore Wind Power capacity in India in terms of the above policy of the Government of India.
- E. SECI had initiated a Tariff-Based Competitive Bid Process for procurement of 500 MW of the power generated from the ISTS-connected Offshore Wind Power Projects in Gujarat on the terms and conditions contained in the Request for Selection (herein after referred to as ‘RfS’) issued by SECI vide RfS No..... dated..... including its subsequent amendments and clarifications, if any.
- F. ....[Insert name of the Bidding Company] has been selected in the Competitive Bidding Process and has constituted a Special Purpose Vehicle, namely M/s ..... [Insert the name of SPV] (hereinafter referred to as ‘OWPD’) for development, generation and supply of electricity from the .....MW Offshore Wind Power Project to be established by OWPD at Gulf of Khambhat in Gujarat and for supply of such electricity by SECI as an Intermediary Agency to the Buying Entity (as defined) under a Power Sale Agreement (PSA) to be entered into between SECI and such Buying Entity.
- G. SECI has issued the Letter of Award No..... dated .....in favour of the ..... [Insert the name of Bidding Company] for development and establishment of the .....MW Offshore Wind Power Project in the State of Gujarat as per the terms and conditions contained in the RfS, and draft of this Power Purchase Agreement, including amendments and clarifications thereto circulated at the time of the bidding and other bidding documents as well as the conditions contained in the aforementioned Letter of Award.
- H. The Ministry of New and Renewable Energy, Government of India and the OWPD have entered into a Seabed lease deed dated \_\_\_\_ (the “**Seabed lease Deed**”)

wherein certain stipulations for grant of a lease in respect of undertaking development of the Project on the Seabed were set forth;

- I. The Ministry of New and Renewable Energy, Government of India and the Successful Bidder have entered into the Seabed Lease Deed (as defined hereinafter), for the survey, construction, operation and maintenance of the Offshore Wind Power Project, including the transmission system to deliver power at the Offshore substation, at the seabed (the “**Seabed**”), on design, build, finance, operate and own basis (the “**Project**”);
- J. SECI has agreed to purchase such Wind Power from the OWPD as an Intermediary Procurer and sell it to Buying Entity on back-to-back basis as per the provisions of the RfS. Accordingly, SECI has agreed to sign/has signed a Power Sale Agreement with the Buying Entity to sell such power as per the provisions of the above said scheme. OWPD hereby acknowledges and accepts that SECI is an Intermediary to facilitate the promotion of Offshore Wind Power Projects and the purchase of electricity by SECI from OWPD under this Agreement shall be entirely on a back-to-back basis to the sale of electricity by SECI to Buying Entity(ies) under the PSA, with the intent that there shall be no residual liability (including the payment obligation) on the SECI towards the Buying Entity which will not be fulfilled by the OWPD.
- K. In terms of the RfS and the Bidding Documents, the OWPD has furnished the Performance Bank Guarantee/ Payment on Order Instrument in the sum of Rs.....in favour of SECI as per the format provided as a part of the Bidding Documents and a copy of the Bank Guarantee/ Payment on Order Instrument provided is in Schedule – 1/ Schedule - 2 to this Agreement.
- L. The OWPD has fulfilled the terms of the bidding and the terms of the Letter of Award for signing this Power Purchase Agreement as a definitive agreement for establishing the Offshore Wind Power Project of.....MW for generation and sale of electricity by the OWPD to SECI to enable SECI to make available such Wind Power to the Buying Entity, as SECI may consider appropriate, under a Power Sale Agreement and on a back-to-back basis to the Power Purchase Agreement to be entered into with the OWPD.

- M. The parties have agreed to execute this Power Purchase Agreement in terms of the provisions of the RfS, the bidding documents and the Letter of Award in regard to the terms and conditions for establishment of the Offshore Wind Power Project at Gujarat, and for generation and supply of electricity by the OWPD to SECI.
- N. In accordance with the above, 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 PSA and in the event SECI is not in a position to enforce its rights against the Buying Entity or is subject to any obligation to be performed towards Buying Entity, OWPD 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.

**Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:**

**ARTICLE 1: DEFINITIONS AND INTERPRETATION****1.1 Definitions**

The words and expressions beginning with capital letters in this Agreement, unless as defined below or repugnant to the context, and unless they have been defined in the Request for Selection (RfS) document dated \_\_\_\_ and/or the Seabed Lease Deed, as the case may be, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued / framed by the Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

“Act” or “Electricity Act, 2003”	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
“Adjusted Equity”	<p>shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “Reference Date”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:</p> <ul style="list-style-type: none"> <li>(i) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;</li> <li>(ii) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;</li> <li>(iii) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.24% (zero point two four percent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;</li> </ul>

	For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Expiry Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;
“Affiliate”	shall have the same meaning as contained in the RfS document;
“Agreement” or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its Recitals and Schedules, Appendixes, and any amendments thereto made in accordance with the provisions contained in this Agreement;
“Applicable Laws”	shall mean all laws, brought into force and effect by the Government of India or any State Government, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;
“Applicable Permits”	shall mean all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the implementation of the Project during the subsistence of this Agreement;
"Appropriate Commission"	Unless otherwise stated or the context requires, Appropriate Commission shall mean Gujarat State Electricity Regulatory Commission;
“Awarded Capacity”	Shall mean ..... MW [enter the capacity as awarded by SECI as per the LoA]
“Backdown”	shall mean part of Contracted capacity available for scheduling but not scheduled based on instructions from Buying Utility/SLDC /RLDC, as the case may be;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;

“Business Day”	shall mean with respect to OWPD and SECI, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Delhi;
“Buying Entity” or “DISCOM” or “Buying Utility” or “Distribution Licensee(s)”	shall mean an End Procurer as defined in the Guidelines who has agreed to purchase the Wind Power from SECI and has signed/will sign the Power Sale Agreement with SECI. It is clarified that all obligations of SECI under this Agreement shall be deemed to be the obligations of Buying Entity(ies) with which SECI has signed/will sign Power Sale Agreement.
“Capacity Utilization Factor” or “CUF”	shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time; However, for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity;  In any Contract Year, if ‘X’ MWh of energy has been metered out at the Delivery Point for ‘Y’ MW Project capacity, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) \times 100\%$ ;  Declared CUF for this Project shall be ____ % (to be revised as applicable) (shall not be less than 40%).
“CERC”	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
“CTU” or “Central Transmission Utility”	shall mean the Government Company notified by the Central Government under Sub-Section (1) of Section 38 of the Electricity Act, 2003.
“Change in Law”	shall have the meaning ascribed thereto in Article 12 of this Agreement;
“Commencement of Power Supply” or “Commencement of Supply of Power”	The date of commencement of power supply shall mean the date of onset of commercial offtake of power supply under the PPA. Prior to declaration of commencement of power supply, the OWPD shall submit COD certificate upon receipt of successful completion of trial run certificate by the respective RLDC for the corresponding Installed Capacity to SECI as part of the requisite documents.



“Commissioning”	The Project shall be commissioned in line with the provisions of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, including subsequent amendments issued thereof.
“Commercial Operation Date (COD)”	shall mean the date as defined in “Commissioning Certificate” issued in line with the provisions of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, including subsequent amendments issued thereof.
“Competent Court of Law”	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
“Completion Certificate”	shall mean the certificate issued by SECI certifying, that; (i) the OWPD has constructed the Project in accordance with the Construction Requirements; and (ii) the OWPD has obtained all Applicable Permits necessary for commercial operations of the Project;
“Consents, Clearances and Permits”	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
“Construction Period”	shall mean the period during which the Project will be constructed by the OWPD, beginning from the Effective Date of PPA and ending on the COD of last part capacity/ capacity finally accepted under the PPA;
“Construction Requirements”	shall mean such specifications as set out in Schedule 4;
“Construction Works”	shall mean all works and things required to be constructed by the OWPD as part of the Project in accordance with this Agreement;
“Consultation Period”	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a OWPD Preliminary Default Notice or SECI Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation

	between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
“Contractor”	shall mean the person or persons, as the case may be, with whom the OWPD has entered into any of the EPC Contract, the O&M Contract, or any other agreement or a material contract for construction, operation and/ or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the OWPD;
“Contract Year”	shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that: (i) in the financial year in which commissioning of the first part capacity of the Contracted Capacity would occur, the Contract Year shall commence from the date of commissioning of first capacity and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement
"Contracted Capacity"	shall mean ..... [Insert capacity] MW, which is the AC capacity contracted with SECI for supply of power by the OWPD to SECI at the Delivery Point from the Wind Power Project.
“Day”	shall mean a day, if not a Business Day, the immediately succeeding Business Day.
“Debt Due”	shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Expiry Date: (i) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Expiry Date; (ii) all accrued interest, financing fees and charges payable under

	<p>the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (i) above until the Expiry Date but excluding (a) any interest, fees or charges that had fallen due 1 (one) year prior to the Expiry Date, (b) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (c) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Concessioning Authority Default; and</p> <p>(iii) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost:</p> <p>provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/ or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken.</p>
“Debt Service”	shall mean the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements.
“Delivery Point” or “Interconnection Point” or “Offshore Delivery/ Interconnection Point”	<p>shall mean the point at the voltage level of 66 kV of the Offshore pooling substation, which is an ISTS Sub-station, including the transmission line connecting the Offshore Wind Power Project with the substation system as specified in the RfS document. Metering shall be done at this interconnection point where the power is injected into. For interconnection with grid and metering, the OWPD shall abide by the relevant and applicable regulations, Grid Code notified by the CERC or and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time, or orders passed thereunder by the appropriate commission or CEA.</p> <p>Pursuant to Article 4.2.6, all charges and losses related to Transmission of power from project up to Delivery Point (including but not limited to open access, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, RLDC/SLDC charges</p>

	etc.) as notified by the competent authority / regulator shall be borne by the OWPD and beyond the Delivery Point all charges and losses as notified by the competent authority / regulator from time to time shall be borne by the Buying Utility.
“Dispute”	shall mean any dispute or difference of any kind between SECI and the OWPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement.
"Due Date"	shall mean the forty-fifth (45th) day after receipt of full payment from the Buying Entity and subject to presentation of a Monthly Bill (including all the relevant documents) or a Supplementary Bill by the OWPD in hard copy and duly acknowledged by the SECI or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the SECI.
“Effective Date”	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
“Electricity Laws”	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
“Encumbrance”	shall mean, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project;
"Energy Accounts"	shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof or where such regional energy accounts/ state energy accounts are not issued, Joint Meter Reading (JMR) will be considered; SECI reserves the right to choose from

	any of the above, i.e. JMR/SEA/REA, based on the acceptance of the same by the Buying Utility;
“Event of Default”	shall mean the events as defined in Article 13 of this Agreement;
“Expiry Date”	shall mean the date occurring twenty-five (25) years from the Scheduled Commencement-of-Supply Date (SCSD) or from the rescheduled date of commencement of supply to the extent of extension given by SECI.
"Force Majeure" or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 11 of this Agreement;
“Good Industry Practice”	shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any facilities similar to the Project;
“GNA Regulations”	shall mean the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 notified on 07.06.2022, including subsequent amendments and clarifications issued thereof. Any reference to the terms “connectivity” or “network access” or “general network access” in this Agreement shall be interpreted in terms of the provisions of these Regulations.
“Guidelines: or “Scheme”	shall mean the Guidelines titled Guidelines for Competitive Bidding Process for Award of Offshore Wind Power Projects under Viability Gap funding (VGF) Scheme dated 11.09.2024 including subsequent amendments and clarifications notified thereof until the last date of bid submission of the RfS, as issued by the Ministry of New & Renewable Energy
“Grid”	shall mean as per the definition contained in the Act.
"Grid Code" or “Indian Electricity Grid Code” or “IEGC”	shall mean the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, as specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as

or “State Grid Code”	specified by the concerned State Commission, referred under Clause (h) of Sub- section (1) of Section 86 of the Electricity Act 2003, as applicable.;
“Indian Governmental Instrumentality”	shall mean the Government of India, Governments of State(s)..... [Insert the name(s) of the State(s) in India, where the Power Project, SECI and OWPD are located] and any ministry, department, division or sub-division, board, authority, agency, corporation, commission, municipal and other local authority or statutory body including Panchayat under the direct or indirect control of Government of India or the above state Government(s) or both, any political sub-division of any of them; including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India.
“Installed Capacity” or “Project Capacity”	shall mean the rated AC capacity of the Project to be installed by the OWPD, in line with Article 3.1 of this Agreement. The above configuration shall be identical to the “installed capacity” for which connectivity has been granted to the OWPD under the GNA Regulations.
“Insurances”	shall mean the insurance cover to be obtained and maintained by the OWPD in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on OWPD’s side of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement.
“Intermediary agency” or “Intermediary nodal agency” or “Intermediary	shall mean Solar Energy Corporation of India Limited (SECI).

Procurer” or “REIA”	
“Invoice” or “Bill”	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties.
“Joint Control”	shall have same meaning as defined in RfS Document.
“Late Payment Surcharge”	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions.
“Letter of Credit” or “L/C”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement.
“MNRE”	shall mean the Ministry of New and Renewable Energy, Government of India.
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month.
“Offshore Wind Power Developer (OWPD)” or “Developer”	shall have the meaning attributed thereto in the array of Parties.
“OWPD Event of Default”	shall have the meaning ascribed to the said term in Article 13.
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement.
“Payment on Order Instrument”	shall mean the irrevocable unconditional letter of undertaking issued by either of the three institutions, viz., (i) Indian Renewable

	Development Agency Limited (IREDA) or (ii) Power Finance Corporation Limited or (iii) REC Limited., as an alternative to submission of Performance Bank Guarantee by the OWPD, issued in the form attached hereto as Schedule 2.
“Performance Bank Guarantee”	shall mean the irrevocable unconditional bank guarantee, submitted by the OWPD to SECI in the form attached hereto as Schedule-1.
“Pooling Substation/ Pooling Point”	means a point where more than one Offshore Wind Power Project may connect to a common transmission system. Multiple Projects can be connected to a pooling substation from where common transmission system shall be constructed and maintained by the OWPD(s) to get connected to the Delivery Point. The voltage level for such common line shall be as per the voltage level specified in “Interconnection Point”. Further, the metering of the pooled power shall be done at the injection point, i.e. the ISTS Offshore substation. However, the voltage level of transmission system of individual projects up to the pooling substation may be at 33 kV and above. Sub-meters shall be installed at the pooling substation for metering and forecasting and scheduling of individual projects. The losses in the common transmission system up to the injection point shall be apportioned to the individual Projects for the purpose of billing. In such case, it shall be responsibility of the OWPD to obtain and furnish the meter reading jointly by the OWPD and any competent authority (State Government or Central Government) (if applicable).
“Offshore Wind Power Project” or “Power Project” or “Project”	shall mean the Offshore Wind Power generation facility of Contracted Capacity of .....[Insert capacity] MW, located at ..... having a separate control system, metering and a single point of injection into the grid at Delivery/Interconnection/Metering point at ISTS Offshore substation or in case of sharing of transmission lines, by separate injection at pooling point.  The project shall include all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, transmission line up to the Delivery Point and all



	the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement.
“Power Sale Agreement” or “PSA”	shall mean the power sale agreement entered between the Buying Entity and SECI (Buyer-Buying Entity PSA) for onward sale of power being procured under this Agreement as per the provisions of Guidelines and forms Schedule-3 of this Agreement.
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 13 of this Agreement.
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project; b) the requirements of Indian Law; and the physical conditions at the site of the Power Project
“RBI”	shall mean the Reserve Bank of India.
“Rebate”	shall have the same meaning as ascribed thereto in Article 10.3.4 of this Agreement.
“Request for Selection / RfS/Bidding Documents”	shall mean Request for Selection Documents issued by SECI vide RfS No. SECI/C&P/IPP/12/00___/___ dated __.__.20__ including subsequent clarifications, amendments and addenda thereof.
"RLDC"	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003.

“RPC”	shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region.
"Rupees", "Indian Rupees", "INR", "Rs.", "₹"	shall mean Indian rupees, the lawful currency of India.
“Scheduled Commencement of Power Supply Date” or “SCSD”	shall mean ..... [Insert Date as per applicable provisions of the RfS].
“SERC”	shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Sub-section (1) of Section 83 of the Electricity Act 2003.
“SLDC”	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
“SLDC Charges”	shall mean the charges levied by the SLDC of the state wherein the Offshore Wind Power Project is located;
“SECI”	shall mean Solar Energy Corporation of India Limited and shall have the meaning attributed thereto in the array of Parties;
“SECI Event of Default”	shall have the meaning ascribed to the said term in Article 13;
“SECI Representative”	shall mean such person or persons as may be authorized in writing by SECI to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of SECI under this Agreement;
“State Transmission Utility” or “STU”	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
“Subordinated Debt”	means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as

	<p>on the Expiry Date:</p> <p>(i) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and</p> <p>(ii) all accrued interest on the debt referred to in Sub-clause (i) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five percent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two percent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Expiry Date;</p> <p>provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken.</p>
"Tariff" or "Applicable Tariff"	Shall have the same meaning as provided for in Article 9 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
"Unit/ Part Commencement of Power Supply"	shall mean the part Contracted Capacity (AC MW) not less than 50 MW for first part (with subsequent parts of at least 10 MW capacity and the last part being the balance Contracted Capacity) from which commencement of power supply is recorded.
"Unit Commercial Operation Date (UCOD)"	shall mean the COD declared for the respective unit/part of the Project in line with the provisions of the Grid Code.

“WPI”	shall mean the Wholesale Price Index for all commodities as published by the Ministry of Industry, Government of India and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday.
“Wind Power”	shall mean power generated from the Offshore Wind Power Project.
“Offshore Wind Power Project”	shall mean the project that uses wind for conversion into electricity and that is being set up by the OWPD to provide Wind Power to SECI as per the terms and conditions of this Agreement.

## **1.2 Interpretation**

Save where the contrary is indicated, any reference in this Agreement to:

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees", "Rs" or new rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "Winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, Winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;

- 1.2.11 A Law or laws of India or Indian Law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India, including its amendments or re-enactments from time to time;
- 1.2.12 A time of day or any period of time shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not be used in, and shall not affect the construction or interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty-five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “include” or “including” or “including without limitation” or “including but not limited to” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18 The terms “construction” or “building” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, Processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” or “build” shall be construed accordingly;
- 1.2.19 The term “development” includes, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and develop shall be construed accordingly;
- 1.2.20 The reference to any gender shall include the other and the neutral gender;1.2.21 Time shall be of the essence in the performance of the respective Parties’ obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

- 1.2.22 Any reference to month and quarter shall mean a reference to a calendar month and calendar quarter as per the Gregorian calendar;
- 1.2.23 References to any date or period shall mean and include such date or period as may be extended pursuant to this Agreement;
- 1.2.24 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.25 This Agreement and other documents such as Request for Selection Documents, letter of Award, Guidelines including subsequent clarifications, addenda, amendments and further clarifications in regard to the tender as well as Power Sale Agreement shall be read in conjunction with each other and interpreted in harmonious manner. However, in case of any mismatch/contradiction between provisions of different documents, following shall be the order of precedence:
1. Power Purchase Agreement read with Power Sale Agreement
  2. Concession Agreement
  3. Seabed Lease Deed
  4. RfS Document

## **ARTICLE 2: TERM OF AGREEMENT**

### **2.1 *Effective Date***

- 2.1.1 This Agreement shall come into effect from..... and such date shall be referred to as the Effective Date.
- 2.1.2 The Parties agree that decisions pertaining to adoption of the Tariff and approval of the same, for procurement of contracted capacity, shall be binding on all Parties concerned, as contained in the Electricity Act, 2003 and any amendments thereof.
- 2.1.3 Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that, within 60 days of submission of application/petition for tariff adoption in Appropriate Commission or within 120 days from the signing of Power Sale Agreement (PSA), whichever is more, Buying Entity shall obtain adoption of tariff from the Appropriate Commission, on the terms and conditions contained in this Agreement read with the terms and conditions contained in the Power Sale Agreement entered into between SECI and the Buying Entity. 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, the provisions of Article 2.1.4 shall apply.
- 2.1.4 Pursuant to Article 4.6.2, if parties have not mutually extended the time period as stipulated under Article 2.1.3 and the order from the Appropriate Commission is issued within the timeline as per Article 2.1.3, no extension for SCSD shall be given. However, if the requisite Appropriate Commission's order is issued after the timeline as per Article 2.1.3, this shall entail a corresponding extension in SCSD for equal number of days for which the order has been delayed beyond such period as specified in Article 2.1.3.

In case of any difference between the date of signing of PPA and the Effective Date of the PPA, which is attributable to the OWPD, such duration between the two dates (in terms of days), will be deducted from the above extension in the corresponding milestone.

Provided further that in case, the order of adoption of Tariff by the Appropriate Commission as required under Article 2.1.3 above is not received or delayed, either Party shall not be liable for payment of any compensation to other Party for any loss or damage on account of such delay in approval of the Appropriate Commission.



**2.2 *Term of Agreement***

2.2.1 Subject to Article 2.3 and 2.4 of this Agreement, this Agreement shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period at least one hundred eighty (180) days prior to the Expiry Date, on mutually agreed terms and conditions.

2.2.2 The OWPD is free to operate their plants beyond the Expiry Date if other conditions like land lease / Right to Use of Land (as applicable), permits, approvals and clearances etc. allow. In such case, the Buying entity shall have the first right of refusal to the generated power on the terms and conditions of the PPA.

**2.3 *Early Termination***

2.3.1 This Agreement shall terminate before the Expiry Date if either SECI or OWPD terminates the Agreement, pursuant to Article 13 of this Agreement. It is clarified that termination of the Seabed Lease Deed signed between the OWPD and MNRE, prior to the Expiry Date of this Agreement, shall automatically result in termination of this Agreement.

**2.4 *Survival***

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty (subject to receipt of the same from the Buying Entity) as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 2.2.2, Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 16 (Governing Law and Dispute Resolution), Article 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

**ARTICLE 3: INSTALLED CAPACITY, PERFORMANCE SECURITY, FINANCIAL CLOSURE, AND REPRESENTATIONS & WARRANTIES**

**3.1 Installed Capacity**

3.1.1 The OWPD shall configure the project with the objective of supplying wind power to the Buying Entity. Accordingly, the Project Capacity, i.e. the Installed Capacity shall mean the rated capacity of the Offshore Wind Power Project.

3.1.2 The above configuration shall be identical to the “installed capacity for which connectivity has been granted to the OWPD under the GNA Regulations.

**3.2 Performance Bank Guarantee/ Payment on Order Instrument**

3.2.1 The Performance Bank Guarantee (PBG)/ Payment on Order Instrument (POI) having validity from the date of submission of PBG/POI until .....(insert validity period as per RfS conditions), submitted for a value of Rs. \_\_\_\_\_ (in words) under this Agreement, shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement as per format provided in Schedule 1/2.

3.2.2 The failure on the part of the OWPD to furnish and maintain the Performance Bank Guarantee/ POI valid as per the requirement stated in this Agreement, shall be a material breach of the term of this Agreement on the part of the OWPD.

3.2.3 If the OWPD fails to commence supply of power from SCSD specified in this Agreement or any further extension thereof granted by SECI, subject to conditions mentioned in Article 4.5, or fails to meet any Condition Precedent as per Article 3.4, SECI shall encash the Performance Bank Guarantee/ POI equivalent to the amount calculated as per penalty applicable under Article 4.6 and Article 3.5 as on the date of encashment without prejudice to the other rights of SECI under this Agreement. It is to be noted that the damages/dues recovered by SECI by encashing the PBG/ POI, upon the default of the OWPD under the PPA, shall be credited to the payment security fund maintained by SECI under the PPA. Upon such encashment and appropriation from the PBG/POI, the OWPD shall, within 30 days thereof, replenish the PBG/POI, in case of partial appropriation, to its original level, and in case of appropriation of the entire PBG/POI, provide a fresh PBG/POI, as the case may be, and the OWPD shall, within the time so granted, replenish or furnish fresh PBG/POI as aforesaid failing

which the SECI shall be entitled to terminate this Agreement in accordance with Article \_\_\_\_.

### **3.3 Return of Performance Bank Guarantee/ Payment on Order Instrument**

3.3.1 Subject to Article 3.2, SECI shall return / release the Performance Bank Guarantee/ Payment on Order Instrument after the successful commencement of Power supply from full Project Capacity or the Project capacity finally accepted under the PPA, after taking into account any penalty due to delays in commencement of power supply beyond SCSD as per provisions stipulated in this Agreement. PBG may be returned on pro-rata basis subsequent to commencement of supply from part-capacity of the Project, based on the request by the OWPD.

3.3.2 The return / release of the Performance Bank Guarantee/ Payment on Order Instrument shall be without prejudice to other rights of SECI under this Agreement.

### **3.4 Financial Closure**

The OWPD agrees and undertakes to duly perform and complete all of the following activities including Financial Closure, at the OWPD's own cost and risk, by the date as on 24 months subsequent to Effective Date of this Agreement:

- a) The OWPD may, upon providing the PBG to SECI in accordance with Article 3.2, at any time after 90 days from the date of this Agreement or on an earlier day acceptable to SECI, by notice require SECI to satisfy the Conditions Precedent set forth in this Clause within a period of 30 days of the notice, or such longer period not exceeding 60 days as may be specified therein, and the Conditions Precedent required to be satisfied by SECI shall have caused the Ministry of New and Renewable Energy, Government of India to enter into the lease deed (the "**Seabed Lease Deed**") with the OWPD for grant of a lease of the Seabed for undertaking the installation, testing, commissioning, operation and maintenance of the Project on the Seabed:

Provided that upon request in writing by the SECI, the OWPD may, in its discretion, waive any of the Conditions Precedent set forth in this Clause. For the avoidance of doubt, the OWPD may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit;

- b) executed and procured execution of the Seabed Lease Deed, and, simultaneous with the execution of the Seabed Lease Deed furnished in favour of the Lessor a refundable security deposit for an amount of INR 1,00,000 per MW (Rupees One

Lakh per Mega Watt) corresponding to the Project capacity, in the form of an irrevocable and unconditional guarantee from any of the Scheduled Commercial Bank as listed on the website of Reserve Bank of India (RBI) and amended as on date of issuance of bank guarantee in the form set forth in **Schedule II** of the Seabed lease Deed;

- c) executed and procured execution of the Substitution Agreement, if required, as mutually agreed by the OWPD and the Senior Lenders;
- d) The OWPD shall provide confirmation in original of the correctness of their representations and warranties set forth in Article 3 of this Agreement;
- e) The OWPD shall make Project financing arrangements and shall provide necessary certificates to SECI in this regard;
- f) The OWPD shall submit the details of all planned/proposed wind turbine generators and produce the documentary evidence of the same. The OWPD shall also furnish documentary evidence of tying up with the agencies for deployment of vessels required for installation of the Project.

Provided that upon request in writing by the OWPD, SECI may, in its discretion waive any of the Conditions Precedent set forth in this Article. For the avoidance of doubt, SECI may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

### **3.5 Consequences of non-fulfilment of Conditions Precedent and Financial Closure**

3.5.1 In case of a failure to submit the documents as above, SECI shall encash the Performance Bank Guarantee/Payment on Order Instrument submitted by the OWPD, and may terminate this Agreement and cancel the Project by giving a notice to the OWPD in writing of at least seven (7) days. Unless extended as per provisions of Article 3.5.2 of this Agreement in writing, SECI may terminate this Agreement upon the expiry of the 7th day of the above notice.

3.5.2 An extension, without any impact on the Scheduled Commencement of Supply Date, may however be considered, on the sole request of OWPD, on payment of Rs. 10,000/- per day per MW + applicable GST to SECI. Such extension charges are

required to be paid to SECI in advance, for the period of extension required. In case of any delay in depositing this extension charge, OWPD shall pay an interest on this extension charge for the days lapsed beyond due date of Financial Closure @ SBI-MCLR (1Year). In case such delay in making payment of the extension charges to SECI is more than 7 days, SECI may terminate this Agreement upon the expiry of such 7<sup>th</sup> day. In case of the OWPD meeting the requirements of Financial Closure before the last date of such proposed delay period (for which extension charges have been paid), the remaining amount deposited by the OWPD shall be returned by SECI without interest. This extension will not have any impact on the Scheduled Commencement of Supply Date. Any extension charges paid so by the OWPD, shall be returned to the OWPD without any GST amount and interest on achievement of successful commencement of power supply within the Scheduled Commencement of Supply Date, on pro-rata basis, based on the Contracted Capacity that has commenced supply of power as on Scheduled Commencement of Supply Date. However, in case the OWPD fails to start commencement of power supply from the Contracted Capacity by Scheduled Commencement of Supply Date, the extension charges deposited by the OWPD shall not be refunded by SECI. For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

### **3.6 Representations and Warranties of the OWPD**

#### **3.6.1 The OWPD represents and warrants to SECI that:**

- (i) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (ii) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (iii) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (iv) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

- (v) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (vi) the information furnished in the Application and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (vii) the execution, delivery and performance of this Agreement will not conflict with, result in the breach or constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws, or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (viii) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (ix) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (x) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect;
- (xi) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Article 4.1.1.h;
- (xii) all its rights and interests in the Seabed shall pass to and vest in the SECI on the Expiry Date, free and clear of all claims and Encumbrances, without any further act or deed on its part or that of SECI, and that none of the Project Assets including the Seabed shall be acquired by it, subject to any agreement under which a security interest or other Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

- (xiii) no representation or warranty by it contained herein or in any other Document furnished by it to the SECI or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (xiv) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of the SECI in connection therewith;
- (xv) all information provided by the Successful Bidder for the purpose of its selection or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (xvi) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, Documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts; and
- (xvii) as of date, as regards it there is no applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

### **3.7 Representations and warranties of SECI**

#### **3.7.1 SECI represents and warrants to the OWPD that:**

- (i) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (ii) it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (iv) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on SECI's ability to perform its obligations under this Agreement; and
- (v) it has complied with Applicable Laws in all material respects.

**3.8 Disclosure**

- 3.8.1 In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

**3.9 Disclaimer**

- 3.9.1 The OWPD acknowledges that prior to the execution of this Agreement, the OWPD has, after a complete and careful examination, made an independent evaluation of the Seabed, Standards and Specifications, local conditions, and all information provided by the SECI or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. SECI makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/ or completeness of any assessment, assumptions, statement or information provided by it and the OWPD confirms that it shall have no claim whatsoever against SECI in this regard.
- 3.9.2 The OWPD acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby acknowledges and agrees that SECI shall not be liable for the same in any manner whatsoever to the OWPD, and its Associates or any person claiming through or under any of them.
- 3.9.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 3.9.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 3.9.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the SECI to give any notice pursuant to this Clause 3.9.4 shall not prejudice the disclaimer of SECI contained in Clause 3.9.1 and shall not in any manner shift to the SECI any risks assumed by the OWPD pursuant to this Agreement.



## SECI-OWPD PPA

- 3.9.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the OWPD and SECI shall not be liable in any manner for such risks or the consequences thereof.
- 3.9.6 Financial liability, if any, arising out of this Agreement shall be enforceable upon SECI only upon receipt of the penalty/payment from the Buying Entity.

## ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT, SEABED AND UTILITIES

### 4.1 OWPD's and SECI's Obligations

4.1.1 **OWPD's Obligations:** The OWPD undertakes to be responsible, at OWPD's own cost and risk, for the following:

- a) An area of 365 sq.km. in the Gulf of Khambhat, off the coast of Gujarat has been identified for the Project. Detailed coordinates of the Project location are placed at Annexure-A of the RfS. The Project shall be located within these coordinates, at installation sites chosen by the OWPD at its own discretion, cost, risk and responsibility. OWPD shall enter into the Seabed Lease Deed for 35 years with MNRE, in accordance with 'Offshore Wind Energy Lease Rules' notified vide Gazette Notification dated 19.12.2023. The OWPD shall be solely responsible and make arrangements for land & associated infrastructure for development of the Project and for connectivity with the Offshore ISTS System for confirming the availability of power system required for supply of power by the SCSD and all clearances related thereto.
- b) The OWPD shall be required to obtain necessary Consents, Clearances and Permits as required for setting up the Project in line with this Agreement, and the MNRE's Guidelines for Offshore Wind Power Assessment Studies and Surveys, and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. Stage-I and Stage-II clearances as specified in the 'National offshore wind Policy-2015' are listed out as follows:

Sl. No	Ministry/Department	Stage-I Clearances	Stage-II Clearances (or NOCs)
1.	Ministry of Environment & Forests and Climate Change	In-Principle Clearance	EIA and CRZ clearance
2.	Ministry of Defence	In-Principal Clearance	Clearance related to defence & security aspects, related to army, Navy, Air force, DRDO and other such institutions

			under MoD.
3.	Ministry of External Affairs	In-Principal Clearance	Clearance for development of offshore wind energy project within the maritime zones of India.
4.	Ministry of Home Affairs	In-Principal Clearance	Clearance regarding deployment of foreign nationals in offshore wind energy block
5.	Ministry of Civil Aviation	No clearance needed at this stage	Clearance for construction near aviation radars/aerodromes. No clearance/ NOC required for all other locations.
6.	Ministry of Petroleum & Natural Gas	No clearance needed at this stage	Clearance for project near major ports. No objections certificate to operate away from shipping lanes.
7.	Ministry of shipping	No clearance needed at this stage	Clearance for project near Major ports. No objection certificate to operate away from shipping lanes
8.	Department of space	In-Principal Clearance	Clearance from security angle with regard to Dept of space installation and for minimum safety distance to be maintained from the Dept of space installations.
9.	Department of Telecommunication	No clearance needed at this stage	No objection certificate to operate outside subsea communication cable zones.

10.	Ministry of Mines	No clearance needed at this stage	No objection certificate to operate outside mining Zones.
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Stage-I clearances as mentioned above, are under the scope of NIWE, and have been obtained. Stage-II clearances are under the scope of the OWPD, which shall file the relevant information necessary for obtaining the Stage II clearances on NIWE's web portal within 30 days of signing of this Agreement. NIWE will facilitate in obtaining the Stage-II clearances and will coordinate with concerned Ministries/ Departments for grant of clearances/ no-objection certificates. Additional clearances/ approvals may be required from State Government bodies for creating evacuation infrastructure, logistics etc. The OWPD shall directly apply for such clearances/ approvals to the concerned State Government bodies.

It shall be the OWPD's responsibility to submit the requisite documents, complete in all respects, to enable NIWE to obtain necessary clearances and permits as required for setting up the Project. Any other clearances as may be legally required in order to establish and operate the offshore infrastructure Project – like offshore Oil and Gas exploration or pipelines, shall also be obtained by NIWE on behalf of the OWPD.

SECI shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the Offshore Wind Power project. The Offshore Wind Power Developer shall, on his own, obtain permissions/ sanctions from Government authorities, if any required for establishing the Project. Any steps that may be taken by SECI in regard to grant of such consents and permits or any other approval to be taken by the OWPD shall only be a voluntary facilitating endeavor on the part of SECI with no intention of being bound by any legal or binding obligation.

- c) Designing, engineering, financing, constructing, erecting, commissioning, completing and testing the Project on the Seabed, including Operation & Maintenance (O&M) of the Project either itself or through such person as may be selected by it, provided that the ultimate obligation and responsibility for the performance of this Agreement shall continue to vest with the OWPD, in accordance with the Applicable Law, Applicable Permits, the Grid Code, the terms and conditions of this Agreement, the detailed project report finalized in terms of the Seabed lease Deed, and Prudent Utility Practices.

- d) The OWPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at Offshore Interconnection / Metering / Delivery Point to connect the Power project switchyard with the Interconnection facilities at the Delivery Point.
- e) Obtaining Connectivity and executing connectivity agreement as per provision of GNA regulation issued by CERC, for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement. It is further clarified that the Entities (OWPD and Buying Entity) as indicated in the detailed procedure issued subsequently under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, will be responsible for their respective obligation as notified in the detailed procedure irrespective of the provisions of the RfS, PPA and PSA.
- f) The commencement of supply of power up to the Contracted Capacity to SECI no later than the SCSD and continuance of the supply of power in line with Clause 4.4 of this Agreement throughout the term of the Agreement.
- g) Owning the Project throughout the Term of Agreement, free and clear of all encumbrances, except those expressly permitted under Article 15.
- h) Maintaining minimum shareholding requirements as stipulated in the RfS, up to a period of one (1) year after the SCSD in line with Clause 22 of the RfS;
- i) Fulfilling all obligations undertaken by the OWPD under this Agreement and also as per the terms of the RfS.
- j) The OWPD shall be responsible to for directly coordinating and dealing with the corresponding Buying Utility, Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Wind Power and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the OWPD and the corresponding Buying Utility(ies) are the Grid connected entities and SECI as an Intermediary Procurer/trading licensee is not a Grid connected entity in respect of the Wind Power contracted under this Agreement.
- k) The wind turbines to be installed under the project shall have type certificate as per relevant IEC or BIS standard, issued by accredited certification body.
- l) The OWPD shall be solely responsible for and obligated to ensure that the Project being implemented under this Agreement shall fulfil the criteria as per Central

Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof.

- m) As part of scheduling of power from the Project, the OWPD will be required to punch-in its respective schedules along with subsequent revisions in such schedules, by itself, at the interfaces of all the RLDCs concerned for the corridor of power flow, including the RLDC of the Buying Entity(ies), as per the Regulations in force, under intimation to SECI. The OWPD must intimate SECI in advance (preferably in the first week of the month), the energy transacted in previous month so that it will help to comply statutory obligations of SECI as a trading licensee. The OWPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.
- n) Not used.
- o) The OWPD shall be required to submit the progress status of the Project to SECI as and when requested by SECI, strictly within the timelines provided by SECI. Further, on 5<sup>th</sup> day of every calendar month, the OWPD shall be required to submit the Project progress status as per Annexure-B of the RfS, or the format as desired by Buying Entity.
- p) The OWPD shall bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the OWPD under this Agreement;
- q) Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, SECI, on behalf of MNRE, hereby grants to the OWPD, the exclusive right and authority to design, build, finance, construct, operate, and maintain the Project till the Expiry Date, and the OWPD hereby accepts and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- r) The OWPD shall exclusively hold, possess, and control the Seabed, in accordance with the terms of the SEABED Lease Deed, for the purposes of the due implementation of this Project in accordance with the terms of this Agreement;
- s) The OWPD may borrow or raise money or funding required for the due implementation of the Project and create Encumbrance on the whole or part of the Project except the Seabed;
- t) The OWPD shall neither assign, transfer or sublet or create any Encumbrance on this Agreement or on the whole or any part of the Project or Seabed nor transfer,

lease or part possession thereof; save and except as expressly permitted by this Agreement or the Substitution Agreement; and

- u) The OWPD shall set all standards and frame and apply all internal policies, guidelines and procedures as may be appropriate for the safety, security, development, management, operations or maintenance of the Project, subject only to the terms of this Agreement and in accordance with Applicable Laws and Good Industry Practice;
- v) The OWPD shall ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the OWPD's obligations under this Agreement;
- w) The OWPD shall construct, operate and maintain the Project in accordance with Applicable Laws, including all the Applicable Laws relating to protection and safeguard of the environment, laws for preventing and monitoring pollution of environment, laws relating to health and safety aspects, policies and guidelines related thereto, and obtain and maintain the Applicable Permits required for the same.
- x) The OWPD shall complete the construction and achieve the COD in a manner that is safe and reliable for performance of the O&M during the Operation Period, subject to normal wear and tear and Force Majeure, and free from all defects in design and workmanship.

#### **4.2 *Information regarding Interconnection Facilities***

4.2.1 The OWPD shall be required to obtain all information from the STU/CTU/concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the OWPD's side of the Delivery Point to enable delivery of electricity at the Delivery Point. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the OWPD at his own cost.

4.2.2 Penalties, fines and charges, etc. imposed by the CTU/ STU under any statute or guidelines in relation to delay in commissioning of the Project shall be entirely dealt by the OWPD and any such amounts claimed by such agency(ies) shall be payable by the OWPD.

4.2.3 The responsibility of getting connectivity with the transmission system up to the Interconnection Point, will lie with the OWPD. The transmission of power up to the

point of interconnection where the metering is done for energy accounting shall be the responsibility of the OWPD at his own cost. The maintenance of Transmission system up to the designated point as per the applicable terms and conditions shall be the responsibility of the OWPD to be obtained at its own cost. All costs and charges including but not limited to the wheeling charges and losses up to and including at the Interconnection Point associated with this arrangement will also be borne by the OWPD.

4.2.4 In case of Pooling substation, losses in the transmission line shall be apportioned among the OWPDs who share such a Pooling arrangement and duly signed by all OWPDs, based on their monthly generation.

4.2.5 The arrangement of connectivity shall be made by the OWPD through a transmission line/cable. The entire cost of transmission including cost of construction of line/cables, any other charges, losses etc. from the Project up to the Interconnection Point will be borne by the OWPD. In case of non-availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the OWPD, provisions of Article 4.10 shall be applicable.

4.2.6 ISTS charges and losses on transmission of power, including waiver for wind power, shall be applicable as per extant regulations. Government of India/CERC at its sole discretion, from time to time, issues order for waiver of inter-state transmission system (ISTS) charges and losses on transmission of wind power till a certain date. In case commencement of power supply from the Project gets delayed beyond the applicable date of ISTS waiver, arising out of any reasons whatsoever, SECI shall bear no liability with respect to transmission charges and losses levied, if any. However, in case the SCSD is on or before the above deadline for ISTS waiver and commencement of power supply from the Project gets delayed beyond the applicable date of ISTS waiver and losses due to reasons solely attributable to the OWPD, the liability of transmission charges and losses would be to the account of the OWPD.

Delay in Project commissioning beyond the deadline as stipulated by the Government of India, and treatment of ISTS charges and losses thereof, shall be dealt in line with the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2023 dated 07.02.2023, and subsequent amendments and clarifications thereto, as applicable.

Subject to the above, it is however, clarified that ISTS charges and losses beyond the Delivery Point(s) shall be borne by the Buying Utility upon the execution of the relevant PSA.



### **4.3 Purchase and sale of Power within the Contracted Capacity**

- 4.3.1 Subject to the terms and conditions of this Agreement, the OWPD undertakes to sell wind power to SECI and SECI undertakes to purchase such power and pay Tariff (upon receipt of the same from the Buying Entity) for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.

### **4.4 Right to Contracted Capacity & Energy**

- 4.4.1 The CUF declared by the OWPD is \_\_\_\_\_ (insert the amount as per SECI's LoA). The OWPD will be allowed to revise the CUF of the Project once within first three years after the date of commencement of power from first part capacity of the Project or full Project capacity, whichever is earlier. In case of revision in CUF, the revised CUF shall, in no case, be lower than the originally committed value. Subsequent to commencement of power supply from the Project, SECI, in any Contract Year, except for the Contract Year ending on 31<sup>st</sup> March immediately after the date of commencement of power from the Project, shall have the first right to; but will not be obliged to purchase any additional energy from the OWPD beyond ..... Million kWh (MU) [Insert value of energy corresponding to CUF of 120% of the declared CUF for the Project or the modified CUF]. If for any Contract Year, except for the Contract Year ending on 31<sup>st</sup> March immediately after the date of commencement of power from the Project, it is found that the OWPD has not been able to supply minimum energy amounting to ..... Million kWh (MU) [Insert values corresponding to a CUF of 80% of the declared CUF for the project or the modified CUF], save and except in case of Force Majeure, the OWPD shall be liable to pay penalty to SECI to enable SECI to remit such compensation to the Buying Entity (ies). For the first year of operation of the Project, the above limits shall be considered for the complete calendar year after the date of commencement of power from the Project. Subsequently, the annual CUF will be calculated every year from 1<sup>st</sup> April of the year to 31<sup>st</sup> March next year. Similarly, for the last year of operation of the Project, these limits shall be considered for the complete calendar year before the expiry of the PPA. The lower limit will, however, be relaxable by Buyer to the extent of Generation Compensation due to grid non-availability to the Project for evacuation which is beyond the control of the OWPD as determined under provisions of Article 4.10.1. The amount of such penalty will be calculated @ 50% (fifty per cent) of the Applicable Tariff for the shortfall in energy terms, which in turn, shall be remitted to the Buying Entity. The penalty as per above shall be applied on the amount of shortfall

in generation from the Project during any Contract Year. This penalty shall not be applicable in events of Force Majeure identified under this Agreement, affecting supply of Wind Power by OWPD.

- 4.4.2 Any excess generation over and above as per Article 4.4.1, may be purchased by SECI at the tariff as per Article 9. While the OWPD would be free to install the wind turbines as per its design of required output, including its requirement of auxiliary consumption and to repower the Project from time to time during the term of the PPA, it will not be allowed to sell any excess energy to any other entity other than SECI (unless refused by SECI). The OWPD shall be required to intimate SECI about the proposed excess quantum of energy likely to be generated from the Project within any Contract Year, at least 60 days prior to the proposed date of commencement of excess generation. SECI shall be required to intimate its approval/refusal to the OWPD, for buying such excess generation not later than 15 days of receiving the above offer from the OWPD. In the event the offer of the OWPD is not accepted by SECI within the said period of 15 deviation days, such right shall cease to exist and the OWPD shall, at its sole discretion, may sell such excess power to any third party. SECI shall not be held responsible for any generation loss, in case OWPD does not intimate SECI about excess generation as per the timeline mentioned above.

However, in case at any point of time, the peak of capacity reached is higher than the Contracted Capacity and causes disturbance in the system at the point where power is injected, the OWPD will have to forego the excess generation and reduce the output to the rated capacity and shall also have to pay the penalty/charges (if applicable) as per applicable regulations / requirements / guidelines of CERC / SERC /SLDC or any other competent agency.

#### 4.5 *Extensions of Time*

- 4.5.1 In the event that the OWPD is prevented from performing its obligations under Article 4.1 by the SCSD due to:

- a) any SECI Event of Default; or
- b) Force Majeure Events affecting SECI/ Buying Entity(ies) , or
- c) Force Majeure Events affecting the OWPD,

the SCSD and the Expiry Date shall be deferred, for a reasonable period but not less than 'day for day' basis, to permit the OWPD or SECI/ Buying Entity(ies) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the OWPD or SECI/Buying Entity(ies), or till such time such Event of Default is rectified by SECI.

**4.5.2** Subsequent to grant of connectivity, in case there is a delay in operationalization of GNA by the CTU and/or there is a delay in readiness of the Offshore ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network until SCSD of the Project, and it is established that:

- (i) The OWPD has complied with the complete application formalities as per RfS,
- (ii) The OWPD has adhered to the applicable Procedure in this regard as notified by the CERC/CTU, and
- (iii) The delay in operationalization of GNA and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network, is solely attributable to the CTU/transmission licensee and is beyond the control of the OWPD;

The above shall be treated as delays beyond the control of the OWPD and SCSD for such Projects shall be revised as the date as on 60 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or grant/operationalization of GNA. Decision on requisite extension on account of the above factor shall be taken by SECI.

**4.5.3** In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of nine (9) months from the date of the Force Majeure Notice, termination of this Agreement shall be caused solely at the discretion of SECI, as per the provisions of Article 13.5.

**4.5.4** If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the SCSD or the Expiry Date should be deferred, either Party may raise the Dispute to be resolved in accordance with Article 16.

**4.5.5** As a result of such extension on account of Article 4.5.1 or Article 4.5.2, the newly determined SCSD and newly determined Expiry Date shall be deemed to be the SCSD and the Expiry Date for the purposes of this Agreement.

**4.5.6** Further, any delay in adoption of tariff by the Appropriate Commission, beyond 60 days of submission of petition for adoption of tariff before the Appropriate Commission or 120 days from the date of signing of PSA, whichever is more, shall entail a corresponding extension in the SCSD, in line with provisions of Article 2.1.4 of this Agreement.

**4.5.7** Delay in commencement of power supply from the project beyond the SCSD for reasons other than those specified in Article 4.5.1 & Article 4.5.2 shall be an event of

default on part of the OWPD and shall be subject to the consequences specified in the Article 4.6.

**4.6 *Penalty for delay in Commencement of Power Supply***

4.6.1 The OWPD shall commence supply of power from the full Project Capacity within SCSD as defined in this Agreement. If the OWPD is unable to commence power supply from the Project by the SCSD for the reasons other than those specified in Article 4.5.1 and 4.5.2, the OWPD shall pay to SECI, penalty for the delay in such commencement of power supply and making the Contracted Capacity available for dispatch by the SCSD as per the following:

- (a) Delay beyond the SCSD upto (& including) the date as on 12 months after the SCSD or the extended SCSD, if applicable: The total PBG/POI amount shall be encashed on per-day basis and proportionate to the Project capacity that has not commenced supply of power. For example, in case of a Project of 500 MW capacity, if commencement of power supply from 100 MW capacity is delayed by 18 days beyond the SCSD, then the penalty shall be: PBG amount X (100/500) X (18/360). For the purpose of calculation of penalty, a 'month' shall be considered consisting of 30 days.
- (b) For avoidance of doubt it is clarified that provisions of Article 4.6.1 will be applicable even in cases where no capacity (**i.e. 0 MW**) has commenced power supply.

4.6.2 The maximum time period allowed for commencement of power supply from the full Project Capacity with encashment of Performance Bank Guarantee/ Payment on Order Instrument shall be limited to 12 months after the SCSD/extended SCSD of the Project. In case, the commencement of power supply from the Project is delayed beyond 12 months after the SCSD, the Contracted Capacity shall stand reduced / amended to the capacity corresponding to the Project Capacity that has commenced power supply until the date as on 12 months after the SCSD and the PPA for the balance capacity will stand terminated and shall be reduced from the Contracted Capacity.

It is clarified that since minimum part capacity allowed for commencement of power supply is 50 MW, in case the Project capacity finally installed at the end of delay period as per Article 4.6.1 (a), is below 50 MW, the same shall be accepted to avoid wastage of power and resource, and will be considered as the revised Project capacity under the tender.

It is clarified that termination of the PPA on account of the OWPD surrendering the full/part Contracted Capacity, at any stage prior to the maximum timeline as specified in Article 4.6.1 (a) above, will result in encashment of PBG corresponding to the capacity being surrendered, in addition to provisions of this Article.

However, SECI has the full right to give extension to OWPD beyond the time line as mentioned above in case reason of delay is beyond the reasonable control of OWPD.

4.6.3 The OWPD acknowledges and accepts that the methodology specified herein above for calculation of penalty payable by the OWPD is a genuine and accurate pre-estimation of the actual loss that will be suffered by SECI. OWPD further acknowledges that a breach of any of the obligations contained herein result in injuries and that the amount of the penalty or the method of calculating the penalty specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the SECI in each case specified under this Agreement.

4.6.4 In case of part-commencement of power supply subsequent to the SCSD, encashment of PBG shall take place upon commencement of power supply from each part capacity, in case of no request for time extension of such part capacity pending with SECI.

#### **4.7 Acceptance/Performance Test**

4.7.1 Prior to synchronization of the Power Project, the OWPD shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or an agency identified by the central government to carry out testing and certification for the Offshore Wind Power projects.

4.7.2 Further, for the purposes of determining that Construction Works are being undertaken in accordance with the requirements, the OWPD shall with due diligence carry out all necessary and periodical Tests with advance intimation to the SECI, who either in person or through his representative, may choose to be present during the conduct of such Tests. The OWPD shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results and keep SECI informed.

4.7.3 At least 30 days prior to the likely commissioning of the Project, the OWPD shall notify SECI of its intent to subject the Project to Tests. All Tests shall be conducted in accordance with Schedule 6. SECI shall observe, monitor and review the results of the Tests to determine compliance of the Project with Standards and Specifications and if it is reasonably anticipated or determined by SECI during the course of any

Test that the performance of the Project or any part thereof does not meet the  
(Insert Project ID)

Standards and Specifications, it shall have the right to suspend or delay such Test and require the OWPD to remedy and rectify the defects or deficiencies. Upon completion of each Test, the SECI shall provide to the OWPD copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the SECI may require the OWPD to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Standards and Specifications.

#### **4.8 *Third Party Verification***

- 4.8.1 The OWPD shall be further required to provide entry to the site of the Power Project (from which power under this Agreement is being made available) free of all encumbrances at all times during the Term of the Agreement to SECI and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the OWPD at the site of the Power Project. The OWPD shall provide full support to SECI and/or the third party in this regard.
- 4.8.2 The third party may verify the construction works/operation of the Project being carried out by the OWPD and if it is found that the construction works/operation of the Power Project is not as per the Prudent Utility Practices, it may seek clarifications from OWPD or require the works to be stopped or to comply with the instructions of such third party.

#### **4.9 *Breach of Obligations***

- 4.9.1 The Parties herein agree that during the subsistence of this Agreement, subject to SECI being in compliance of its obligations & undertakings under this Agreement, the OWPD would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity of power which is the subject matter of this Agreement. It is the specific understanding between the Parties that such bar will apply throughout the entire term of this Agreement.

#### **4.10 *Generation compensation for Off-take constraints***

- 4.10.1 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 Offshore Wind Power Developer. In such cases, subject to the submission of documentary evidences from the competent authority, the

generation compensation shall be restricted and payable by the Buying Utility(ies) as under and there shall be no other claim, directly or indirectly against SECI:

<b>Duration of Grid unavailability</b>	<b>Provision for Generation Compensation</b>
Grid unavailability in a Contract Year as beyond 72 hours in a Contract Year as defined in the PPA	<p><b>Generation Loss = [(Average Generation per hour during the contract year) × (number of hours of grid unavailability during the contract year)]</b></p> <p>Where, Average Generation per hour during the contract year (kWh) = Total generation in the contract year (kWh) ÷ Total hours of generation in the contract year.</p> <p>The excess generation by the Generator equal to this generation loss shall be procured by the Procurer at the PPA tariff so as to offset this loss in the succeeding 3 (three) Contract Years.</p>

**4.10.2 Payment in case of reduced off take:** The OWPD and the Buying Entity shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. In case the plant is available to supply power but the off take of power is not done by the Buying Entity(ies), 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 OWPD shall be eligible for payment from the Buying Entity, corresponding to the reduced off take, in terms of following manner:

<b>Duration of reduced off take</b>	<b>Provision for Generation Compensation</b>
Reduced off-take beyond 72 hours in a Contract Year as defined in the PPA	<p><b><i>Generation Compensation= (Applicable Tariff X RE 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 expenses, shall be adjusted against the Generation compensation payable, on monthly basis.</p>

- 4.10.3 For claiming compensation under Article. 4.10.2, the OWPD 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.
- 4.10.4 The OWPD shall be eligible for payment from the Buying Entity, corresponding to the reduced offtake of power as per above mentioned methodology. The Payment is to be done as part of the energy bill for the successive month after receipt of Energy Accounts (REA)/SEA/JMR. It is hereby clarified that for the purpose of Article 4.10, “generation” shall mean scheduled energy based on Energy Accounts. The OWPD shall not be eligible for any compensation in case the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions or Force Majeure.



**ARTICLE 5: SYNCHRONIZATION, COMMERCIAL OPERATION AND COMMENCEMENT OF SUPPLY OF POWER**

- 5.1 The OWPD shall give the concerned RLDC/SLDC and SECI and also to the Buying Entity at least sixty (60) days' advanced preliminary written notice and at least thirty (30) days' advanced final written notice, of the date on which it intends to synchronize the Offshore Wind Power Project to the Grid System.
- 5.2 Subject to Article 5.1, the Project may be synchronized by the OWPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.3 The synchronization equipment and all necessary arrangements / equipment including RTU for scheduling of power generated from the Offshore Wind Project and transmission of data to the concerned authority as per applicable regulations shall be installed by the OWPD at its generation facility at its own cost. The OWPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/Grid System and checking/verification is made by the concerned authorities of the Grid System and RLDC, in line with the provisions of the Grid Code.
- 5.4 The OWPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the generation facility including Offshore Wind Project(s) is electrically connected and also to the RLDC in accordance with applicable Grid Code under intimation to SECI.
- 5.5 The OWPD shall commission the Project in line with provisions of the Grid Code. In line with this regulation, the OWPD proposing the Project, or its part, for trial run or repeat of trial run shall give a notice of not less than seven (7) days to the concerned RLDC, Buying Entity(ies), and SECI. However, in case the repeat trial run is to take place within 48 hours of the failed trial run, fresh notice shall not be required. The OWPD shall submit requisite documents as mentioned below to SECI, at least 30 days prior to trial run of the Project –
- i. Intimation regarding the timeline for commencement of supply of power from the Project.
  - ii. Copy of CON-4 report submitted to CTU.
  - iii. CEI/CEIG (as applicable) report containing approval for all the components, including WTGs, inverters, transformers, Transmission system and protection system,

along with all annexures/attachments. It would be the responsibility of the OWPD to obtain the certificate.

iv. Approval of Metering arrangement/scheme from CTU/GRID INDIA/ any other concerned authority as applicable

v. Plant Layout, Plant (AC & DC) SLD

vi. Affidavit certifying that the OWPD has obtained all the necessary approvals for commencement of power supply from the Project, and indemnifying SECI against any discrepancies in the above details.

viii. Documents to establish the compliance of technical requirement as per PPA/RfS.

ix. Invoices against purchase of the WTGs, Inverters/PCUs, WMS, SCADA and DC cables along with the summary sheet containing the list of all the invoices, inverters including details and number of items. Lorry Receipts for delivery of WTGs and inverters at site along with certified summary sheet by the authorized signatory.

x. In addition to the above, the OWPD shall provide coordinates of WTGs, details of storage systems (if any), RLMM certificates, insurance documents of Project, online monitoring facility as stated vide Clause 7, Annexure-B, of the RfS.

It is clarified that SECI shall bear no responsibility in declaration of commissioning/COD of the Project. However, on the basis of above documents, the OWPD shall be required to obtain No-objection certificate (NOC) from SECI prior to declaration of commissioning/COD of the Project.

SECI's scope will be limited to verifying the installation of rated capacity(ies) of the Project as per the COD certificate submitted by the OWPD. This verification will be at SECI's discretion and shall not constitute any certification/confirmation of commissioning/COD of the Project by SECI. Prior to declaration of commencement of power supply, the OWPD shall submit COD certificate for the corresponding Installed Capacity to SECI as part of the requisite documents.

The date of onset of commercial offtake of power by SECI/Buying Entity shall be determined as the date of commencement of power supply under the RfS/PPA.

- 5.6 The OWPD shall be permitted for commencement of power supply from full as well as part Contracted Capacity even prior to the SCSD subject to availability of transmission connectivity and Long-Term Access (LTA)/ General Network Access

(GNA). Even in case of early part/full commencement of power supply, the PPA will remain in force for a period of 25 (twenty-five) years from the SCSD/extended SCSD. If the project continues beyond 25 years, the power generated will be offered on the existing terms and conditions to the PPA holder and it can be sold to other procurer only on refusal of the PPA holder, provided that the arrangements with the seabed and infrastructure owning agencies, the relevant transmission utilities and system operators permit operation of the Project beyond the initial period of 25 years. If OWPD operate the Project after expiry of the term of the PPA the first right of refusal will be of the procurer.

- 5.7 There can be part commencement of power supply from the Contracted Capacity. Part commencement of supply of power from the Project shall be accepted by SECI/Buying Entity(ies) subject to the condition that the minimum capacity for acceptance of first part shall be 50 MW, without prejudice to the imposition of penalty, in terms of the PPA on the part which has not yet commenced supply of power. Subsequent part capacities shall also be accepted in multiples of 50 MW, with the last part capacity being the balance remaining capacity.
- 5.8 The SECI & OWPD agree that for the purpose of commencement of the supply of power by OWPD to SECI, penalty for delay etc., the SCSD/extended SCSD as defined in this Agreement shall be the relevant date.
- 5.9 The OWPD will be free to reconfigure and repower various components of the Project configuration from time to time during the PPA duration at its own risk and cost, pursuant to Articles 3.1 and 4.4 of this Agreement. However, SECI will be obliged to buy power only upto the Contracted Capacity as per this Agreement.

**5.10 Installation of additional capacity of wind turbines**

The OWPD is free to install additional wind turbines in the Project with total installed capacity not exceeding 550 MW, subject to the following conditions:

- a. Details of the overall Project configuration, including details of additional capacity that OWPD is proposing to install in the Project, must be provided within 30 days of issuance of LoA.
- b. Excess generation on account of the above additional installed capacity shall be treated in line with provisions of Article 4.4.2 of the PPA.
- c. The OWPD will undertake that such installed capacity over & above the contracted capacity would not cause any disturbance in the grid system, at no instance, power more than the Contracted Capacity under the PPA would be injected into the grid, and they will always comply with the terms of the PPA

in this regard. This undertaking will be submitted to SECI/CTU, to be intimated by SECI at the time of commencement of power supply from the Project.

- d. With connectivity to the ISTS being a technical requirement, the OWPD should inform the entire capacity (along with interface details) that is proposed to be installed along with all the validated generic and UDM data/models (individual as well as aggregated at the point of interface) to CTU/GRID-INDIA/Transmission Service Provider. CTU/Transmission Service Provider (TSP) will require all details of capacity (along with interface details) to be installed along with all the validated generic and UDM data models (User defined Models \*.dll files for PSS/E) (individual as well as aggregated at the point of interface) for Wind Farm Modelling studies and finalizing the Technical requirements of the Evacuation system. The OWPD shall provide these to CTU/GRID-INDIA/TSP.
- e. All the WTGs shall comply with all the technical requirements specified in CEA “Technical Standards for Connectivity to the Grid, 2007” and subsequent amendments.
- f. At all-times, the OWPD shall have to follow the applicable Indian Electricity Grid Code/Rules/Regulation/Procedures issued by MoP/CEA/CERC/CTU/POSCOS for all WTGs, including additional WTGs, installed under the Project.
- g. As specified in CERC approved “Procedure for Implementation of the Framework on Forecasting, Scheduling and Imbalance Handling for Renewable Energy (RE) Generating Stations including Power Parks based on Wind and Solar at Inter-State Level”, each single WTG level data shall be provided by OWPD to CTU/GRID-INDIA, for all the turbines installed in the Project.
- h. Developer would be permitted Connectivity as per the applications to CTU. In case of installation of any excess capacity beyond the quantum for which Connectivity has been sought, the OWPD would be required to capture all details of the same in the respective formats as per the procedure outlined under the General Network Access Regulations. It shall be ensured that such excess capacity added, fully complies with CEA (Technical Standards for connectivity to the Grid) Regulations 2007 (as amended) and all mandated documents/test reports shall be furnished in support of above.

- i. This additional installation of WTGs is a prerogative of the OWPD to utilize their AC infrastructure optimally. Financial implications of applicability of relevant provisions of the PPA, i.e. Penalty, relief on account of Change in Law, etc. will be governed by the Contracted Capacity only.

#### 5.10 Viability Gap Funding Mechanism

5.10.1 In line with the O.M. issued by the MNRE dated \_\_\_\_\_, the Project selected under this RfS will be eligible for grant of Viability Gap Funding (VGF) support by the Government for development of Offshore Wind Power Projects, and the same will be disbursed to the OWPD through SECI.

5.10.2 Disbursement of the VGF amount shall be governed by the milestones as follows:

<b>Milestone</b>	<b>Release of VGF amount (calculated as % of total VGF sanctioned)</b>
Completion of Foundation Works	25%
Commissioning of 50% of full project capacity	35%
Commissioning of full project capacity/capacity finally accepted under the PPA	35%
After 1 year of successful operation of the Project	05%
<b>Total</b>	<b>100</b>

**Note:** The 1st tranche of VGF shall be released only upon completion of 50% of Foundation Works and fulfilment of Financial Closure criteria under the PPA by the OWPD. In case of phase-wise completion of Foundation works, the OWPD may seek VGF on pro-rata basis, corresponding to the number of foundations completed. For eg.in case the OWPD completes 80% of the foundations in a single phase, he may seek disbursement of VGF corresponding to 80% of the 1st tranche as per the above table.

5.10.3 **Bank Guarantees:** The 1st tranche of VGF will be disbursed only after submission of Bank Guarantee (BG) to SECI by the OWPD, for an amount equal to 10% of the total VGF amount sanctioned by SECI. This BG is in addition to the Performance Bank Guarantee provided by the OWPD as per Clause 17 of the RfS, and shall bear the same format as that of the Performance Bank Guarantee. This BG will be valid for and retained by SECI for a period upto the disbursement of 2nd tranche of VGF,

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and will be returned after the end of the above period, taking into account recovery of VGF, if any. The 2nd tranche of VGF will be released upon submission of a BG for an amount equal to 10% of the total VGF amount sanctioned by SECI based on the Contracted Capacity/capacity finally accepted by SECI, and will be released at the time of disbursement of the 3rd tranche .

5.10.4 If the Project is transferred or sold to a third party during the above tenure, the BG will be re-issued by the new entity, corresponding to the amount applicable. The sale/transfer of the Project shall be effective only on submission of BG by new entity.

5.10.5 SECI reserves the right to recover the VGF amount disbursed, in case of early termination of the PPA.

## **ARTICLE 6: DISPATCH AND SCHEDULING**

### **6.1 *Dispatch and Scheduling***

- 6.1.1 The OWPD shall be entirely responsible to schedule its power as per the applicable regulations / requirements / guidelines of CERC / SERC /SLDC / RLDC or any other competent agency and same being recognized by the RLDC/SLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC/RLDC from time to time. Any deviation from the schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the OWPD.
- 6.1.2 The OWPD shall be responsible for directly coordinating and dealing with the Buying Entity, State Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the OWPD and Buying Entity are the Grid connected entities and SECI as an Intermediary Procurer/ trading licensee is not a Grid connected entity in respect of the power contracted under this Agreement.
- 6.1.3 The OWPD shall be responsible for any deviation from scheduling and for any resultant liabilities on account of charges for deviation as per applicable regulations. UI charges on this account shall be directly paid by the OWPD.
- 6.1.4 Auxiliary power consumption will be treated as per the concerned Central/State regulations.
- 6.1.5 Further, in case of any difference in scheduled energy at the interfaces of all the RLDCs concerned for the corridor of the power flow, including the RLDC of the Buying Entity, SECI will make payments corresponding to the lowest of the individual energy values to the OWPD, until rectification of the above error.

## **ARTICLE 7: METERING**

### **7.1     *Meters***

- 7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the OWPD and SECI shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.
- 7.1.2 The OWPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at OWPD's side of Delivery Point.
- 7.1.3 In addition to ensuring compliance of the applicable codes, the OWPD shall install Main & Check meters at the Delivery Point, along with Stand-by meter(s) as per the applicable Central/State regulations.
- 7.1.4 In case of pooling of multiple Projects, power from multiple Projects can be pooled at a Pooling Substation prior to the Delivery point and the combined power can be fed at Delivery point through a common transmission line from the Pooling Substation. In such cases, ABT compliant sub-meters as per relevant regulation/approval are also to be set up at pooling substation for individual projects in addition to the meters at Delivery Point as described in clause 7.1.3.

### **7.2     *Reporting of Metered Data and Parameters***

- 7.2.1 The grid-connected Offshore Wind Power Projects will install necessary equipment for regular monitoring of ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power generated from the Project.
- 7.2.2 Online arrangement would have to be made by the OWPD for submission of above data regularly for the entire period of this Power Purchase Agreement to the SLDC, SECI and the concerned Ministry or concerned agency as per applicable regulation / directions.
- 7.2.3 Reports on above parameters on monthly basis (or as required by regulation / guidelines) shall be submitted by the OWPD to Ministry of New and Renewable Energy/SECI/or authorized agency of SECI/ MNRE for entire Term of this Agreement.



## **ARTICLE 8: INSURANCES**

### **8.1 *Insurance***

8.1.1 The OWPD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, Insurances against such risks to keep the Project in good condition and shall take Industrial All Risk insurance policy covering risks against any loss or damage, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements, Implementation and Support Agreement (if applicable) and under the applicable laws.

### **8.2 *Application of Insurance Proceeds***

8.2.1 In case of the Project not being implemented through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

In case of the Project being financed through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be applied as per such Financing Agreements.

8.2.2 If a Force Majeure Event renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, SECI shall have claim on such proceeds of such Insurance limited to outstanding dues of SECI against the Buying Utility(ies) as per PSA entered into and any other dues of the Buying Utility(ies) against OWPD.

### **8.3 *Effect on liability of SECI***

8.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the OWPD can claim compensation, under any Insurance shall not be charged to or payable by SECI or Buying Entity(ies). It is for the OWPD to ensure that appropriate insurance coverage is taken for payment by the insurer for the entire loss and there is no under insurance or short adjustment etc.

**ARTICLE 9: APPLICABLE TARIFF**

- 9.1 Subsequent to commencement of power supply by the OWPD on the terms contained in this Agreement, the OWPD shall be entitled to receive the Tariff of Rs. 4.50/ kWh, fixed for the entire term of this Agreement.
- 9.2 In case of early part/full commencement of power supply from the project, till SCSD, the OWPD will be free to sell the electricity generated, to any entity other than the SECI/ Buying Entity(ies), only after giving the first right of refusal to the SECI/Buying Entity(ies) by giving 15 days' advance notice to both SECI and Buying Entity. SECI/Buying Entity shall provide refusal within 15 (fifteen) days from the receipt of the request for early part/full commencement of power supply from the Project, beyond which it would be considered as deemed refusal. In case SECI/Buying Entity agree to purchase power from a date prior to the SCSD, such power shall be purchased at the Applicable Tariff. Any energy produced and flowing into the grid before SCSD shall not be at the cost of SECI. Further, SECI shall not be held responsible for any generation loss, in case OWPD does not timely intimate SECI about commissioning as per the timeline mentioned at Article 5.1 of this PPA.
- 9.3 Any excess generation over and above energy specified in Article 4.4.1, will be purchased by SECI at the Applicable Tariff, and provided the Buying Entity consents for purchase of such excess generation.
- However, the OWPD will not be allowed to sell energy generated prior to SCSD or excess energy during any Contract Year to any other entity other than SECI (unless refused by SECI).
- 9.4 The OWPD may also sell the power which was offered on day ahead basis to the Buying Entity (within maximum CUF) but not scheduled by the Buying Entity to any third party or power exchange without requiring NOC from the Buying Entity. However, in case SECI has a potential buyer to procure the aforesaid unrequisitioned power, OWPD shall schedule the power to such Buying Entity/buyer at the Applicable Tariff.

## **ARTICLE 10: BILLING AND PAYMENT**

### **10.1 *General***

#### 10.1.1 Not Used.

10.1.2 From the commencement of supply of power, SECI shall pay to the OWPD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with Article 9. All Tariff Payments by SECI shall be in Indian Rupees.

#### 10.1.3 Not Used.

10.1.4 The OWPD shall be required to make arrangements and payments for import of energy and other charges (if any) required for supply/offer of the contracted capacity under this agreement as per applicable regulations.

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

### **10.2 *Delivery and Content of Monthly Bills/Supplementary Bills***

10.2.1 The OWPD shall issue to SECI hard copy of a signed Monthly Bill/Supplementary Bill for the immediately preceding Month/relevant period based on the issuance of Energy Accounts along with all relevant documents (payments made by OWPD for

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drawal of power, payment of reactive energy charges, Metering charges or any other charges as per guidelines of SERC/CERC, if applicable.

10.2.2 OWPD may raise Monthly bill based on the provisional REA published at RPC of the Buying Entity, the final adjustments in bill, if any, may be done on the basis of the final REA along with Debit/Credit Note. The Monthly Bill amount shall be the product of the energy as per Energy Accounts and the Applicable Tariff.

10.2.3 The OWPD shall issue the monthly Bill and all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RPC or any other competent authority which shall be binding on both the Parties. Energy drawn from the grid will be regulated as per the applicable Central/State regulations and other relevant document as desired.

10.2.2 As per applicable regulation(s) of the Appropriate Commission, all charges pertaining to obtaining open access and scheduling of power, if any, upto the Delivery Point, shall be borne by the OWPD.

### 10.3 *Payment of Monthly Bills*

10.3.1 SECI shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the OWPD, as shall have been previously notified by the OWPD as below.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

- i) deductions required by the Law; and
- ii) amount claimed by SECI, if any, from the OWPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, the interest applicable will be same as rate of Late Payment surcharge will be applicable on day-to-day basis.

The OWPD shall open a bank account (the "OWPD's Designated Account") in India for all Tariff Payments (including Supplementary Bills) to be made by SECI to the OWPD, and notify SECI of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. SECI shall also designate a bank account at New Delhi ("SECI Designated Account") for payments to be made by the OWPD to SECI, if any, and notify the OWPD of the details of such account ninety (90) Days before the SCSD. SECI and the OWPD shall instruct their respective bankers to make all payments under this Agreement to the OWPD'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.

#### **10.3.3 Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by SECI beyond the Due Date, a Late Payment Surcharge shall be payable by SECI to the OWPD 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 (500 bps) 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 the OWPD through the Supplementary Bill. Late Payment Surcharge shall be payable on the outstanding payment at the base rate of Late Payment Surcharge applicable for the period for the first month of default. The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent (50 bps) for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time.

If the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years.

The above payment will be made by SECI subject to such late payment surcharge being duly received by SECI under the PSA from the Buying Entity(ies).

10.3.4 Subject to the Article 9 of this Agreement, in the event of early commencement of power supply from the Project and subject to acceptance by SECI, the payment for the power fed to the grid may be accounted from the date of commencement of such power supply, and OWPD would be allowed to raise Bills against such power as per Article 10.2.1.

#### **10.3.5 Rebate**

For payment of any Bill including Supplementary Bill on or before Due Date, the following Rebate shall be paid by the OWPD to SECI in the following manner.

- a) A Rebate of 1.5% shall be payable to the SECI for the payments made within a period of 10 (ten) days from the date of receipt of full payment from the Buying Entity and subject to the presentation of hard copy of Bill by the OWPD.
- b) Any payments made after ten (10) days up to and including the 30<sup>th</sup> Day from the date as per (a) above, shall be allowed a rebate of 1 %.

For the above purpose, the date of presentation of Bill shall be the next Business Day of delivery of the physical copy of the Bill at SECI.

#### **10.4 Payment Security Mechanism**

10.4.1 SECI shall provide to the OWPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the OWPD in accordance with this Article.

10.4.2 Before the commencement of power supply, SECI shall, through a scheduled bank, open a Letter of Credit in favour of the OWPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

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

10.4.3 Provided that the OWPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawl in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, SECI shall restore such shortfall before next drawl.

10.4.5 SECI shall cause the scheduled bank issuing the Letter of Credit to intimate the OWPD, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 SECI shall ensure that the Letter of Credit shall be renewed not later than its current expiry date.

10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by OWPD.

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the OWPD

may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to OWPD and;
- ii) a certificate from the OWPD 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.

## **10.5 Disputed Bill**

10.5.1 If the SECI does not dispute a Monthly Bill or a Supplementary Bill raised by the OWPD within thirty (30) days of receiving such Bill shall be taken as conclusive.

10.5.2 If the SECI disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay the amount as received from the Buying Entity, and it shall within thirty (30) days of receiving such Bill Dispute Notice from the Buying Entity, 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.

10.5.3 If the OWPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the OWPD shall revise such Bill and present along with 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 disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

10.5.4 If the OWPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the SECI 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.

10.5.5 Upon receipt of the Bill Disagreement Notice by the SECI under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board

of the SECI and OWPD shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

10.5.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.5.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

10.5.7 Not used.

## **10.6 Quarterly and Annual Reconciliation**

10.6.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

10.6.2 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 OWPD and SECI shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the OWPD shall make appropriate adjustments in the next Monthly Bill. 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.

## **10.7 Payment of Supplementary Bill**

10.7.1 OWPD may raise a ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Energy Accounts (if applicable); or
- ii) Change in Law as provided in Article 12, or
- iii) Payment under Article 4.10,

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

10.7.2 SECI shall remit all amounts due under a Supplementary Bill raised by the OWPD to the OWPD's Designated Account by the Due Date, except open access charges, RLDC or scheduling charges and transmission charges (if applicable). No Late Payment Surcharge will be applicable other than that on the monthly energy payment and associated debit and credit note.



## **ARTICLE 11: FORCE MAJEURE**

### **11.1 Definitions**

11.1.1 In this Article, the following terms shall have the following meanings:

### **11.2 Affected Party**

11.2.1 An affected Party means Buyer or the OWPD whose performance has been affected by an event of Force Majeure.

### **11.3 Force Majeure**

11.3.1 A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly or partly prevents or unavoidably delays the performance by the Party (the Affected Party) of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

- a) Act of God, including, but not limited to lightning, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, pandemic, cyclone, typhoon or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of the other Party.
- b) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party.
- c) The discovery of geological conditions, toxic contamination or archaeological remains on the Project site that could not reasonably have been expected to be discovered through an inspection of the Project site and/or as per prudent industry practices.
- d) Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.
- e) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action.

- f) Nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its Contractor.
- g) Nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the Generator, as a result of which the Concessionaire or its shareholders are deprived (wholly or partly) of their rights or entitlements under this Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Concessioneing Authority or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the Concessionaire or its related parties.
- h) Any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority in India (provided such requirement, action or omission to act is not due to the breach by the Affected Party of any Law or any of their respective obligations under this Agreement).
- i) Any unlawful or unauthorised or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the Concessionaire or any of the clearance, licence, authorization to be obtained by the Concessionaire to perform its respective obligations under this Agreement and/or the Project documents; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, licence, authorization, as the case may be.

#### **11.4 *Force Majeure Exclusions***

11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
- b. Delay in the performance of any contractor, sub-contractor or their agents;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes at the facilities of the Affected Party;

- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
  - i. Negligent or intentional acts, errors or omissions;
  - ii. Failure to comply with an Indian Law; or
  - iii. Breach of, or default under this Agreement.

### **11.5 *Notification of Force Majeure Event***

11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than fifteen (15) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. The other Party shall respond on the claim of the Affected Party within 15 days of receipt of the said intimation of Force Majeure.

11.5.2 Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

11.5.3 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

### **11.6 *Duty to Perform and Duty to Mitigate***

11.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 11.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

### **11.7 *Available Relief for a Force Majeure Event***

11.7.1 Subject to this Article 11:

(Insert Project ID)

- (a) no Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.5;
- (c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
- (d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

## ARTICLE 12: CHANGE IN LAW

### ***12.1 Definitions***

In these rules, unless the context otherwise requires, -

12.1.1 In this Article 12, the term “Change in Law” shall refer to the occurrence of any of the following events pertaining to this project only after \_\_\_\_ [Enter the date of e-Reverse Auction held under the RfS], including any enactment or amendment or repeal of any law, leading to corresponding changes in the cost requiring change in tariff, and includes-

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

but does not include-

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

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

### ***12.2 Adjustment in tariff on account of Change in Law***

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

12.2.2 For the purposes of 12.2.1 above, the affected party, which intends to adjust and recover the costs due to change in law, shall give a 21 days’ prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

12.2.3 The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of 21 days from the date of the notice referred to in 12.2.2 above, whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

12.2.4 The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

12.2.5 The amount of the impact of change in law to be adjusted and recovered, shall be calculated in accordance with the formula given here under to calculate adjustment in the monthly tariff due to impact of change in law, which is non-recurring in nature.

Let financial impact of change in law=P

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

Where X= estimated monthly electricity generation in kWh =  $(1/12) \times [\text{Contracted Capacity of the power plant as per the Agreement (in MW)} \times \text{CUF in \%} \times 8760 \text{ hours} \times 10]$  &

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

Where, -

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

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

CUF = declared or revised CUF as indicated in the Agreement; and

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

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

Any such change, shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.

*For e.g. in case the change in tariff payable is calculated as Rs. 0.14678/kWh, it shall be modified as Rs. 0.146/kWh*

12.2.6 The recovery of the impacted amount, in case of the fixed amount shall be,

- a. In case of generation project, within a period of one-hundred eighty months; or
- b. In case of recurring impact, until the impact persists.

12.2.7 The OWPD shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges

12.2.8 The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under clause 12.2.7.

12.2.9 After the adjustment of the amount of the impact in the monthly tariff or charges under clause 12.2.8, the OWPD, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.

12.2.10 In the event of any decrease in the project cost by the OWPD or any income to the OWPD on account of any of the events as indicated above, OWPD shall pass on the benefit of such reduction at a rate as provided in Article 12.2 to SECI which shall be further passed on to the Buying Entity. In the event of the OWPD failing to comply with the above requirement, SECI shall make such deductions in the monthly tariff payments on immediate basis. Further, at the time of raising of 1st Monthly Tariff Payment Bill, OWPD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 12.

12.2.11 Any notice service pursuant to this Article 12.2.7, shall provide, amongst other things, precise details of the Change in Law and its effect on the Project Cost, supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.

12.2.12 “Project Cost” wherever applicable under this Article, shall mean the cost incurred by the OWPD towards supply and services only for the Project concerned, upto the actual date of commencement of power supply from the last part capacity or upto the SCSD or extended SCSD, whichever is earlier. For example, in case the date of actual Commencement of power supply from the last part capacity is 15.04.2024, SCSD is 15.03.2024 and extended SCSD is 01.04.2024, the Project Cost shall be determined as the cost incurred by the OWPD upto 01.04.2024.



## ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

### 13.1 *OWPD Event of Default*

13.1.1 The occurrence and/or continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by SECI or Buying Entity(ies) of its obligations under this Agreement, shall constitute an OWPD Event of Default:

- (i) the failure to commence supply of power to SECI up to the Contract Capacity, by the end of the period specified in Article 4, or failure to continue supply of annual energy corresponding to the minimum CUF power to SECI after the commencement of supply of power, for any Contract Year (except for the first and final Contract Years), throughout the term of this Agreement, or if
  - a) the OWPD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Project in contravention of the provisions of this Agreement; or
  - b) the OWPD transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer
    - is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
    - is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
- (ii) if (a) the OWPD 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 OWPD, or (c) the OWPD 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 OWPD will not be a OWPD 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 OWPD and expressly assumes all obligations of the OWPD under this Agreement and is in a position to perform them; or

- (iii) the OWPD 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
- (iv) except where due to any SECI's failure to comply with its material obligations, the OWPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the OWPD within thirty (30) days of receipt of first notice in this regard given by SECI; or
- (v) change in shareholding of the OWPD before the specified time frame as mentioned in Article 4.1.1 of this Agreement, without prior consent of SECI; or
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the OWPD; or
- (vii) except where due to any SECI's failure to comply with its material obligations, the OWPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the OWPD within thirty (30) days of receipt of first notice in this regard given by SECI.
- (viii) Any Event of Default not listed in this Article but listed in the Seabed Lease Agreement.

### **13.2 SECI Event of Default**

13.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the OWPD of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting SECI:

- (i) SECI fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the OWPD is unable to recover the amount outstanding to the OWPD through the Letter of Credit,
- (ii) SECI repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the OWPD in this regard; or
- (iii) except where due to any OWPD's failure to comply with its obligations, SECI is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by SECI within sixty (60) days of receipt of notice in this regard from the OWPD to SECI; or
- (iv) if

- SECI becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of sixty (60) days, or
  - any winding up or bankruptcy or insolvency order is passed against SECI, or
  - SECI goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that it shall not constitute a SECI Event of Default, where such dissolution or liquidation of Buyer or SECI is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to SECI and expressly assumes all obligations of SECI and is in a position to perform them; or;
- (v) If Buying Entity is subject to any of the above defaults and SECI does not designate another or other Buying Entities for purchase of power.
- (vi) Occurrence of any other event which is specified in this Agreement to be a material breach or default of SECI.

### **13.3 *Procedure for cases of OWPD Event of Default***

- 13.3.1 Upon the occurrence and continuation of any OWPD Event of Default under Article 13.1, SECI shall have the right to deliver to the OWPD, with a copy to the representative of the lenders to the OWPD with whom the OWPD has executed the Financing Agreements, 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.
- 13.3.2 Following the issue of a SECI Preliminary Default Notice, the Consultation Period of ninety (90) 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 be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 13.3.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the OWPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have

been remedied, SECI may terminate this Agreement by giving a written Termination Notice of sixty (60) days to the OWPD.

13.3.5 Subject to the terms of this Agreement, upon occurrence of an OWPD Event of Default under this Agreement, the OWPD shall be liable to pay to SECI, penalty, as provided in Article 4.6 of the PPA for failure to commence supply of power within the stipulated time and Article 4.4.1 for failure to supply power in terms of the PPA. For other cases, the OWPD shall be liable to pay to Buying Entity(ies), damages, equivalent to 24 (twenty-four) months, or balance PPA period, whichever is less, of tariff for its Contracted Capacity, corresponding to the committed annual CUF.

SECI shall have the right to recover the said damages by way of forfeiture of bank guarantee/Payment on Order Instrument, if any, without prejudice to resorting to any other legal course or remedy.

In addition to the levy of damages as aforesaid, the lenders in concurrence with the Buying Entity and SECI, may exercise their rights, if any, under Financing Agreements, to seek substitution of the OWPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the OWPD and performing the obligations of the OWPD. However, in the event the lenders are unable to substitute the defaulting OWPD within the stipulated period, SECI may terminate the PPA. Provided that any substitution under this Agreement can only be made with the prior consent of SECI including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by SECI and accepts the terms and conditions of this Agreement.

13.3.6 The lenders in concurrence with the Buying Utility and SECI, may seek to exercise right of substitution under Article 13.3.5 by an amendment or novation of the PPA in favour of the selectee. The OWPD shall cooperate with SECI to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized. In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a new entity, an amount of Rs. 10 Lakh per Project+ applicable taxes per transaction as facilitation fee (non-refundable) shall be deposited by the OWPD to SECI.

#### **13.4 *Procedure for cases of SECI Event of Default***

13.4.1 Upon the occurrence and continuation of any SECI Event of Default specified in Article 13.2, the OWPD shall have the right to deliver to SECI, a OWPD Preliminary

Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

13.4.2 Following the issue of a OWPD Preliminary Default Notice, the Consultation Period of ninety (90) 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 be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

13.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

13.4.4 After a period of two hundred ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or SECI Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, SECI under intimation to the Buying Entity and the OWPD shall, subject to the prior consent of the OWPD, novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the OWPD, or if no offer of novation is made by SECI within the stipulated period, then the OWPD may terminate the PPA and at its discretion require the Buying Entity through SECI to pay to the OWPD, damages, equivalent to 24 (twenty-four) months, or balance PPA period, whichever is less, of charges of its Contracted Capacity corresponding to the committed annual CUF. In case SECI's Event of Default is triggered by a default on the part of the Buying Entity, the above amount will be recovered by SECI from the Buying Entity.

In the event of termination of PPA/PSA, on account of Event of Default by the SECI/Buying Entity, any damages or charges payable to the STU/ CTU, for the connectivity of the plant, shall be borne by SECI/Buying Entity.

### **13.5 Termination due to Force Majeure**

If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.5.3, termination of this Agreement shall be caused solely at the discretion of SECI. In such an event, this Agreement shall terminate on the date of such Termination Notice as issued by SECI without any further liability to either Party from the date of such termination.

## **ARTICLE 14: LIABILITY AND INDEMNIFICATION**

### **14.1 Indemnity**

14.1.1 The OWPD shall indemnify, defend and hold SECI harmless against:

- a) any and all third-party claims against SECI 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 OWPD of any of its obligations under this Agreement or due to the OWPD's willful misconduct, gross negligence or fraudulent behaviour or violations of Applicable Law; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by SECI from third party claims arising by reason of a breach by the OWPD of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the OWPD, for which specific remedies have been provided for under this Agreement).

14.1.2 SECI shall cause the Buying Entity(ies) to indemnify, defend and hold the OWPD harmless against:

- a) any and all third-party claims against the OWPD, 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 Buying Entity(ies) of any of their obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the OWPD from third party claims arising by reason of a breach by Buying Entity(ies) of any of its obligations. SECI shall incorporate appropriate covenants in the PSA for the above obligations of Buying Entity(ies). In so far as indemnity to OWPD is concerned, Buying Entity(ies) shall be the indemnifying party and not SECI.

### **14.2 Procedure for claiming Indemnity**

#### **14.2.1 Third party claims**

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or 14.1.2(a) in respect of which it is entitled to be indemnified.

Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

- i) the Parties choose to refer the dispute in accordance with Article 16.3.2; and
- ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

The Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

- b. The Indemnified Party may contest the claim by referring to the Appropriate Commission for which it is entitled to be Indemnified under Article 14.1.1(a) or 14.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

### **14.3 *Indemnifiable Losses***

- 14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of nonpayment of such losses after a valid notice under this Article 14.3, such event shall constitute a payment default under Article 13.

#### **14.4 *Limitation on Liability***

14.4.1 Except as expressly provided in this Agreement, neither the OWPD nor SECI nor Buying Entity(ies) nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Buying Entity(ies) , the OWPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 SECI shall have no recourse against any officer, director or shareholder of the OWPD or any Affiliate of the OWPD or any of its officers, directors or shareholders for such claims excluded under this Article. The OWPD shall have no recourse against any officer, director or shareholder of Buyer or Buying Entity(ies), or any affiliate of Buyer or any of its officers, directors or shareholders for such claims excluded under this Article.

#### **14.5 SECI's Liability**

14.5.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and accept that the SECI is an Intermediary Company to purchase and resell the electricity to the Buying Utility(ies) to enable them to fulfill the Renewable Purchase Obligations (RPO) and, therefore, the performance of the obligations of the SECI under this Agreement shall be subject to the ability of the SECI to enforce the corresponding obligations assumed by the Buying Utility(ies) on re-sale under the Power Sale Agreement to be entered into by the Buying Utility(ies) with SECI. It is however, specifically agreed that the payment of money becoming due from the SECI to the OWPD under this Agreement for supply of Wind Power to the extent of the Contracted Capacity shall be on a back-to-back basis and will be made subsequent to receipt of the same from the Buying Entity under the PSA. SECI shall discharge the tariff payment obligation in terms of the provisions of this Agreement.



14.5.2 The parties agree that in respect of the obligations mentioned herein above, in the event the OWPD has any claim against the SECI in regard to the performance of any obligation of the SECI under this Agreement or enforcement of any right of the OWPD against the SECI under this Agreement, the same shall be subject to the ability of the SECI to enforce the corresponding obligations assumed by the Buying Utility under the Power Sale Agreement to be entered into between the SECI and the Buying Utility on resale on mutatis mutandis basis and not otherwise.

***14.6 Duty to Mitigate***

14.6.1 The Parties shall endeavour to take all reasonable steps so as to mitigate any loss or damage which has occurred under this Article 14.

## **ARTICLE 15: ASSIGNMENTS AND CHARGES**

### **15.1 *Assignments***

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party, except to the Project Lenders or Lender's Representative as security for their debt under the Financing Agreements, other than by mutual consent between the Parties to be evidenced in writing. Such assignment shall be agreed to by SECI subject to the compliance of provisions contained in this Agreement and more specifically to the provisions of Article 4.1.1 of this Agreement. In no case, such assignment shall be permissible prior to commencement of power supply under this Agreement.

Provided that, SECI shall permit assignment of any of OWPD's rights and obligations under this Agreement in favour of the lenders to the OWPD, if required under the Financing Agreements.

Provided that, such consent shall not be withheld if SECI seeks to transfer to any transferee all of its rights and obligations under this Agreement.

The enforcement of the rights and obligation between the OWPD and the Buying Utility(ies) provided in this Agreement and in the PSA shall not be treated as an assignment but an enforcement of the terms agreed under this Agreement.

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement. An amount of Rs. 5 Lakh + 18% GST per Transaction as Facilitation Fee (non-refundable) shall be deposited by the OWPD to SECI. Provided further that, such consent shall not be withheld by the OWPD if SECI seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a New Entity, an amount of Rs. 10 Lakh per Project+ applicable taxes per transaction as Facilitation Fee (non-refundable) shall be deposited by the OWPD to SECI.

### **15.2 *Permitted Charges***

15.2.1 OWPD shall not create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement, other than as set forth in Article 15.1 and the Guidelines.

## **ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION**

### **16.1 *Governing Law***

16.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in Delhi.

### **16.2 *Amicable Settlement and Dispute Resolution***

#### **16.2.1 *Amicable Settlement***

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (“Dispute”) by giving a written notice (Dispute Notice) to the other Party, which shall contain:
  - (a) a description of the Dispute;
  - (b) the grounds for such Dispute; and
  - (c) all written material in support of its claim.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 16.2.1(i), furnish:
  - (a) counter-claim and defences, if any, regarding the Dispute; and
  - (b) all written material in support of its defences and counter-claim.
- iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 16
  - (i) if the other Party does not furnish any counter claim or defence under Article 16
  - (ii) or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 16.2.1.
  - (iii) the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

### **16.3 *Dispute Resolution***

16.3.1 In the event CERC is the Appropriate Commission, any dispute that arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such dispute shall be adjudicated by the CERC. All other disputes shall be resolved by the Dispute Resolution Committee set up by the Government, failing which by arbitration under the Indian Arbitration and Conciliation Act, 1996. In the event SERC/JERC is the Appropriate Commission, then all disputes shall be adjudicated by the SERC/JERC or shall be referred for arbitration by the SERC/JERC.

16.3.2 SECI shall be entitled to co-opt the Buying Entity(ies) and/or the lenders (if any) as a supporting party in such proceedings before the Appropriate Commission.

### **16.4 *Parties to Perform Obligations***

16.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission and save as the Appropriate Commission may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

## **ARTICLE 17: MISCELLANEOUS PROVISIONS**

### **17.1 *Amendment***

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

### **17.2 *Third Party Beneficiaries***

17.2.1 Subject to provisions contained in this agreement relating to back to back implications of the PPA as well as PSA, this Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

### **17.3 *Waiver***

17.3.1 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 authorised representative of such Party.

17.3.2 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.

### **17.4 *Confidentiality***

17.4.1 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.

### **17.5 *Severability***

17.5.1 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.

**17.6 Notices**

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

17.6.2 If to the OWPD, 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.:

17.6.3 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(es) below:

(i) Address :

Attention

Email :

Fax. No. :

Telephone No.:

17.6.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

17.6.5 Any Party may by notice of at least fifteen (15) days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

**17.7 *Language***

17.7.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

17.7.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

**17.8 *Restriction of Shareholders / Owners' Liability***

17.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 2013.

**17.9 *Taxes and Duties***

17.9.1 The OWPD shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the OWPD, contractors or their employees that are required to be paid by the OWPD as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.

17.9.2 SECI shall be indemnified and held harmless by the OWPD against any claims that may be made against SECI in relation to the matters set out in Article 17.9.1.

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

**17.10 *Independent Entity***

17.10.1 The OWPD shall be an independent entity performing its obligations pursuant to the Agreement.

17.10.2 Subject to the provisions of the Agreement, the OWPD shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the OWPD or contractors engaged by the OWPD in connection with the performance of the Agreement shall be under the complete control of the OWPD and shall not be deemed to be employees, representatives, contractors of SECI and nothing contained in the Agreement or in

any agreement or contract awarded by the OWPD shall be construed to create any contractual relationship between any such employees, representatives or contractors and SECI.

**17.11 *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.

**17.12.** The duly executed Power Sale Agreement between SECI and Buying entity(s) as attached to this Agreement shall be read along with this Agreement as a composite back-to-back agreement for Generation and supply of electricity to the Buying entity(s), particularly, to fulfill the Renewable Purchase Obligations under the provisions of the Electricity Act, 2003 and the Regulations notified thereunder.

**17.13 *Breach of Obligations***

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages/penalty or the method of calculating the liquidated damages/penalty specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

**17.14 *Order of priority in application***

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below:

- i. applicable Law, rules and regulations framed thereunder;
- ii. the Grid Code; and
- iii. the terms and conditions of this Agreement;



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

For and on behalf of

[SECI]

[OWPD]

Name, Designation and Address

Name, Designation and Address

Signature with seal

Signature with seal

Witness:

Witness:

1.

1.

2.

2.

**SCHEDULE 1: FORMAT FOR PERFORMANCE BANK GUARANTEE (PBG)**

(to be submitted separately for each Project)

(To be stamped in accordance with Stamp Act, the Non-Judicial Stamp Paper of Appropriate Value)

Reference: .....

Bank Guarantee No.: .....

Date: .....

In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as 'selected Offshore Wind Power Developer') submitting the response to RfS inter alia for ..... [Insert name of the RfS] of the capacity of ..... MW, at .....[Insert name of the place], for supply of power there from on long term basis, in response to the RfS dated..... issued by Solar Energy Corporation of India Ltd (hereinafter referred to as SECI) and SECI considering such response to the RfS of .....[insert the name of the selected Offshore Wind Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Offshore Wind Power Project of the Offshore Wind Power Developer and issuing Letter of Award No ----- to \_\_\_\_\_ (Insert Name of selected Offshore Wind Power Developer) as per terms of RfS and the same having been accepted by the selected OWPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Offshore Wind Power Developer or a Project Company, M/s ----- {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable ].

As per the terms of the RfS, the \_\_\_\_\_ [insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to SECI at [Insert Name of the Place from the address of the SECI] forthwith on demand in writing from SECI or any Officer authorized by it in this behalf, any amount up to and not exceeding Indian Rupees----- [Total Value] only, on behalf of M/s \_\_\_\_\_ [Insert name of the selected Offshore Wind Power Developer / Project Company].

This guarantee shall be valid and binding on this Bank up to and including..... and shall not be terminable by notice or any change in the constitution of the Bank or the term of contract or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

## SECI-OWPD PPA

Our liability under this Guarantee is restricted to INR \_\_\_\_\_ (Indian Rupees \_\_\_\_\_ only).

Our Guarantee shall remain in force until..... SECI shall be entitled to invoke this Guarantee till .....

The Guarantor Bank hereby agrees and acknowledges that SECI shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by SECI, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to SECI.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by -----[Insert name of the selected Offshore Wind Power Developer / Project Company as applicable] and/or any other person. The Guarantor Bank shall not require SECI to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against SECI in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Delhi shall have exclusive jurisdiction.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly SECI shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the selected Offshore Wind Power Developer / Project Company , to make any claim against or any demand on the selected Offshore Wind Power Developer / Project Company or to give any notice to the selected Offshore Wind Power Developer / Project Company or to enforce any security held by SECI or to exercise, levy or enforce any distress, diligence or other process against the selected Offshore Wind Power Developer / Project Company .

This BANK GUARANTEE shall be effective only when the Bank Guarantee issuance message is transmitted by the issuing Bank through SFMS to IDFC First Bank and a confirmation in this regard is received by SECI.

## SECI-OWPD PPA

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to SECI and may be assigned, in whole or in part, (whether absolutely or by way of security) by SECI to any entity to whom SECI is entitled to assign its rights and obligations under the PPA.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to INR \_\_\_\_\_ (Indian Rupees \_\_\_\_\_ only) and it shall remain in force until ..... (Provide for two additional months after the period of guarantee for invoking the process of encashment). We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if SECI serves upon us a written claim or demand.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Power of Attorney No. \_\_\_\_\_

For

\_\_\_\_\_ [Insert Name and Address of the Bank] \_\_\_\_\_

Contact Details of the Bank:

E-mail ID of the bank:

Banker's Stamp and Full Address.

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_

Witness:

1. ....

Signature

Name and Address

2. ....

Signature

Name and Address

Notes:

1. The Stamp Paper should be in the name of the Executing Bank and of appropriate value.
2. The Performance Bank Guarantee shall be executed by any of the Scheduled Commercial Banks as listed on the website of Reserve Bank of India (RBI) and

amended as on the date of issuance of Bank Guarantee. Bank Guarantee issued by foreign branch of a Scheduled Commercial Bank is to be endorsed by the Indian branch of the same bank or State Bank of India (SBI).

**SCHEDULE 2: FORMAT OF PAYMENT ON ORDER INSTRUMENT TO BE ISSUED  
BY IREDA/REC/PFC (IN LIEU OF PBG)**

(to be submitted separately for each Project)

No.

Date

**SECI,**

**Registered**

\_\_\_\_\_  
\_\_\_\_\_

**Reg: M/s \_\_\_\_\_(insert name of the PPA signing entity) (Project No. \_\_\_\_\_(insert project ID issued by SECI) – Issuance of Payment on Order Instrument for an amount of Rs.\_\_\_\_\_**

Dear Sir,

1. It is to be noted that M/s. \_\_\_\_\_(insert name of the POI issuing Agency)(‘IREDA/REC/PFC’) has sanctioned a non-fund based limit loan of Rs. \_\_\_\_\_ (Rupees\_\_\_\_\_only) to M/s \_\_\_\_\_ under the Loan Agreement executed on \_\_\_\_\_ to execute Renewable Energy Projects.

2. At the request of M/s \_\_\_\_\_, on behalf of \_\_\_\_\_ (insert name of the SPV), this Payment on Order Instrument (POI) for an amount of Rs. \_\_\_\_\_(Rupees\_\_\_\_\_ (in words)). This Payment on Order Instrument comes into force immediately.

3. In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected Offshore Wind Power Developer') submitting the response to RfS inter alia for selection of Contracted Capacity of ..... MW, at .....[Insert name of the place] under RfS for ..... [Insert name of the RfS], for supply of power there from on long term basis, in response to the RfS dated..... issued by Solar Energy Corporation of India Ltd (hereinafter referred to as SECI) and SECI considering such response to the RfS of .....[insert the name of the selected Offshore Wind Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Offshore Wind Power Project of the Offshore Wind Power Developer and issuing Letter of Award No ----- to (Insert Name of selected Offshore Wind Power Developer) as per terms of RfS and the same having been accepted by the selected OWPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Offshore Wind Power Developer or a Project Company, M/s ----- (Insert Project ID)

- { a Special Purpose Vehicle (SPV) formed for this purpose }, if applicable ]. As per the terms of the RfS, the \_\_\_\_\_ [insert name & address of IREDA/PFC/REC] hereby agrees unequivocally, irrevocably and unconditionally to pay to SECI at [Insert Name of the Place from the address of the SECI] forthwith on demand in writing from SECI or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees----- [Total Value] only, on behalf of M/s \_\_\_\_\_ [Insert name of the selected Offshore Wind Power Developer / Project Company]

4. In consideration of the above facts, IREDA/REC/PFC, having its registered office at \_\_\_\_\_, agrees to make payment for the sum of Rs. \_\_\_\_\_ lakhs (in words.....) to SECI on the following conditions: -

- (a) IREDA/REC/PFC agrees to make payment of the said amount unconditionally, without demur and without protest upon receipt of request from SECI within the validity period of this letter as specified herein;
- (b) The commitment of IREDA/REC/PFC, under this Payment of Order Instrument will have the same effect as that of the commitment under the Bank Guarantee issued by any Public Sector Bank and shall be enforceable in the same manner as in the case of a Bank Guarantee issued by a Bank and the same shall be irrevocable and shall be honored irrespective of any agreement or its breach between IREDA/REC/PFC or its constituents notwithstanding any dispute that may be raised by them against SECI;
- (c) The liability of IREDA/REC/PFC continues to be valid and binding on IREDA/REC/PFC and shall not be terminated, impaired and discharged, by virtue of change in its constitution and specific liability under letter of undertaking shall be binding on its successors or assignors;
- (d) The liability of IREDA/REC/PFC shall continue to be valid and binding on IREDA/REC/PFC and shall not be terminated/ impaired/ discharged by any extension of time or variation and alternation made given or agreed with or without knowledge or consent of the parties (SECI and Bidding Party), subject to the however to the maximum extent of amount stated herein and IREDA/REC/PFC is not liable to any interest or costs etc;
- (e) This Payment of Order Instrument can be invoked either partially or fully, till the date of validity;
- (f) IREDA/REC/PFC agrees that it shall not require any proof in addition to the written demand by SECI made in any format within the validity period. IREDA/REC/PFC shall not require SECI to justify the invocation of the POI against the SPV/OWPD, to make

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any claim against or any demand against the SPV/OWPD or to give any notice to the SPV/OWPD;

- (g) The POI shall be the primary obligation of IREDA/REC/PFC and SECI shall not be obliged before enforcing the POI to take any action in any court or arbitral proceedings against the SPV/OWPD;
- (h) Neither SECI is required to justify the invocation of this POI nor shall IREDA/REC/PFC have any recourse against SECI in respect of the payment made under letter of undertaking;

5. Notwithstanding anything contrary contained anywhere in this POI or in any other documents, this POI is and shall remain valid upto\_\_\_\_\_ and IREDA/REC/PFC shall make payment thereunder only if a written demand or request is raised within the said date and to the maximum extent of Rs.....and IREDA/REC/PFC shall in no case, be liable for any interest, costs, charges and expenses and IREDA's/REC's/PFC's liability in no case will exceed more than the above amount stipulated.

6. In pursuance of the above, IREDA/REC/PFC and SECI have signed an Umbrella Agreement dated \_\_\_\_ setting out the terms and conditions for issue of letter of undertaking by IREDA/REC/PFC to SECI and the said terms and conditions shall be read as a part of this letter of undertaking issued for the project of the project of PP mentioned above.

Thanking you,

Yours faithfully

For and on behalf of

M/s. \_\_\_\_\_

(name of the POI issuing agency).

( )

General Manager (TS)

Copy to:-

M/s. \_\_PP\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ As per their request

( )

General Manager (TS)



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**SCHEDULE 3: SECI-BUYING ENTITY POWER SALE AGREEMENT**

**SCHEDULE 4: SEABED LEASE AGREEMENT**