

**STANDARD**

**POWER PURCHASE AGREEMENT FOR**

**PROCUREMENT OF ..... MW EXCESS POWER FROM RE PROJECTS**

**ON MEDIUM TERM BASIS**

**Between**

..... **[Insert Name of RE Power Developer]**

**And**

**Solar Energy Corporation of India Limited**

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

This Power Purchase Agreement is made on the ..... [Insert date] day of ..... [Insert month] of ..... [Insert year] at ..... [Insert place]

Between

..... [Insert name of the RE 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 RE Power Developer] (hereinafter referred to as “**RE Power Developer or RPD**”, 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 6<sup>th</sup> 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 RPD 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 Power, Government of India has issued the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid connected Renewable Energy Power Projects with Energy Storage Systems, vide Gazette Resolution dated 09.06.2023, including subsequent amendments and clarifications thereof, if any, issued until \_\_\_\_ [Enter the last date of bid submission of the RfS];

- C. SECI has been designated as a Renewable Energy Implementing Agency (REIA) for developing and facilitating the establishment of the Grid connected RE Power capacity in India in terms of the above Guidelines of the Government of India.
- D. SECI had initiated a Tariff Based Competitive Bid Process for supply of 1000 MW of Excess Power from ISTS-Connected RE Projects (SECI-FDRE-VIII) 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.
- E. .... [Insert name of the Bidding Company] has been selected in the Competitive Bidding Process, {in case Bidding Company is supplying the Contracted Capacity through SPV} has constituted a Special Purpose Vehicle,..... [Insert the name of SPV, if applicable] (hereinafter referred to as 'RPD') for supply of Excess RE Power of Contracted Capacity of .....MW from the RE Power Project(s) established/to be established by RPD anywhere in India through SECI as an Intermediary Agency to the Buying Entity(ies) (as defined) under a Power Sale Agreement to be entered into between SECI and such Buying Entity(ies)/ to SECI under this Agreement (as applicable).
- F. SECI has issued the Letter of Award No..... dated..... in favour of the .....[Insert the name of Bidding Company] for supply of ..... MW of Contracted Capacity of Excess Power from RE Power Project(s) listed in Schedule 5 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.
- G. SECI has agreed to purchase such Excess Power from the RPD as an Intermediary Procurer and sell it to Buying Entity(ies) 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(ies) to sell such power as per the provisions of the RfS and this Agreement.
- H. In terms of the RfS and the Bidding Documents, the RPD has furnished the Performance Bank Guarantee/ Payment on Order Instrument/ Insurance Surety Bond (as applicable) for 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/Surety Bond provided is in Schedule – 1/ Schedule – 2/ Schedule – 3 to this Agreement.

- I. The RPD 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 supplying the Excess RE Power of.....MW by RPD to SECI to enable SECI to make available such power to the Buying Entity(ies), 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 RPD.
- J. SECI may, at its discretion, utilize such Excess Power supplied by the RPD for its own use as a Buying Entity.
- K. 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 supplying of the Excess RE Power from the project(s) listed in Schedule 5 and for generation and supply of electricity by the RPD 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 terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed 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;
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 amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	Unless otherwise stated or the context requires, Appropriate Commission shall mean Central Electricity Regulatory Commission;
“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 Entity/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 RPD and SECI, a day other than Saturday, Sunday or a statutory holiday, on which the banks remain open for business in Delhi and [Insert name of State where RPD Registered Office is located] both;
“Buying Entity” or “Buying Utility”	shall mean an End Procurer as defined in the Guidelines who has agreed to purchase the RE 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 Entities with which SECI has signed/will sign Power Sale Agreement. In case, SECI utilizes such Excess Power for its own use then SECI shall be the Buying Entity.
“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.
“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 Excess RE Power supply under the PPA. Prior to declaration of commencement power supply, the RPD 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 Grid Code.
“Commercial Operation Date (COD)”	shall mean the date as defined in “Commissioning” or in line with the provisions of the Grid Code.
“Competent Court of Law”	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
“Consents, Clearances and Permits”	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
“Consultation Period”	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a RPD 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;
“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 cumulative AC capacity contracted with SECI for supply of Excess RE Power by

	the RPD to SECI at the Delivery Point(s) from the RE Power Project(s).
“Day”	shall mean a day, if not a Business Day, the immediately succeeding Business Day.
“Delivery Point” / “Interconnection Point”	<p>shall mean a single point at the voltage level of 220 kV or above of the ISTS Sub-station/ InSTS substation (at voltage level as applicable by State Regulations) including the transmission line connecting the RE 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 RPD shall abide by the relevant and applicable regulations, Grid Code notified by the CERC 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>In case the Buying Entity is located in the same State where the Project is located, if the Buying Entity desires the Project to set up behind its STU/InSTS substation, it will be permitted by SECI subject to acceptance of such an arrangement by the RPD. It is clarified that by default, “Delivery Point” shall mean ISTS substation, and shall mean an InSTS substation only in case both the RPD and the Buying Entity agree to this modification.</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 etc.) as notified by the competent authority / regulator shall be borne by the RPD and beyond the Delivery Point all charges and losses as notified by the competent authority / regulator from time to time shall be borne by the Buying Entity(ies).</p>
“Dispute”	shall mean any dispute or difference of any kind between SECI and the RPD, 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. In case the RPD has tied up for the ESS component through a third-party, it is clarified and confirmed by the Parties that in all such disputes, RPD shall have the absolute authority to represent such third party in so far as SECI is concerned and SECI will not be required to or otherwise will have to deal with such third

	party, notwithstanding, any difference or dispute between the RPD and/or the such third party.
"Due Date"	shall mean the forty-fifth (45th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received 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;
"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 Entity(ies);
"Energy Storage Systems" or "ESS"	shall mean the system(s) installed in addition to the RE power capacity as part of the Project, that can capture energy produced at one time for use at a later time;
"Event of Default"	shall mean the events as defined in Article 13 of this Agreement;
"Excess RE Power" or "Power" or "Excess Power"	shall mean the additional/surplus power supplied from the project beyond its obligation under the respective Existing PPA
"Existing PPA"	shall mean the PPA signed by the bidders with the REIA/Buying Entity for the project prior to the submission of bids under this RfS.
"Expiry Date"	shall mean the date occurring as on twelve (12) 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;
"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” or “solar hour access” or “solar hours” in this Agreement shall be interpreted in terms of the provisions of these Regulations.
“Guidelines” or “Scheme”	shall mean the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Firm and Dispatchable Power from Grid Connected Renewable Energy Power Projects with Energy Storage Systems issued by the Ministry of Power vide Gazette Notification dated 09.06.2023 including subsequent amendments and clarifications issued / notified thereof until the last date of Bid submission against the referred RfS;
“Grid”	shall mean as per the definition contained in the Act.
"Grid Code" or “Indian Electricity Grid Code” or “IEGC” or “State Grid Code”	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 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(s), SECI and RPD are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the above state Government(s) or both, any political sub-division of any of them; including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
“Project Capacity”	shall mean the rated AC capacity of the Project components as committed to be installed by the RPD, in line with Article 3.1 of this Agreement.
“Insurances”	shall mean the insurance cover to be obtained and maintained by the RPD in accordance with Article 8 of this Agreement;
“Insurance Surety Bond” or “Surety Bond”	shall mean the irrevocable surety bond from and Insurer as per the guidelines issued by the Insurance Regulatory and Development Authority of India (IRDAI), as an alternative to submission of Performance Bank Guarantee by the RPD to SECI, issued in the form attached hereto as Schedule 3;

"Interconnection Facilities"	shall mean the facilities on RPD'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 Procurer" or "REIA"	shall mean Solar Energy Corporation of India Limited (SECI);
"Invoice" or "Bill"	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
"Joint Control"	shall have same meaning as defined in RfS Document.
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 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;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment on Order Instrument" or "POI"	shall mean the irrevocable unconditional letter of undertaking issued by either of the two institutions, viz., (i) Power Finance Corporation Limited or (ii) REC Limited., as an alternative to submission of Performance Bank Guarantee by the RPD, issued in the form attached hereto as Schedule 2;

“Payment Security Mechanism”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“Performance Bank Guarantee”	shall mean the irrevocable unconditional bank guarantee, submitted by the RPD to SECI in the form attached hereto as Schedule 1;
“Pooling Substation/ Pooling Point”	<p>means a point where more than one Power Project may connect to a common transmission system. Multiple Projects can be connected to a pooling substation from where common transmission system shall be constructed and maintained by the RPD(s) to get connected to the Delivery Point. The voltage level for such common line shall be as per the voltage level specified in “Interconnection Point”. Further, the metering of the pooled power shall be done at the injection point, i.e. the ISTS substation. However, the voltage level of transmission system of individual projects up to the pooling substation may be at 33 kV and above. Sub-meters shall be installed at the pooling substation for metering and forecasting and scheduling of individual projects. The losses in the common transmission system up to the injection point shall be apportioned to the individual Projects for the purpose of billing. In such case, it shall be responsibility of the RPD to obtain and furnish the meter reading jointly by the RPD and any competent authority (State Government or Central Government) (if applicable).</p>
“RE Power Project” or “RE Project” or “Power Project” or “Project”	<p>shall mean the renewable energy generation facility of Contracted Capacity of .....[Insert capacity] MW, comprising Solar Power Generating systems, Wind Power Generating systems, other renewable energy generating source(s) or a combination thereof, for supply of RE power, including ESS (which may be leased/tied-up from a third party), having a separate control system, metering and a single point of injection into the grid at Delivery /Interconnection/Metering point at ISTS substation or in case of sharing of transmission lines, by separate injection at pooling point. ESS shall mandatorily constitute part of the Project. It is clarified that ESS charged using a source other than RE power would not qualify as RE power.</p> <p>It may be noted that the sources of generation and ESS shall be co-located. The ESS component may either be owned by the RPD or may be tied-up separately with a third-party by the RPD, and the same will constitute as part of the Project under this RfS.</p> <p>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</p>

	<p>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.</p> <p>It is clarified that arithmetic summation of the rated capacities of Wind, Solar PV and other renewable power generating components of the Project can be more than the Contracted Capacity.</p>
“Power Sale Agreement” or “PSA”	shall mean the back-to-back power sale agreement entered between the Buying Entity and SECI (Buyer- Buying Entity(ies) PSA) for onward sale of power being procured under this Agreement as per the provisions of Guidelines and forms Schedule-4 of this Agreement;
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 13 of this Agreement;
"Prudent Utility Practices"	<p>shall mean the practices, methods and standards that are generally accepted within India 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:</p> <p>a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project;</p> <p>b) the requirements of Indian Law; and the physical conditions at the site of the Power Project</p>
“RBI”	shall mean the Reserve Bank of India;
“RE Power” or “Renewable Energy Power”	shall refer to power from Solar Power Generating Systems, Wind Power Generating Systems, Wind Solar hybrid or any other renewable energy resource based Generating System or a combination thereof, with Energy Storage System (ESS). It is clarified that ESS charged using a source other than RE power would not qualify as RE Power. Further, in the case of charging the ESS from sources other than RE, any financial implications, including but not limited to ISTS charges, shall be borne by the RPD.
“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/..... dated ..... 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", "Rs.", “₹”	shall mean Indian rupees, the lawful currency of India;
“Scheduled Commencement of 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 Subsection (1) of Section 83 of the Electricity Act 2003;
“SLDC”	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
“SLDC Charges”	shall mean the charges levied by the SLDC of the state wherein the RE Power Project is located;
“SECI”	shall mean Solar Energy Corporation of India Limited;
“Solar Power”	shall mean power generated from the Solar Photovoltaic Power Project;
“Solar Photovoltaic Project Component” or “Solar PV Project Component”	shall mean the Project component that uses sunlight for conversion into electricity and that is being set up by the RPD to provide renewable energy (RE) to SECI as per the terms and conditions of 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;
"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 (with the last part being the balance Contracted Capacity) from which commencement of power supply is recorded;

<p>“Unit Commercial Operation Date (UCOD)”</p>	<p>shall mean the COD declared for the respective unit/part of the Project in line with the provisions of the Grid Code.</p>
<p>"Week"</p>	<p>shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;</p>
<p>“Wind Power Project Component”</p>	<p>shall mean the Project component that uses wind energy for conversion into electricity through wind turbine generator.</p>

## **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 shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty-five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18 This Agreement and other documents such as Request for Selection Documents, Letter of Award, Guidelines including subsequent clarifications, addenda, amendments and further clarifications in regard to the tender as well as Power 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. RfS Documents

## **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/ Contracted Capacity approval under the Existing PPA as applicable under Section 63/ 86(1)(b) of the Electricity Act, 2003 in Appropriate Commission/SERC or effective date of this Agreement, whichever is more. The Parties agree that in the event, the order of adoption of tariff/ Contracted Capacity approval as mentioned above is not issued by the CERC/SERC (as applicable) within the time specified above, the provisions of Article 2.1.4 shall apply.

2.1.4 Pursuant to Article 4.5.2, if parties have not mutually extended the time period as stipulated under Article 2.1.3 and the order from the Appropriate Commission/SERC is issued within the timeline as per Article 2.1.3, no extension for Scheduled Commencement of Supply Date (SCSD) shall be given. However, if the requisite Appropriate Commission's/SERC'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 RPD, 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/Contracted Capacity approval by the Appropriate Commission/SERC 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/SERC.

2.1.5 SECI/Buying Entity (as the case may be) shall obtain adoption of tariff from Appropriate Commission and/or Contracted Capacity approval from CERC/SERC (as applicable), 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(ies).

## 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 RPD is free to operate their plants beyond the Expiry Date if other conditions like land lease / Right to Use of Land (as applicable), permits, approvals and clearances etc. allow. In such case unless otherwise agreed by the SECI/Buying Entity, SECI/Buying Entity (as the case may be) shall not be obligated to procure power beyond the Expiry Date.

## 2.3 *Early Termination*

2.3.1 This Agreement shall terminate before the Expiry Date if either SECI or RPD terminates the Agreement, pursuant to Article 13 of this Agreement.

2.3.2 In case the SECI-Buying Entity PSA corresponding to the Contracted Capacity is terminated or modified for a reduced capacity during the Term of this Agreement the event may result in Termination of this Agreement or pro-rata reduction in Contracted Capacity of this Agreement, as the case may be, at the discretion of SECI. In such scenario, any termination compensation payable by the respective Buying Entity, will be passed on to the RPD, after deducting SECI's costs, if any.

## 2.4 *Survival*

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 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 AND PERFORMANCE SECURITY**

**3.1 Installed Capacity**

3.1.1 The RPD shall configure the Project(s) with the objective of supplying Excess RE Power from the Project(s) to the Buying Entity. Accordingly, the Contracted Capacity, i.e. the cumulative Project(s) Capacity shall mean the rated capacities of the RE power generating and ESS components listed in Schedule 5, as applicable, in the following configuration:

Solar: \_\_\_\_ MW

Wind: \_\_\_\_ MW

Any other renewable energy generating source: \_\_\_\_ MW

ESS: \_\_\_\_ MW/\_\_\_\_ MWh

3.1.2 The above configuration can be changed until SCSD/extended SCSD. The RPDs are free to change the Project location and/or Delivery Points as per the terms and conditions of the Existing PPA subject to the condition the SCSD of the Contracted Capacity under this RfS remains unchanged.

3.1.3 Energy Storage Systems (ESS) shall mandatorily constitute part of the Contracted Capacity. It is clarified that ESS charged using a source other than RE power would not qualify as RE power. For avoidance of any doubt, it is hereby clarified that ESS may be constituted as part of the Project or may be tied-up separately with a third party by the RPD, for supply of power. The ESS technology can be changed by the RPD at any time during the Term of the PPA. Any change in the ESS component during the term of the PPA shall be at risk and cost of the RPD and under intimation to SECI.

**3.2 Performance Bank Guarantee/ Payment on Order Instrument/ Insurance Surety Bond**

3.2.1 The Performance Bank Guarantee (PBG)/ Payment on Order Instrument (POI)/ Insurance Surety Bond having validity from the date of submission of PBG/POI/ Surety Bond 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 Excess RE Power up to the

Contracted Capacity within the time specified in this Agreement as per format provided in Schedule 1/2/3.

3.2.2 The failure on the part of the RPD to furnish and maintain the Performance Bank Guarantee/ POI/ Surety Bond shall be a material breach of the term of this Agreement on the part of the RPD.

3.2.3 If the RPD fails to commence supply of Excess Power from SCSD specified in this Agreement or any further extension thereof granted by SECI, subject to conditions mentioned in Article 4.5, SECI shall encash the Performance Bank Guarantee/ POI equivalent to the amount calculated as per penalties applicable under Article 4.6 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 RPD under the PPA, shall be credited to the payment security fund maintained by SECI under the PPA.

**3.3 Return of Performance Bank Guarantee/ Payment on Order Instrument/ Insurance Surety Bond**

3.3.1 Subject to Article 3.2, SECI shall return / release the Performance Bank Guarantee/ Payment on Order Instrument/ Surety Bond within 45 days after the successful commencement of Excess Power supply from the Project after taking into account any liquidated damages / penalties due to delays in commencement of Excess Power supply beyond SCSD as per provisions stipulated in this Agreement. In case of part-commencement of supply of power, PBG corresponding to such capacity shall be released within 45 days of the actual commencement of supply of power from such part-capacity.

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

## **ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT**

### **4.1 *RPD's Obligations***

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

- a) The RPD shall be solely responsible and make arrangements for land & associated infrastructure for development of the Project and for Connectivity with the ISTS System for confirming the availability of power system required for supply of Excess Power by the SCSD and all clearances related thereto. While the Project(s) may be executed by RPD's Affiliate(s), the RPD (or its SPV) remains solely responsible for all obligations regarding the supply of Excess Power.
- b) Obtaining all Consents, Clearances (including Environmental clearance, if applicable) and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. SECI shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the RE Power project. RPD 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 RPD shall only be a voluntary facilitating endeavour on the part of SECI with no intention of being bound by any legal or binding obligation.
- c) Designing, constructing, erecting, commissioning, completing and testing the Power Project(s) in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.
- d) The RPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point to connect the Power project switchyard with the Interconnection facilities at the Delivery Point.
- e) Maintaining the Connectivity as per provision of GNA regulation issued by CERC, for evacuation of the Contracted Capacity throughout the term of the Agreement. It is further clarified that the Entities (RPD 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 Excess RE Power up to the Contracted Capacity to SECI no later than the SCSD and continuance of the supply of Excess RE Power in line with Article 4.4 of this Agreement throughout the term of the Agreement.
- g) Owning the Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15.
- h) Maintaining minimum 51% shareholding prevalent at the time of signing of PPA up to a period of one (1) year after the SCSD in line with Clause 21 of the RfS;
- i) Providing a discount of Rs. 0.02/kWh in the monthly billing which will be apportioned towards the payment security mechanism to be maintained under Article 10.1.1 of this Agreement. (To be applicable in case the RPD has opted for this discounting in lieu of Payment Security Mechanism. Strike it out if not applicable)
- j) Fulfilling all obligations undertaken by the RPD under this Agreement and also as per the terms of the RfS.
- k) The RPD shall be responsible to for directly coordinating and dealing with the corresponding Buying Entity(ies), Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Excess RE Power and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the RPD and the corresponding Buying Entity(ies) 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.
- l) For the Solar PV and ESS components, the RPD shall fulfil the technical requirements according to criteria mentioned under Annexure B and Annexure-E of the RfS, respectively. For the solar PV capacity, the Solar PV modules and solar PV cells used in the Project shall be sourced only from the models and manufacturers included in the List-I (for solar PV modules) and List-II (for solar PV cells) under the “Approved List of Models and Manufacturers” as published by MNRE and valid as on the date of invoicing of such modules. In case of the

- wind capacity, type-certified wind turbine models listed in Revised List of Models and Manufactures (RLMM) issued by MNRE as updated until the date of commissioning of the project will be allowed for deployment under the RfS. Installation of other RE generating sources as part of the Project shall be governed by applicable technical standards issued by the Government from time to time.
- m) The RPD 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.
- n) As part of scheduling of Excess Power from the Project, the RPD will be required to punch-in its respective schedules from the Project components 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 RPD 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 RPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.
- o) For the Project(s) being implemented under this Agreement, the RPD shall submit a detailed completion Schedule for the Project(s) prior to the signing of PPA. Broad details to be captured in the Schedule are the land procurement, grid connectivity; order, supply and erection status of various Project components; financial arrangement/ tie up etc. The RPD shall also submit the progress report to SECI in a form acceptable to SECI and shall contain percentage completion achieved compared with the planned percentage completion for each activity, and any such other information as required by SECI. The RPD shall be required to submit the progress status of 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 RPD shall be required to submit the Project progress status as per Annexure-D of the RfS or the format as desired by Buying Entity. In case of failure to comply with the same, SECI at its discretion, may or may not consider the SCSD extension request of the RPD.

- p) RPD shall comply with applicable cyber security regulations, directives, and guidelines issued by the Central Government Authorities dealing with cyber security.

#### 4.2 *Information regarding Interconnection Facilities*

- 4.2.1 The RPD 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 RPD'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 RPD 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 RPD and any such amounts claimed by such agency(ies) shall be payable by the RPD.
- 4.2.3 The responsibility of getting connectivity with the transmission system up to the Interconnection Point, will lie with the RPD. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the RPD to be obtained at its 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 RPD to be obtained at his 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 RPD.
- 4.2.4 In case of Pooling substation, losses in the transmission line shall be apportioned among the RPDs who share such a Pooling arrangement and duly signed by all RPDs, based on their monthly generation.
- 4.2.5 The arrangement of connectivity shall be made by the RPD through a transmission line. The entire cost of transmission including cost of construction of line, any other charges, losses etc. from the Project up to the Interconnection Point will be borne by the RPD. In case of non-availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the RPD, provisions of Article 4.10 shall be applicable.

4.2.6 ISTS charges and losses on transmission of power, including waiver for RE power, shall be applicable as per extant regulations. Government of India/CERC at its sole discretion, from time to time, issues order for waiver of inter-state transmission system (ISTS) charges and losses on transmission of wind and solar power till a certain date. In case 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. 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.

However, in case the SCSD is on or before the above deadline for ISTS waiver and commencement of power supply from the solar/ wind power component of the Project gets delayed beyond the applicable date of waiver of ISTS charges and losses due to reasons solely attributable to the RPD, the liability of inter-state transmission charges and losses would be to the account of the RPD. In case of delay in commencement of power supply by the RPD even after the operationalization of GNA obtained by the Buying Entity, RPD shall be liable to pay the applicable CTU/STU transmission charges.

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

Treatment of power supplied from the ESS component, with respect to waiver of ISTS charges and losses, shall be governed by the applicable Rules/Orders issued by Ministry of Power/MNRE, read in conjunction with CERC's Orders and Regulations notified in this regard. Further, it is clarified that in case commencement of power supply from the ESS component of the Project configuration gets delayed beyond the applicable date of waiver of ISTS charges and losses, due to reasons solely attributable to the RPD, the liability of inter-state transmission charges and losses shall be borne by the RPD.

In case of delay in commencement of power supply by the RPD even after the operationalization of GNA obtained by the Buying Entity, RPD shall be liable to pay the applicable CTU/STU transmission charges.

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

4.3.1 Subject to the terms and conditions of this Agreement, the RPD undertakes to sell Excess RE power to SECI and SECI undertakes to purchase such power and pay Tariff for all the energy supplied at the Delivery Point corresponding to the Excess Power supplied.

4.3.2 Power procured from the Project awarded under this RfS shall be allocated on back-to-back basis to the Buying Entities at the discretion of SECI, in consultation with Buying Entities. *(to be deleted in case of a single Buying Entity for the entire awarded capacity/power utilized by SECI under the RfS).*

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

##### **4.4.1 (a) Scheduling and offtake of energy during Solar Generation Hours**

i. The RE Power Developer (RPD) shall supply Excess Renewable Energy from the Project during solar generation hours only. The RPD is required to supply minimum Excess Power as defined below:

a. Window 1 (1<sup>st</sup> April to 30<sup>th</sup> September of each year): The RPD shall ensure a minimum supply of 1.5 MWh for every 1 MW per day Contracted Capacity from the Project (Daily Supply Requirement).

b. Window 2 (1<sup>st</sup> October to 31<sup>st</sup> March of each year): The CUF declared by the RPD is ..... (insert the amount as per SECI's LoA). Subsequent to commencement of Excess Power supply, RPD, in Window-2 of any Contract Year, except for the first Contract Year if the commencement of Excess Power supply has started in Window-2, has not been able to supply minimum energy amounting to ..... Million kWh (MU) [insert values corresponding to CUF-2 declared as per SECI's LoA], save and except in case of Force Majeure, the RPD is liable to pay penalty to SECI.

For the first year of operation, the above limit will be reduced proportionately as per the no. of days for which the Excess Power is being supplied.

The 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 SPD as determined under provisions of Article 4.10.1.

- c. The RPD shall offer Excess power such that 100% of the annual energy offered corresponds to RE power.
- ii. Solar generation hours shall mean the hours between local sunrise and sunset, as notified by GRID-INDIA or derived from the standard solar insolation profile for the State. The RPD shall schedule and inject the energy uniformly or as feasible during these hours. Monthly reconciliation shall be carried out based on scheduled vs. actual energy.
- iii. It may be noted that at any instance of energy supply from the Project, priority shall be accorded by RPD to meet the energy supply requirements as per Existing PPA, before supplying the excess power to SECI. Any instance of supply of excess power from the Project by the RPD, while the supply commitments under the Existing PPA remains unfulfilled, shall constitute a breach of RPD's obligations under the Existing PPA and terms and conditions of Existing PPA shall be applicable on the RPD. Further, RPD shall keep SECI/Buying Entity indemnified from any such losses/penalties under their Existing PPA.
- iv. The RE (including ESS component charged with RE sources) bought under this RfS shall be eligible for RPO compliance. The apportionment of RPO between the different RE components shall be on the lines of the principle adopted in case of hybrid plants. The ESS capacity used, if any, in the Project shall be utilized by the Buying Entity to fulfill the respective Energy Storage Obligations (ESO) as per the Government of India's orders and notifications.
- v. The RPD may supply the power which has been backdown under the Existing PPA to fulfil the obligation to meet the Excess Power supply under this PPA.

4.4.1 (b) Shortfall in supply of energy during Solar Hours

In case of any shortfall, beyond the limit mentioned in clause 4.4.1.a above, in supply of Excess Power during the Solar Generation Hours from the mandated supply of energy, the RPD shall pay a penalty corresponding to the energy shortfall, calculated @ 1.5 times PPA Tariff. Subsequent to commencement of power supply from the Project, in any Window of any Contract Year, the penalty for shortfall shall be calculated for each Window.

4.4.1 (c) The detailed list of documents required for verification of energy supply and performance of the Projects will be intimated to the RPDs subsequent to commissioning.

(i) For each Month, the above data will be required to be submitted by the respective RPDs to SECI within 7 days after expiry of the previous Month, for verification of the performance parameters for calculating applicable penalty on account of shortfall.

(ii) For each Contract Year, the above data will be required to be submitted by the respective RPDs to SECI within 30 days after expiry of the previous Contract Year, for verification of the performance parameters for calculating applicable penalty on account of shortfall.

4.4.2 The RPD may repower the Project at any stage at its own risk and cost, if required in order to meet Power Supply requirement under the Existing PPA and Excess Power Supply requirement, under this Agreement, of this Project.

However, in case at any point of time, the peak of Project Capacity reached is higher than the Contracted Capacity and causes disturbance in the system at the point where power is injected, the RPD 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.

4.4.3 The RPD agrees that the methodology specified hereinabove for calculation of compensation in the form of penalties payable by the RPD as indicated above is a genuine and accurate pre-estimation of the actual loss that will be suffered by SECI / Buying Entities. RPD shall further acknowledge 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 document is a genuine and reasonable pre-estimate of the penalty that may be suffered by the SECI / Buying Entities in each case specified under this Agreement.

4.4.4 The parties agree that penalties shall not be applicable in events of Force Majeure identified under the PPA, affecting supply of Excess Power by the RPD. RPD shall not be liable to pay any penalty whatsoever including consequential damages for any shortfall in generation in excess of what becomes payable under Article 4.4.7 and/or Article 4.4.10.

4.5 *Extensions of Time*

4.5.1 In the event that the RPD 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 RPD,
- d) Force Majeure Events recognized under the Existing PPA.

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

4.5.2 Any extension of the SCSD shall be governed in accordance with the terms and conditions of the respective Existing PPA. Any extension of SCSD granted under the Existing PPA shall be applicable only to the corresponding Contracted Capacity under this Agreement and shall not extend to entire Contracted Capacity.

Such extension shall be considered by SECI only upon submission of the following documents by the Developer:

- (a) a duly notarized copy of the extension letter issued under the Existing PPA; and
- (b) an indemnity affidavit, indemnifying SECI against any claims, losses or liabilities arising out of or in connection with such extension.

The RPD shall submit duly notarized copies of all applicable documents under the said Existing PPA. SECI shall have the right to call for and verify the original documents at any time, as required.

4.5.3 In case of extension due to reasons specified in Article 4.5.1(b), (c) and (d), 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 the Project under 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 for the affected Project shall be deemed to be the SCSD and the Expiry Date for the said Project only and not for the complete agreement. An extension granted to one Project does not automatically extend the SCSD of the other Projects in the Contracted Capacity awarded to the RPD.

**Illustration:**

In the event that the Bidder is supplying Contracted Capacity from multiple distinct Projects (e.g., 5 Projects), and the initial SCSD is 03.09.2027. If a Force Majeure event occurs affecting only one specific Project, any extension of time granted shall apply exclusively to that affected Project. If Project 'A' receives a 3-month extension due to Force Majeure, its new SCSD shall be 03.12.2027. The SCSD for the remaining four unaffected Projects shall remain unchanged at 03.09.2027.

- 4.5.6 Delay in commencement of Excess 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 RPD 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 RPD shall commence supply of power from the full Contracted Capacity within SCSD as defined in this Agreement. If the RPD 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 RPD 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 6 months after the SCSD or the extended SCSD, if applicable: The total PBG/POI/Surety Bond amount shall be encashed on pro-rata basis and proportionate to the Contracted Capacity that has not commenced supply of power.
- (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 Contracted Capacity with encashment of Performance Bank Guarantee/ POI/ Surety Bond shall be limited to 6 months after the SCSD/extended SCSD of the Project. In case, the commencement of power supply from the Project is delayed beyond 6 months after the SCSD/ extended SCSD, the Contracted Capacity shall stand reduced / amended to the capacity corresponding to the Contracted Capacity that has commenced power supply until the date as on 6 months after the SCSD/ extended SCSD and the PPA for the balance capacity will stand terminated and shall be reduced from the Contracted Capacity.
- 4.6.3 The RPD acknowledges and accepts that the methodology specified herein above for calculation of penalty payable by the RPD is a genuine and accurate pre-estimation of the actual loss that will be suffered by SECI. RPD 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 Project with the grid, the RPD 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 of the RE Power projects.

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

- 4.8.1 The RPD 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 RPD at the site of the Power Project. The RPD 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 RPD 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 RPD 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 RPD 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 RPD. In such cases, subject to the submission of documentary evidences from the competent authority, the generation compensation shall be restricted and payable by the Buying Entity(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 beyond 175 hours in a Contract Year (as defined in Article 1)	<p><b>Generation Compensation=</b>  <b><i>((Applicable Tariff X RE Power (MW) offered but not scheduled by the Buying Entity) X 1000 X No. of hours of grid unavailability.</i></b></p> <p>However, in the case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realized, after deducting expenses, shall be adjusted against the Generation compensation payable, on monthly basis.</p>

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

**4.10.2** Payment in case of reduced off take: The RPD 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 RPD shall be eligible for payment from the Buying Entity, corresponding to the reduced off take, in terms of following manner.

Reduced Off-take	Provision for Generation Compensation
Reduced off-take beyond 175 hours in a Contract Year (as defined in Article 1)	<p><b><i>Generation Compensation=</i></b>  <b><i>(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, the RPD must sell their power in the power exchange as a price taker. Thus, the compensation would be limited to the difference of the actual generation up to declared capacity subject to a maximum of up to the Contracted Capacity and the quantum of power scheduled by the Buying Entity.

4.10.4 The RPD shall be eligible for payment from the Buying Entity, corresponding to the reduced offtake of power as per the 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. No Trading Margin shall be applicable on this Payment. It is hereby clarified that for the purpose of Article 4.10, “generation” shall mean scheduled energy based on Energy Accounts. The RPD shall not be eligible for any

compensation in case the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions or Force Majeure.

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

5.1 The RPD 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 RE Power Project to the Grid System.

5.2 Subject to Article 5.1, the Project may be synchronized by the RPD 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 RE Project and transmission of data to the concerned authority as per applicable regulations shall be installed by the RPD at its generation facility at its own cost. The RPD 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 RPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the generation facility including RE Project(s) is electrically connected and also to the RLDC in accordance with applicable Grid Code under intimation to SECI.

5.5 The RPD shall commission the Project in line with provisions of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, as amended from time to time. In line with this regulation, the RPD proposing the Project, or its part (including single component), for commissioning shall give to SECI and the Buying Entity, a preliminary notice not later than 60 days prior and advance notice not later than 30 days prior to the proposed commissioning date.

The RPD shall submit requisite documents as mentioned below, at least 15 days prior to commencement of supply of Excess Power –

- i. Submission of details of payment security deposit amount as per RfS/ PPA (if applicable).
- ii. Trial-run Operation Certificate issued by concern RLDC

- iii. PPA compliance certificate / commissioning certificate issued by REIA/Buying Entity
- iv. Board resolution for authorized signatory for signing the documents related to commissioning of the Project.
- v. Undertaking may be obtained from RPDs that the project is installed as per the terms and conditions stipulated in the existing PPA.
- vi. Affidavit from the authorized signatory of the RPD stating that
  - a. the solar cells and modules have been procured from a manufacturer listed in the ALMM/ ALMMC by MNRE (as applicable).
  - b. the Wind turbines installed in the said Project have been procured from a turbine manufacturer listed in the RLMM issued by MNRE (as applicable).
  - c. all the equipment including but not limited to solar PV modules (as applicable), Inverters/PCU, Power transformer, ESS, WTGs (as applicable), Transmission Systems, and cables have been installed in compliance with the technical requirements specified under the RfS/PPA.
  - d. In case of individual component commissioning, RPD is required to submit affidavit as above.
  - e. RPD has obtained all the necessary approvals for commencement of power supply from the Project.
  - f. Indemnifying SECI against any discrepancies in the above details.

It is clarified that SECI shall bear no responsibility in declaration of commissioning/COD of the Project.

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

- 5.6 The RPD 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 General Network Access (GNA). Even in case of early part/full commencement of Excess Power supply, the PPA will remain in force for a period of 12 (twelve) years from the SCSD/extended SCSD.

- 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 and subsequent part(s) shall be 50 MW (with the last part being the balance Contracted Capacity), without prejudice to the imposition of penalty, in terms of the PPA on the part which has not yet commenced supply of power.
- 5.8 The SECI & RPD agree that for the purpose of commencement of the supply of power by RPD to SECI, penalty for delay etc., the SCSD/extended SCSD as defined in this Agreement shall be the relevant date.
- 5.9 The RPDs 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 Excess Power only up to the Contracted Capacity as per this Agreement.
- 5.10 In additions to the requirements mentioned above, RPD shall also comply with all the requirements as mentioned in the Indian Electricity Grid Code.

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

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

- 6.1.1 The RPD shall be entirely responsible to schedule its Excess 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 RPD.
- 6.1.2 The RPD 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 RPD 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 RPD 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 RPD.
- 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 RPD, 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 RPD 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 RPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at RPD's side of Delivery Point.
- 7.1.3 In addition to ensuring compliance of the applicable codes, the RPD 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 Article 7.1.3.

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

- 7.2.1 The grid-connected RE Power Projects will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI, and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the Project. RPD shall also install and maintain GPS enabled Automatic Weather Station (AWS) as per the technical specifications and standards specified by relevant Central Government Agency. Availability of the data from such AWS shall be ensured as specified by the appropriate Load Dispatch Centre and other Central Government agencies in accordance with the provisions of Indian Electricity Grid Code and instructions from the appropriate Load Dispatch Centre from time to time.
- 7.2.2 Online arrangement would have to be made by the RPD for submission of above data from RE Project 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 RPD to Ministry of New and Renewable Energy/ SECI/ National Institute of Solar Energy /or authorized agency of SECI/ MNRE for entire Term of this Agreement.

## **ARTICLE 8: INSURANCES**

### **8.1 *Insurance***

8.1.1 The RPD 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 Entity(ies) as per PSA entered into and any other dues of the Buying Entity(ies) against RPD.

### **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 RPD can claim compensation, under any Insurance shall not be charged to or payable by SECI or Buying Entity(ies). It is for the RPD 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 Excess RE Power supply by the RPD on the terms contained in this Agreement, the RPD shall be entitled to receive the Tariff of Rs. ....../ kWh [Insert the Tariff calculated through the bidding process conducted by SECI], 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 RPD will be free to sell the Excess Power 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. Provided that in case both the Buying Entity and SECI give their acceptance to purchase of power, the Buying Entity will be accorded priority in availing such power. In case the designated Buying Entity does not give its acceptance, then SECI can purchase such power directly or designate another potential buyer/entity to purchase such power at the Applicable Tariff (as per Article 9.1). 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 (as per Article 9.1). Any energy produced and flowing into the grid before SCSD shall not be at the cost of SECI.
- 9.3 Any excess generation over and above energy specified in Article 4.4.1, will be purchased by SECI at the Applicable Tariff (as per Article 9.1), and provided the Buying Entity consents for purchase of such excess generation. However, the RPD 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 Further, if the RPD installs any ESS component(s) at its own risk and cost without the corresponding generating component (wind, solar PV or any other RE source), such ESS component shall be recognized by SECI only after the corresponding generating component has been installed.

## ARTICLE 10: BILLING AND PAYMENT

### 10.1 *General*

- 10.1.1 Pursuant to Article 4.1.1 (i), SECI may set up a payment security fund for RE Power Projects in order to ensure timely payment. The fund will be created as per the Guidelines and Payment Security Mechanism (PSM) guidelines, if any. This fund will have a corpus realized from encashment of Performance Bank Guarantee/POI, if any, under the referred RfS, and the amount credited by the RPD through a discount of Rs. 0.02/kWh in the monthly billing under this Agreement (last part to be applicable in case the RPD has opted for discounting the Tariff in lieu of Payment Security mechanism charges).
- 10.1.2 From the commencement of supply of Excess Power, SECI shall pay to the RPD 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 For the purpose of payment of the bills raised by the RPD(s), in case Energy Account is published on cumulative basis, payment to the RPD(s) for the energy delivered shall be determined as per the segregation of the energy account provided by all the RPDs as per their schedule (to be provided in the form of annexure that will be attested by all the RPDs).
- 10.1.4 The RPD 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 RPD, power not requisitioned by the Buying Entity, the order of payment and adjustment towards late payment surcharge and indemnification. In case of any inconsistency in the Guidelines and/or the provisions of this Agreement, with the provisions of the above

Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 will supersede and be applicable and govern the terms and conditions of this Agreement. The above shall apply both in regard to the present agreement as well as on mutatis mutandi and back to back basis to the 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 RPD 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 RPD for 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 RPD 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 RPD shall issue the monthly Bill by deducting the discount of Rs.0.02/kWh as per Article 10.1.1 (strike out if not applicable), 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(s)/respective SERC(s), all charges pertaining to obtaining open access and scheduling of power, if any, upto the Delivery Point(s), shall be borne by the RPD.

### 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 RPD, as shall have been previously notified by the RPD 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;
- ii) shortfall in meeting the Excess RE Power supply requirement; and
- iii) amount claimed by SECI, if any, from the RPD, 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 RPD shall open a bank account (the "RPD's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by SECI to the RPD, 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 RPD to SECI, if any, and notify the RPD of the details of such account ninety (90) Days before the SCSD. SECI and the RPD shall instruct their respective bankers to make all payments under this Agreement to the RPD'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 RPD 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 RPD 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 RPD would be allowed to raise Bills against such power as per Article 10.2.1. However, payment against the 1<sup>st</sup> such bill raised by the RPD, will be made subject to acceptance of the bill by the Buying Entity.

#### 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 RPD 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 of the presentation of hard copy of Bill.
- b) Any payments made after ten (10) days up to and including the 30<sup>th</sup> Day from the date of presentation of Bill through hard copy, 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**

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

10.4.1 SECI shall provide to the RPD, 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 RPD in accordance with this Article.

10.4.2 Before the start of supply, SECI shall, through a scheduled bank, open a Letter of Credit in favour of the RPD, 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 RPD 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 drawal 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 RPD, 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 SECI.

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 RPD 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 RPD and;
- ii) a certificate from the RPD 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 RPD 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 undisputed amount or 50% of the invoice amount,

whichever is higher, and it shall within thirty (30) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- i) the details of the disputed amount;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its claim.

10.5.3 If the RPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the RPD 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 RPD 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 RPD 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 For the avoidance of doubt, it is clarified that despite a Dispute regarding an invoice, SECI shall, without prejudice to its right to Dispute, be under an obligation to make payment of undisputed amount or 50% of the invoice amount, whichever is higher, in the Monthly Bill.

## **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 RPD and SECI shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the RPD 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 RPD may raise a ("Supplementary Bill") for payment on account of:

- i) Adjustments required by the Energy Accounts (if applicable); or
- ii) Not used
- 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 RPD to the RPD's Designated Account by the Due Date, except open access charges, RLDC or scheduling charges and transmission charges (if applicable). Except for payment under Article 10.7.1 (i), payment of Supplementary Bills will be made after realization of the same from the Buying Entity(ies) under the Power Sale Agreement. 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 RPD whose performance has been affected by an event of Force Majeure.

### **11.3 *Force Majeure***

11.3.1 A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance 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, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if and only if it is declared / notified by the competent state / central authority / agency (as applicable);
- b) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action if and only if it is declared / notified by the competent state / central authority / agency (as applicable); or
- c) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.
- d) An event of Force Majeure identified under Buyer-Buying Entity(ies) PSA, thereby affecting delivery of power from RPD to Buying Entity(ies).
- e) any event or circumstances having impact analogous to that on account of any of the events as specified under Article 11.3.1.(a), 11.3.1.(b), 11.3.1.(c), and 11.3.1.(d).

- f) Force Majeure events recognized under the Existing PPA.

#### **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:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.5;
- (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.

11.7.2 It is clarified that any relief granted under the Force Majeure provisions shall be restricted solely to the specific, individual project directly impacted by said event. Such relief shall under no circumstances be applied cumulatively to the RPD's total Contracted Capacity.

## **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 introduction of any new tax made applicable including any duties and cess for supply of power from the project by the Power Producer which have a direct effect on the Project and occurring after \_\_\_\_\_ [Enter the date as on 7 days prior to the last date of bid submission of the referred RfS], including any enactment or amendment or repeal of any law.

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 shall be adjusted 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 the tariff due to change in law, shall give a 21 days’ prior notice to the other party about the proposed impact on the tariff or charges 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 on unit basis and shall be recovered in the monthly bill as 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:

Let the tariff for the Contracted Capacity be ‘T’ and the new tax levied on supply of power from the Project be ‘t’.

Then the new tariff for the Contracted Capacity shall be ‘T+t’

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 shall be until the impact persists.

- 12.2.7 The RPD shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.
- 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 RPD, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.
- 12.2.10 In the event of any decrease in any income to the RPD on account of the event as indicated above, RPD 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 RPD failing to comply with the above requirement, SECI shall make such deductions in the monthly tariff payments on immediate basis. Further, at the time of raising of 1st Monthly Tariff Payment Bill, RPD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 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, 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.

## ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

### 13.1 *RPD 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 RPD Event of Default:

- (i) the failure to commence supply of Excess Power to SECI up to the Contracted Capacity, by the end of the period specified in Article 4, or failure to maintain minimum annual Excess RE power supply for a period of 2 (two) consecutive Contract Years, excluding the first Contract Year ending on 31<sup>st</sup> March immediately after commencement of power supply, throughout the Term of this Agreement, or if
  - a) the RPD 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 RPD 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 RPD 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 RPD, or (c) the RPD 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 RPD will not be a RPD 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 RPD and expressly

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

- (iii) the RPD 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 RPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the RPD within thirty (30) days of receipt of first notice in this regard given by SECI; or
- (v) change in shareholding of the RPD before the specified time frame as mentioned in Article 4.1.1 of this Agreement, without prior consent of SECI; or ceding of control by the promoters of M/s ..... [Insert name of the bidding company which was issued LoA by SECI under the RfS] within 1 year of SCSD, 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 RPD; or
- (vii) concealment of material information or making a wrong statement or misrepresentation of facts, etc. as per Clause 24.3 and 24.4 of the RfS.
- (viii) Revoking of connectivity of the RPD on account of non-compliance by the RPD.

### **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 RPD 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 RPD is unable to recover the amount outstanding to the RPD 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 RPD in this regard; or
- (iii) except where due to any RPD'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 RPD 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 Entities are 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 RPD Event of Default**

13.3.1 Upon the occurrence and continuation of any RPD Event of Default under Article 13.1, SECI shall have the right to deliver to the RPD, with a copy to the representative of the lenders to the RPD with whom the RPD 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 RPD 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 RPD.

13.3.5 Subject to the terms of this Agreement, upon occurrence of a RPD Event of Default under this Agreement, the RPD shall be liable to pay to SECI, penalty, as provided in Article 4.6 of the PPA for failure to commence supply of Excess Power within the stipulated time and Article 4.4.1 for failure to supply power in terms of the PPA. RPD's min. annual Excess Power supply requirement shall be reduced to the average of actual annual Excess Power supply requirement for the 2 default Contract Years and the RPD shall be liable to pay to Buying Entity(ies), lump-sum damages equivalent to 24 (twenty-four) months or balance PPA period, whichever is less, of the tariff, for the reduction in min. annual Excess Power supply requirement. Provided that in this case if the RPD fails to pay the lump-sum damages, then, such failure of the RPD shall be treated as an event of default of RPD and the PPA shall be terminated. In the event of termination of PPA in such cases and for other cases, the RPD 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 min. annual Excess RE Power to be supplied during Solar Hours.

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 RPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the RPD and performing the obligations of the RPD. However, in the event the lenders are unable to substitute the defaulting RPD within the stipulated period, SECI

may terminate the PPA. 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 Entity(ies) 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 RPD 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 RPD to SECI.
- 13.3.7 In the event of termination of PPA/PSA, on account of Event of Default by the RPD, any damages or charges payable to the STU/ CTU, for the connectivity of the plant, shall be borne by RPD.

#### **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 RPD shall have the right to deliver to SECI, a RPD 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 RPD 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 RPD shall, subject to the prior consent of the RPD, 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 RPD, or if no offer of novation is made by SECI within the stipulated period, then the RPD may terminate the PPA and at its discretion require SECI to pay to the RPD, damages, equivalent to 24 (twenty-four) months, or balance PPA period, whichever is less, of charges of its Contracted Capacity corresponding to the annual Excess Power to be supplied during Solar Hours. 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 after obtaining consent of Buying Entity and there shall not be any liability (to SECI/Buying Entity) arising out of such termination. In such an event, this Agreement shall terminate on the date of such Termination Notice 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 RPD 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 RPD of any of its obligations under this Agreement or due to the RPD'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 RPD of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the RPD, 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 RPD harmless against:

- a) any and all third party claims against the RPD, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by 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 RPD 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 RPD 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 RPD nor SECI nor Buying Entity(ies) nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Buying Entity(ies) , the RPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 SECI shall have no recourse against any officer, director or shareholder of the RPD or any Affiliate of the RPD or any of its officers, directors or shareholders for such claims excluded under this Article. The RPD 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 Entity(ies) to enable them to fulfill the Renewable Purchase Obligations (RPO)/Energy Storage Obligation (ESO) and power demand, 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 Entity(ies) on re-sale under the Power Sale Agreement to be entered into by the Buying Entity(ies) with SECI. It is however, specifically agreed that the payment of money becoming due from the SECI to the RPD under this Agreement for supply of RE Power to the extent of the Contracted Capacity shall not be on a

back to back basis and will be as per the recourse under the Payment Security Mechanism provided in the PPA and 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 other than the tariff payment obligation specifically mentioned herein above, in the event the RPD 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 RPD 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 Entity(ies) under the Power Sale Agreement to be entered into between the SECI and the Buying Entity(ies) 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 RPD's rights and obligations under this Agreement in favour of the lenders to the RPD, 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 RPD and the Buying Entity(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 per Project + applicable taxes per transaction as Facilitation Fee (non-refundable) shall be deposited by the RPD to SECI. Provided further that, such consent shall not be withheld by the RPD 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 RPD to SECI.

**15.2 *Permitted Charges***

15.2.1 RPD 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 RPD, 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 :  
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:

Address :  
Attention :  
Email :  
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 RPD shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the RPD, contractors or their employees that are required to be paid by the RPD 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 RPD 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 RPD by SECI on behalf of RPD.

### **17.10 *Independent Entity***

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

17.10.2 Subject to the provisions of the Agreement, the RPD shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the RPD or contractors engaged by the RPD in connection with the performance of the Agreement shall be under the complete control of the RPD 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 RPD 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;

SECI-RPD PPA

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]

[RPD]

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 RE Power Developer') submitting the response to RfS inter alia for ..... [*Insert name of the RfS*] of the Contracted Capacity of ..... MW, at ..... [*Insert name of the place*], for supply of Excess Power there from on medium term basis, in response to the RfS dated..... issued by Solar Energy Corporation of India Limited (hereinafter referred to as SECI) and SECI considering such response to the RfS of ..... [*Insert name of the Selected RE Power Developer*] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Project of the RE Power Developer and issuing Letter of Award No. \_\_\_\_\_ to \_\_\_\_\_ (*Insert Name of selected RE Power Developer*) as per terms of RfS and the same having been accepted by the selected RPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected RE 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 authorised 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 RE 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.

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.

SECI-RPD PPA

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 RE 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 New 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 RE Power Developer/ Project Company, to make any claim against or any demand on the selected RE Power Developer/ Project Company or to give any notice to the selected RE 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 RE 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.

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 ..... 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.

SECI shall be entitled to invoke this Guarantee till \_\_\_\_\_ [*Insert a date which is at least 30 days beyond the expiry of the validity period on the basis of Clause No. 17 of this RfS*].

Signature \_\_\_\_\_

Name \_\_\_\_\_

SECI-RPD PPA

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 an Indian branch of a Scheduled Commercial Bank listed on the website of Reserve Bank of India (RBI), as applicable on the date of issuance of Bank Guarantee.

**SCHEDULE 2: FORMAT OF PAYMENT ON ORDER INSTRUMENT TO BE ISSUED BY REC/PFC (IN LIEW 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) ('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 RE 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 Excess Power there from on medium 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 RE Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the RE Power Project of the RE Power Developer (RPD) and issuing Letter of Award No ----- to (Insert Name of selected RE Power Developer) as per terms of RfS and the same having been accepted by the selected RPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected RE 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 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 RE Power Developer / Project Company].

4. In consideration of the above facts, 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) 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 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 REC/PFC or its constituents notwithstanding any dispute that may be raised by them against SECI;
  - (c) The liability of REC/PFC continues to be valid and binding on 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 REC/PFC shall continue to be valid and binding on 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 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) 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. REC/PFC shall not require SECI to justify the invocation of the POI against the SPV/RPD, to make any claim against or any demand against the SPV/RPD or to give any notice to the SPV/RPD;
  - (g) The POI shall be the primary obligation of 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/RPD;
  - (h) Neither SECI is required to justify the invocation of this POI nor shall 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 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 REC/PFC shall in no case, be liable for any interest, costs, charges and expenses and REC's/PFC's liability in no case will exceed more than the above amount stipulated. SECI shall be entitled to invoke this POI till \_\_\_\_\_ [Insert a date which is at least 30 days beyond the expiry of the validity period on the basis of Clause No. 17 of this RfS].

SECI-RPD PPA

6. In pursuance of the above, REC/PFC and SECI have signed an Umbrella Agreement dated \_\_\_\_ setting out the terms and conditions for issue of letter of undertaking by 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)

**SCHEDULE 3: FORMAT OF INSURANCE SURETY BOND TOWARDS PERFORMANCE SECURITY**

(to be stamped in accordance with Stamp Act of India)

Insurance Surety Bond No.:

Date:

To

Solar Energy Corporation of India Limited,  
6th Floor, Plate-B, NBCC Office Block Tower-2,  
East Kidwai Nagar, New Delhi - 110 023

Dear Sir,

In consideration of Solar Energy Corporation of India Limited (hereinafter referred to as 'SECI') (which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s..... [*Insert name of RE Power Developer*] ..... with its Registered/Head Office at..... (Hereinafter referred to as the 'RE Power Developer' or 'RPD', which expression shall unless repugnant to the context or meaning thereof, include its successors administrators, executors and assigns), the project of Contracted Capacity of .....MW for supply of Excess Power there from on medium term basis, in response to the RfS dated..... issued by SECI by issuing Letter of Award No. ....dated..... and the same having been unequivocally accepted by the RPD, resulting into a Power Purchase Agreement (PPA) to be entered, for purchase of Power [from selected RE Power Developer or a Project Company, M/s ..... {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable] and the RPD having agreed to provide a Performance Guarantee of the amount up to and not exceeding Indian Rupees ..... [*Total Value*] only.

We ..... [*Name & Address of the Insurer*] ..... having its Head Office at ..... (hereinafter referred to as the 'Insurer', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay SECI unequivocally, irrevocably and unconditionally, on demand any and all amount to the extent of amount up to and not exceeding Indian Rupees ..... [*Total Value*] on behalf of M/s \_\_\_\_\_ [*Insert name of the selected RPD*] at any time up to ..... [*days/month/year*] without any condition, demur, reservation, contest, recourse or protest and/or without any reference to the RPD. Any such demand made by SECI on the Insurer shall be conclusive and binding notwithstanding any difference between the SECI and the RPD or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. The Insurer undertakes not to revoke this Insurance Surety Bond during its currency and or any period extended under the contract, without prior consent of SECI and further agrees that the guarantee herein contained shall be enforceable till SECI discharges this guarantee.

SECI shall have the fullest liberty, without affecting in any way the liability of the Insurer under this Insurance Surety Bond, from time to time to extend the performance of the Contract  
(Insert Project ID)

SECI-RPD PPA

by the RPD for the purpose of which, the Insurer shall be liable to extend the validity of the present Insurance Surety Bond without any demur, condition, protest and the Insurer shall at no point in time have an option of revoking the same, SECI shall have the fullest liberty, without affecting this Insurance Surety Bond, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the RPD, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Power Purchase Agreement between SECI and RPD or any other course or remedy or security available to SECI. The Insurer shall not be released of its obligations under these presents by any exercise by SECI of its liberty with reference to the aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of SECI or any other indulgence shown by SECI or by any other matter or thing whatsoever which under law would, but for this provision, have the effect of relieving the Insurer.

The Insurer also agrees and undertakes that SECI at its option shall be entitled to enforce this Insurance Surety Bond against the Insurer as a Surety, in the first instance without proceeding against the RPD and notwithstanding any security or other guarantee that SECI may have in relation to the RPD's liabilities.

The Insurer hereby agrees and acknowledges that the SECI shall have a right to invoke this Insurance Surety Bond in part or in full, as it may deem fit.

The Insurer 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 Insurer, in order to make the said payment to SECI.

The Insurer shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by \_\_\_\_\_ [*Insert name of the RPD*] and/ or any other person. The Insurer shall not require SECI to justify the invocation of this Insurance Surety Bond, nor shall the Insurer have any recourse against SECI in respect of any payment made hereunder.

This Insurance Surety Bond shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Insurer.

The Insurer acknowledges that this Insurance Surety Bond 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 RfS.

Notwithstanding anything contained hereinabove our liability under this Insurance Surety Bond is restricted to INR ..... (Indian Rupees ..... only) and it shall remain in force up to and including ..... and shall be extended from time to time for such period, as may be desired by M/s .....[RPD's Name] on whose behalf this Insurance Surety Bond has been given. SECI shall be entitled to invoke this Bond till \_\_\_\_\_ [*Insert a date which is at least 30 days beyond the expiry of the validity period on the basis of Clause No. 17 of this RfS*].

(Insert Project ID)

Dated this ..... day of ..... 20..... at.....

.....  
(Signature)

.....  
(Name)

.....  
(Designation with Insurer stamp)

Email ID of the Branch for confirmation of this Bond: .....

Authorized Vide Power of Attorney No.....

Date.....

**WITNESS :**

1.....  
(Signature)

.....  
(Name)

.....  
(Official Address)

2. ....  
(Signature)

.....  
(Name)

.....  
(Official Address)

**Notes:**

1. The Insurance Surety Bond shall be from an Insurer as per guidelines issued by Insurance Regulatory and Development Authority of India (IRDAI).
2. SECI shall be the Creditor, the RPD shall be the Principal debtor and the Insurance company/Insurer shall be the Surety in respect of the Insurance Surety Bond to be issued by the Insurer.
3. The Insurance Surety Bond should be on Non-Judicial stamp paper/e-stamp paper of appropriate value as per Stamp Act prevailing in the state(s) where the Insurance Surety Bond is submitted or is to be acted upon or the rate prevailing in State where the Insurance Surety Bond is executed, whichever is higher. The Stamp Paper/e-stamp paper shall be purchased in the name of RPD/Insurer issuing the Insurance Surety Bond.

SECI-RPD PPA

**SCHEDULE 4: SECI-BUYING ENTITY(IES) POWER SALE AGREEMENT(S)**

**SCHEDULE 5: LIST OF PROJECTS HAVING EXISTING PPA WHICH ARE PART OF THE CONTRACTED CAPACITY**

Contracted Capacity offered (in MW): \_\_\_\_\_

<b>Project No.</b>	<b>Installed capacity as per Existing PPA (rated capacities of respective components)</b>	<b>Location of Project (Village, Tehsil, Dist., State)</b>	<b>Interconnection Point Details and State Date of Connectivity</b>	<b>Scheduled date of Commissioning under the Existing PPA</b>	<b>Name of Buying Entity and contracted capacity committed under the Existing PPA</b>
1	Solar: ____ MW Wind: ____ MW Other _____ RE Power: __ MW ESS: ____ MW/ ____ MWh				
2					
3					