STANDARD

ENERGY STORAGE PURCHASE AGREEMENT

FOR

PROCUREMENT OF 50 MW/ 100 MWh ESS CAPACITY

ON SHORT TERM BASIS

Between

…………….. [Insert Name of ESSD]

And

Solar Energy Corporation of India Limited

…………. [Insert month and year]

This Energy Storage Purchase Agreement (hereinafter referred to as "ESPA") is made on the …….[Insert date] day of ……….[Insert month] of …….. [Insert year] at ………… [Insert place]

Between

………………. [Insert name of the ESSD], a Company incorporated under the Companies Act 1956 or Companies Act 2013, having its registered office at ………….. [Insert address of the registered office of ESSD] (hereinafter referred to as "**Energy Storage System Developer**" **or** "**Storage Project Developer" or** "**ESSD**", 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, a company incorporated under the Companies Act 1956, having its registered office at ……… (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 ESSD and SECI are individually referred to as 'Party' and collectively referred to as 'Parties'.

WHEREAS:

A. SECI had initiated a Tariff Based Competitive Bid Process for utilization of 100 MWh (50 MW X 2 hrs.) of ISTS connected Energy Storage Project (hereinafter referred to as 'Project') on the terms and conditions contained in the Request for Selection Documents (herein after referred to as **'RfS')** issued by SECI vide RfS No…………….. dated……………. .

B. SECI has issued the Letter of Award No…………….. dated**………..**in favor of the _____________[Insert name of the Bidding Company] for development and establishment of the 50 MW/100 MWh of "Project" or "ESS" at a location provided at __________ [Insert name of the substation]**,** S/s in the State of ____ as per the terms and conditions contained in the RfS, this Energy Storage Purchase Agreement (ESPA) and other bidding documents as well as the conditions contained in the Letter of Award.

C. …..**[Insert Name of the Bidding Company]** has been selected in the Competitive Bidding Process (hereinafter referred to as '**ESSD**'), for utilization of ESS Capacity from the 50 MW/ 100 MWh of the Project / ESS owned by ESSD in ____________________ [Insert the name of substation], S/s in the State of ____and for making available of such Energy Storage Capacity by SECI.

D. SECI has agreed to purchase such Energy Storage Capacity from the ESSD as per the provisions of the RfS.

E. In terms of the RfS and the Bidding Documents, the ESSD has furnished the Performance Bank Guarantee/ Insurance Surety Bond in the sum of Rs………..in favour of SECI as per the format provided as a part of the Bidding Documents and a copy of the Bank Guarantee/ Insurance Surety Bond provided in Schedule-1.

F. ESSD has fulfilled the terms of the RfS Documents and the terms of the Letter of Award for signing this Energy Storage Purchase Agreement as a definitive agreement for developing the "Project" (or "ESS") of 50 MW/ 100 MWh at _____________________ S/S in the State of ___for making available Energy Storage Capacity by the ESSD to SECI;

G. The parties have agreed to execute this Energy Storage 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 utilization of the Project at ……, [Insert name of state] and for making available such Energy Storage Capacity by the ESSD 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;
"Agreement" or "Energy Storage Purchase Agreement" or "Storage Capacity Agreement" or "ESPA"	shall mean this Energy Storage Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	shall mean Central Electricity Regulatory Commission (CERC);
"Annual Availability"	For a particular Contract Year, "Annual Availability" shall be the average availability of the Contracted ESS capacity during that particular Contract Year, calculated as per the RfS and this ESPA;
"Battery Energy Storage Systems" or "BESS"	shall mean the system(s)/projects utilizing methods and technologies such as electrochemical batteries (Lead Acid, Li-ion, solid state batteries, flow batteries, etc.), providing a facility that can store chemical energy and deliver the stored energy in the form of electricity, including but not limited to ancillary facilities (grid support, for example). Such systems may be co-located with RE Generating Stations or may be operated on stand-alone basis.
"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 ESSD and SECI, a day other than Saturday, Sunday or a statutory holiday, on which the banks remain open for business in Delhi;
"Buying Entity" or "SECI" or "Procurer"	shall mean Solar Energy Corporation of India Limited;
"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;

"CTU" or "Central Transmission Utility"	shall mean the Government Company notified by the Central Government under Sub-Section (1) of Section 38 of the Electricity Act, 2003.
"Change in Law"	shall have the meaning ascribed thereto in Article 12 of this Agreement;
"Commercial Operation Date (COD)"	for the Project being utilized under this ESPA shall mean 01.11.2026.
"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 the Project and providing energy storage facility under this Agreement;
"Consultation Period"	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a ESSD 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" or "Term of the Contract/ ESPA"	shall mean the period beginning from 01.11.2026 and ending on 31.10.2027.
"Contracted Capacity" or "Project Capacity"	shall mean 50 MW/100 MWh, which is the Energy Storage Capacity contracted with SECI by the ESSD for charging and discharging the system on "on-demand" short-term basis, at the Delivery Point from the Project.
"Day"	shall mean a day, if not a Business Day, the immediately succeeding Business Day.
"Delivery Point" or "Interconnection Point" or "Metering Point"	shall mean the point of connection at 220 kV substation of _____, including the dedicated transmission line (if any) connecting the 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 / drawn. For interconnection with grid and metering, the ESSD shall abide by the relevant and applicable regulations, Grid Code notified by the CERC/CEA (Installation and Operation of Meters) Regulations, 2006 or equivalent CEIG regulations as amended and revised from time to time, or orders passed thereunder by the appropriate commission or CEA or CEIG.

	Any penalty or cost like deviation settlement mechanism etc. up to delivery point shall be borne by the ESSD.
“Dispute”	shall mean any dispute or difference of any kind between SECI and the ESSD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
"Due Date"	shall mean the forty-fifth (45^{th}) 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;
“Event of Default”	shall mean the events as defined in Article 13 of this Agreement;
“Expiry Date”	Shall be 31.10.2027, unless extended by the Parties as per this Agreement;
"Force Majeure" or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 11 of this Agreement;
"Grid Code" / “IEGC” or “State Grid Code”	shall mean the Grid Code 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;
ISTS	shall mean the Inter-State Transmission System;

“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 Project, SECI and ESSD 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;
“Insurances”	shall mean the insurance cover to be obtained and maintained by the ESSD in accordance with Article 8 of this Agreement;
“Insurance Surety Bond” or “Surety Bond”	shall mean the irrevocable surety bond from an 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 ESSD to SECI;
"Interconnection Facilities"	shall mean the facilities on ESSD’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;
“Invoice” or “Bill”	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
“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;
“MoP”	shall mean the Ministry of Power, 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 Security Mechanism"	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Performance Bank Guarantee" or "PBG"	shall mean the irrevocable unconditional bank guarantee, submitted by the ESSD to SECI;
"Project" or "Energy Storage Project" or "ESS Project" or "Energy Storage Systems" or "ESS"	shall mean the system(s)/projects of ……….[Insert capacity] MW/_____ MWh, located at ……………. [Insert name of the place] in …. [Insert name of the District and State] having a separate control system, metering and single point of injection into the grid at Delivery/Interconnection/Metering point at ISTS substation and utilizing methods and technologies such as electrochemical batteries (Lead Acid, Li-ion, solid state batteries, flow batteries etc.)/ PSP, providing a facility that can store energy and deliver the stored energy in the form of electricity, including ancillary facilities (grid support, for example). It also includes all units and auxiliaries, Energy Management System including associated applications / software; bay/s for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of above mentioned Energy Storage Capacity as per this Agreement;
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 13 of this Agreement;
"Project Capacity"	Shall mean [Insert the capacity] ___ MW/____ MWh [as per LoA] of ESS, which [Insert name of ESSD] is required to Own Operate and supply such Energy Storage Capacity as per provisions of this Agreement read harmoniously with RfS Documents and LoA.
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of Energy Storage System equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be installed / used for the Project Energy Storage Project; b) the requirements of Indian Law; and the physical conditions at the site of the Project;

	c) Installation, Operation, Maintenance and Safety Guidelines / Rules / Regulations for ESS/ Projects / Power Projects issued by Central Government Instrumentality;
“Pumped Storage Plant” or “PSP”	shall mean a hydro power plant, either on-stream or off-stream, that stores energy by pumping water from a lower stream/ reservoir to an upper reservoir and generates electricity by releasing it back through a turbine-generator.
“RBI”	shall mean the Reserve Bank of India;
“Rebate”	shall have the same meaning as ascribed thereto in Article 10.3.4 of this Agreement;
"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;
“SLDC”	shall mean the State Load Dispatch Center;
“SLDC Charges”	shall mean the charges levied by the SLDC;
“State Transmission Utility” or “STU”	shall mean the Board or the Government company notified by the 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;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

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, Guidelines including subsequent clarifications, amendments and further clarifications in regard to the tender 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. Energy Storage Purchase Agreement
2. RfS Document & Letter of Award

ARTICLE 2: TERM OF AGREEMENT

2.1 ***Effective Date***

2.1.1 This Agreement shall come into effect from ……….(*Enter the date in line with Clause 15.1 of the RfS*) and such date shall be referred to as the Effective Date.

2.2 ***Term of Agreement***

2.2.1 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.

2.3 ***Early Termination***

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

2.4 ***Survival***

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty 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: PERFORMANCE SECURITY

3.1 Performance Bank Guarantee/ Insurance Surety Bond

3.3.1 The Performance Bank Guarantee (PBG)/ Insurance Surety Bond having validity from the date of submission of PBG until 3 months after the Expiry Date of the ESPA submitted for a value of **Rs. 6 Crores** (being a genuine pre-estimate as agreed by the Parties) to be furnished under this Agreement shall be for guaranteeing the commencement and continuation of the supply (injection / drawl) of power / energy up to the Project Capacity within the time specified in this Agreement as per Format-7.2C and 7.2D of the RfS.

3.3.2 The failure on the part of the ESSD to furnish and maintain the Performance Bank Guarantee shall be a material breach of the term of this Agreement on the part of the ESSD.

3.3.3 Commercial Operation Date (COD) for Utilization of ESS capacity under this ESPA shall be 1st November 2026. In case of failure of the ESSD to provide the ESS capacity for utilization from the COD, as part of liquidated damages, the total PBG amount for the Project shall be encashed by SECI and ESPA for the Project shall stand terminated. It is clarified that the liquidated damages are genuine pre-estimate and Bidder/ESSD agrees that in case of invocation of BG, SECI is under no obligation to produce any estimate of loss in this regard.

3.4 Return of Performance Bank Guarantee/ Insurance Surety Bond

3.4.1 Subject to Article 3.3, SECI shall return / release the Performance Bank Guarantee/ Insurance Surety Bond within 45 days of Expiry Date of the ESPA after taking into account any liquidated damages / penalties due to non-fulfilment of performance obligations as per provisions stipulated in this ESPA.

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

ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 *ESSD's Obligations*

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

a) The ESSD shall be solely responsible for maintenance of associated infrastructure of the Project and for Connectivity with the ISTS Delivery Point for confirming the evacuation of power throughout the Term of the ESPA and all clearances related thereto. All the requisite costs associated including fees with obtaining and maintaining connectivity shall be borne by the ESSD.

b) Obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. The ESSD shall, on its own, obtain permissions/ sanctions from Government authorities, if any, required for operating (including for Charging and Discharging from ESS) the project.

c) Operating, and maintaining the Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.

d) the commercial operation of the Contracted Capacity to SECI no later than the COD and enabling utilization of Contracted Capacity by SECI throughout the term of the Agreement;

e) owning the Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15.

f) The ESSD shall be responsible to for directly coordinating and dealing with the corresponding Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Stored Energy Capacity and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the ESSD is the Grid connected entity and SECI is not a Grid connected entity in respect of the Energy Storage Capacity contracted under this Agreement.

g) The ESSD shall fulfil the technical requirements according to criteria mentioned under Annexure A of the RfS.

h) Further, 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, or equivalent CERC/ CEIG regulations, and subsequent amendments and clarifications thereof,

i) As part of scheduling of power / energy from / to the Project for discharging / charging, the ESSD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces of all the SLDCs concerned for the corridor of power flow, as per the Regulations in force, under intimation to SECI. SECI may facilitate in identification of any discrepancy and assist the ESSD for its early rectification without any liability on SECI. The ESSD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices / penalty.

j) ESS systems shall comply with applicable regulations, standards and codes issued by the CEA regarding safety. The ESSD is required to comply with Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2023, including subsequent amendments and clarifications issued thereof.

k) The ESSD shall ensure that the Energy Storage System installed is of requisite quality and complies with best industry practices.

4.2 ***Information regarding Interconnection Facilities***

4.2.1 The ESSD shall be required to obtain all information from the CTU/concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to operate all interconnection facilities on the ESSD's side of the Delivery Point to enable injection / drawl of electricity at the Delivery Point. The transmission of power / energy to / from up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the ESSD at its own cost.

4.2.2 The responsibility of maintaining connectivity with the transmission system up to the Interconnection Point, will lie with the ESSD. The maintenance of Transmission system up to the designated point as per the applicable terms and conditions shall be the responsibility of the ESSD. All costs, charges and losses up to and including at the Interconnection Point associated with this arrangement will also be borne by the ESSD.

4.2.3 The arrangement of connectivity shall be made by the ESSD through a transmission line, if applicable. 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 ESSD.

4.2.3.1 ESSD needs to carry out inter-device interaction studies for ESS with RE generation (Wind/Solar) and STATCOMs in nearby substations.

4.2.3.2 Following studies may be conducted (not limited to below) by ESSD in this regard:

i. Harmonic studies considering network and ESS system along with flicker studies
ii. Transient and dynamic studies
iii. Small signal stability studies
iv. Sub-Synchronous Oscillations/ Sub-Synchronous Resonance / Sub-Synchronous Torsional Interaction studies
v. Sub-synchronous control interactions studies between different converter-based equipment.

4.2.3.3 In addition, ESS system shall need comply to requirements/performance parameters stipulated in Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 and its amendments.

4.2.3.4 **Communication Equipment Requirement at ESS end:**

ESSD will provide UGFO/Approach cable (having minimum 12 Fibers) from ESS end to the _____ [Insert the name of s/s] control room. ESSD will provide FOTE (STM-16) terminal equipment, FODP and PMU at the ESS end.

4.2.3.5. Communication Equipment Requirement at ISTS end:

ESSD will provide communication equipments as per Regulations on Communication System for transmission of electricity and other Regulations/Procedures (as amended from time to time) issued by Appropriate Commissions and Central Electricity Authority (CEA)/ CEIG.

4.3 *Purchase and sale of Contracted Capacity*

4.3.1 Subject to the terms and conditions of this Agreement, the ESSD undertakes to sell to SECI and SECI undertakes to pay Applicable Tariff as per this Agreement for the Energy Storage Capacity up to the Contracted Capacity at the Delivery Point.

4.4 *Right to Project Capacity*

4.4.1 During the Term of the Contract, SECI shall not be obligated to off-take any capacity beyond / over and above Contracted Capacity.

The ESSD shall make the ESS available for a minimum of 1 operational cycle per day (i.e. 1 complete charge-discharge cycle per day) and up to a maximum of 2 operational cycles per day, subject to maximum 485 operational cycles during the Term of ESPA.

For the purpose of this Agreement, Cycle shall mean charging of the ESS up to the Contracted Capacity followed by discharge of such stored energy including any intervening resting period as specified in the RfS Document. The ESSD shall not use the Contracted Capacity for any purpose other than that specified in this Agreement.

For the Contracted Capacity of 50 MW, the ESPA shall entitle SECI to schedule discharge up to 100 MWh of energy from the ESS in each cycle, with SECI scheduling charging of the ESS with equal amount of energy plus energy expected to be lost as conversion losses (determined from the guaranteed Round-Trip Efficiency (RtE) of the system).

Illustration: For a Contracted Capacity of 50 MW/100 MWh, assuming an RtE of 85%, SECI shall supply charging power to the tune of 117.65 MWh, to expect a discharge of 100 MWh as per the desired schedule.

4.4.2 For the Contract Year, the ESSD shall be required to maintain and demonstrate the following performance parameters:

a) **Minimum Annual Average Availability of 95%:** During the Contract Year for the Contracted Capacity, ESSD shall be required to maintain minimum annual average availability of 95%.

Annual System Availability = Mean of the System availabilities of all time-blocks during the year.

where,

"Availability (MW)" is the capability of the Project to operate in both charging and discharging mode and will be declared by the ESSD on day-ahead basis, for each 15-minute time block (or any amended duration of the time-block as per the extant Grid Code regulations/ other regulations issued by CERC) for the next day.

In case of shortfall in meeting the above criteria, the ESSD shall be levied liquidated damages for such shortfall and shall duly pay such damages to SECI. Amount of such liquidated damages shall be twice the Capacity Charges (Capacity Charges shall mean Applicable Tariff as defined under Article 9 of the ESPA) for the capacity not made available.

The Minimum Annual Average Availability as specified above, shall however be relaxable by SECI upon occurrence of Force Majeure event as identified in ESPA (and occurrence of such Force Majeure event(s) has been mutually agreed) and affecting availability and supply of Contracted Capacity.

b) **Round Trip Efficiency**: The ESSD shall maintain AC to AC roundtrip efficiency (RtE) of system on a monthly basis. The ESSD shall guarantee a **minimum AC to AC roundtrip efficiency (RtE) of 85%** for the system on monthly basis.

The ESSD shall be liable for liquidated damages, if any, as per following criteria:

(i) For RtE <70%, there shall be a liquidated damage @ Rs. 3.5/kWh, levied upon the excess conversion losses, considering system RtE = 85% and tariff payment for the corresponding month shall not be made to the ESSD

(ii) For 70% ≤ RtE < 85%, there shall be a liquidated damage levied @ Rs. 3.5/kWh, levied upon excess conversion losses considering system RtE = 85%.

System Roundtrip Efficiency =

$$\frac{Sum\ Total\ of\ Actual\ Injection/Discharging\ \ MUs_j\ in\ a\ month\ (C)}{Sum\ Total\ of\ Actual\ Drawal/Charging\ \ MUs_j\ in\ a\ month\ (D)}$$

Where,

j refers to the jth month in a year;

D ≠ 0;

D <= No. of Cycles in jth Month x “d”;

“d” refers to the charging energy required for each cycle in the month

C and D shall be as per the DSM/UI Reports published by the Regional RPCs or measurement at the Main ABT Meter at the Point of Interconnection.

Note:

- The Scheduled capacity shall be subject to the System Power Rating specified in Clause 6.1.a. of the RfS.
- The ESSD shall take separate, metered connection for the Auxiliary Power load of ESS at its own cost.
- The ESSD shall declare RtE on Day-Ahead basis.

c) The nameplate ratings shall be achievable during discharge for the full range of environmental conditions at the project site when the ESS is fully charged. In any case, the ESS shall be capable of being discharged at reduced power levels from that specified above. However, the energy discharged from the ESS shall not require to be greater than the nameplate watt-hour rating specified herein.

e) SECI shall, in accordance with Applicable Laws and Regulations thereunder, issue instructions to the ESSD for dispatch of electricity to the Grid during such period and in such volume as it may specify in its instructions. The ESSD shall clearly specify the maximum recovery times required to restore the ESS for functional availability between duty cycles. However, in no case, the same shall be more than 1 hour.

f) Operational Window: Operational Window shall mean the expected hours/duration of system (capacity) availability on each day during the term of the Contract, excluding:
   a. Maximum ESS recovery time as specified in this document
   b. Grid Outages (duly certified to this effect by the Grid Operator)
   c. Planned Maintenance Outage duly informed by the ESSD to SECI, with at least one month's prior notice, subject to meeting the minimum annual system Availability criteria as specified in the ESPA.

   ESSD will have to comply with the Charging and Discharging Schedule as intimated by SECI.

4.4.3 **Shortfall in meeting Performance Criteria**

Following provisions shall be applicable on the Contracted Capacity:

i. Shortfall in demonstrating minimum Availability:

Subsequent to the start of commercial operation of the Project/ Contracted Capacity, in case the annual Availability demonstrated by the ESSD is less than the minimum as specified above, such shortfall in performance shall make the ESSD liable to pay the liquidated damages to SECI.

Liquidated damages for the Contract Year on account of shortfall in meeting the minimum Annual Availability criteria as per Article 4.4.2 (a) will be computed as follows:

Liquidated damages = (A – B) x C x D x 12 x 2

where,

A is Guaranteed Annual Availability (%) as per Article 4.4.2 (a) above;

B is Actual Annual System Availability (%);

C is Contracted Capacity/ ESS Power Capacity;

D is Tariff / Capacity Charges in INR/MW/month as discovered through bidding process;

It is clarified that the calculation of Availability as per Clause 4.4.2 (a) above will include the planned outage as declared by the ESSD under Clause 4.4.2 above.

ii. Shortfall in demonstrating minimum Round-trip-Efficiency:

In case the ESSD fails to meet the monthly RtE demonstration as per Article 4.4.2 (b), additional Liquidated Damages for the unavailability of the required minimum RtE shall be applicable for the entire month.

For avoidance of any doubt, liquidated damages as specified above are mutually exclusive and independent, therefore, in case of levying of liquidated damages against Annual Average Availability and Round-Trip Efficiency, both damages shall be payable by the ESSD.

Illustrations regarding calculation of liquidated damages are provided at Schedule-2 of this Agreement.

4.5 Acceptance/Performance Test

4.5.1 The ESSD shall be required to submit the certificate of the requisite test including for safety as may be laid down by Central Electricity Authority or an agency identified by the central government to carry out testing and certification for the Energy Storage projects. Further, ESSD shall ensure that all technical, acceptance and performance criteria as specified in RfS Documents and Guidelines are also complied and maintained.

4.6 Third Party Verification

4.6.1 The ESSD shall be further required to provide entry to the site of the Project free of all encumbrances at all times during the Term of the Agreement to SECI (or its authorized representatives) and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the ESSD at the site of the Project. The ESSD shall provide full support to SECI and/or the third party in this regard.

4.6.2 The third party may verify the operation of the Project being carried out by the ESSD and if it is found that the operation of the Project is not as per the Prudent Utility Practices, it may seek clarifications from ESSD or require the works to be stopped or to comply with the instructions of such third party.

4.7 Breach of Obligations

4.7.1 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 ESSD would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity 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.

ARTICLE 5: COMMERCIAL OPERATION DATE FOR UTILIZATION OF ESS CAPACITY

5.1 Commercial Operation Date (COD) for Utilization of ESS capacity under this ESPA shall be 1st November 2026. The Term of the ESPA shall start from the Effective Date of ESPA and shall continue till 31st October 2027. In case of failure of the ESSD to provide the ESS capacity for utilization from the COD, as part of liquidated damages, the total PBG amount for the Project shall be encashed by SECI and ESPA for the Project shall stand terminated.

It is clarified that the liquidated damages are genuine pre-estimate and ESSD agrees that in case of invocation of PBG, SECI is under no obligation to produce any estimate of loss in this regard.

ARTICLE 6: DISPATCH AND SCHEDULING

6.1 *Dispatch and Scheduling*

6.1.1 The ESSD, in consultation with SECI, shall be required to charge/ discharge the Energy Storage System as per the applicable regulations / requirements / guidelines of CERC / SERC /SLDC / RLDC/ NLDC or any other competent agency and same being recognized by the SLDC/NLDC 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 ESSD.

6.1.2 The ESSD shall be responsible for directly coordinating and dealing with the SECI, RLDCs, SLDCs, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of charging and discharging power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the ESSD is the Grid connected entity and SECI is not a Grid connected entity in respect of the ESS Capacity contracted under this Agreement.

6.1.3 DSM penalties, if any, shall be levied on the ESSD at its respective end for the charging and discharging activities. UI charges on this account shall be directly paid by the ESSD as per applicable regulations.

Reactive power charges shall be on account of the ESSD at its respective end during charging and discharging, as per CERC/SERC regulations.

6.1.4 The ESSD shall take separate, metered connection for the Auxiliary Power load of ESS. Cost of Auxiliary power shall be borne by the ESSD 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, SECI will make payments corresponding to the lowest of the individual energy values to the ESSD, until rectification of the above error.

6.2 Supply obligation of the ESSD:

In case the ESSD fails to offer the contracted power as per this Agreement to SECI and sells the contracted capacity without its consent to any other party, the ESSD, on a complaint to this effect by SECI to the load dispatch centre concerned, shall be debarred from participating in Power Exchanges and on the Discovery of Efficient Electricity Pricing portal and scheduling of any new short-term contracts from the Project for a period of three months from the date on which the default has been taken cognizance by the concerned load dispatch centre. The period of debarment shall increase to six months for second default and shall be one year for each successive default. Such debarment of the ESSD shall be without prejudice to the rights of SECI for seeking compensation for the default by the ESSD under this Agreement.

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 ESSD 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 ESSD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at ESSD side of Delivery Point for injection and drawl of power from the Grid during discharging and charging of ESS.

7.1.3 In addition to ensuring compliance of the applicable codes, the ESSD shall install Main & Check meters at the Delivery Point for both Charging and Discharging, along with Stand-by meter(s) as per the applicable Central/State regulations.

7.2 Reporting of Metered Data and Parameters

7.2.1 Online arrangement would have to be made by the ESSD for submission of metering data regularly for the entire Term of this Agreement to the SLDC, SECI and the concerned Ministry or concerned agency as per applicable regulation / directions.

7.2.2 Reports on metering parameters on monthly basis, and/or as required by regulation / Guidelines, shall be submitted by the ESSD to SECI / GRID-INDIA through SECI for entire Term of the ESPA.

ARTICLE 8: INSURANCES

8.1 *Insurance*

8.1.1 The ESSD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of ESPA, 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, 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 ESS or any part of the ESS shall be first applied to reinstatement, replacement or renewal of such loss or damage to the Contracted Capacity followed by the balance Project Capacity.

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 Project to any part of the ESS 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 as per ESPA against ESSD.

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 ESSD can claim compensation, under any Insurance shall not be charged to or payable by SECI. It is for the ESSD 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 The ESSD shall be entitled to receive the Tariff of INR_______/MW/Month [Insert the Tariff discovered through the bidding process conducted by SECI], fixed for the entire term of this Agreement, with effect from the COD, as per the provision of this agreement.

9.2 GST levied on the energy storage facility provided by the ESSD, if any, shall be payable by SECI.

ARTICLE 10: BILLING AND PAYMENT

10.1 *General*

10.1.1 From the commencement of availability of ESS Capacity, SECI shall pay to the ESSD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with Article 9. All capacity charge Payments by SECI shall be in Indian Rupees.

10.1.2 Subject to the provision of this Agreement, ESSD shall be required to make arrangement of auxiliary power at its own risk and cost.

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

10.2.1 The ESSD shall issue to SECI hard copy of a signed Monthly Bill/Supplementary Bill for the immediately preceding Month/relevant period, including the time-block-wise data in the tabular format as per Illustration in Schedule-2, along with all relevant documents. The ESSD shall also submit calculations of System Availability and Round-trip Efficiency in line with provisions of this Agreement, as part of the Monthly Bill/Supplementary Bill.

10.2.2 As per applicable regulation(s) of the Appropriate Commission(s)/respective SERC(s), all charges pertaining to scheduling of power, if any, shall be borne by SECI.

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 ESSD, as shall have been previously notified by the ESSD. The ESSD shall open a bank account (the “ESSD’s Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by SECI to the ESSD, and notify SECI of the details of such account at least thirty (30) 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 ESSD to SECI, if any, and notify the ESSD of the details of such account thirty (30) Days before the COD. SECI and the ESSD shall instruct their respective bankers to make all payments under this Agreement to the ESSD’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

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

i) deductions required by the Law; and

ii) amount claimed by SECI, if any, from the ESSD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be applicable on day-to-day basis.

10.3.3 **Rebate**

For payment of any Bill including Supplementary Bill on or before Due Date, the following Rebate shall be paid by the ESSD 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 10 Days up to and including the 30th Day after 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.

10.3.4 **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 ESSD 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 ESSD 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.

10.4 **Payment Security Mechanism**

Letter of Credit (LC):

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

10.4.2 Subject to Article 10.4.1, before the start of supply, SECI shall, through a scheduled bank, open a Letter of Credit in favour of the ESSD, 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 for an amount equal to 110% of the estimated average monthly billing;

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

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

10.4.5 SECI shall cause the scheduled bank issuing the Letter of Credit to intimate the ESSD, 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 expiry.

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 ESSD 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 ESSD and;
ii) a certificate from the ESSD 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 SECI does not dispute a Monthly Bill or a Supplementary Bill raised by the ESSD 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 ESSD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the ESSD 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 ESSD 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 ESSD 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 the Contract Year and annual reconciliation at the end of 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 ESSD and SECI shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the ESSD 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 ESSD may raise a ("Supplementary Bill") for payment on account of Adjustments required by the Energy Accounts (if applicable) 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 ESSD to the ESSD's Designated Account by the Due Date, except for open access charges, RLDC or scheduling charges and transmission charges (if applicable). No Late Payment Surcharge will be applicable other than that on the monthly energy payment and associated debit and credit note.

ARTICLE 11: FORCE MAJEURE

11.1 *Definition of Force Majeure*

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

An Affected Party means SECI or the ESSD whose performance has been affected by an event of Force Majeure.

11.2 *Force Majeure Events*

a) Act of God, including, but not limited to lightning, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, pandemic, cyclone, typhoon or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of SECI;

b) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party.

c) The discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land and/or as per prudent industry practices.

d) Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.

e) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, or Industrywide strikes and labour disturbances, having a nationwide impact in India, if and only if it is declared / notified by the competent state / central authority / agency (as applicable)

f) Nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the ESSD, as a result of which the ESSD or its shareholders are deprived (wholly or partly) of their rights or entitlements under this ESPA. Provided that such action does not constitute remedies or sanctions lawfully exercised by SECI or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the ESSD or the ESSD related parties

g) An event of Force Majeure affecting delivery / offtake of power / Contracted Capacity from ESSD to SECI.

11.3 *Force Majeure Exclusions*

11.3.1 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/ ESS;

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 / ESS 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 or lack of due diligence expected from any prudent and rational human being;

ii. Failure to comply with an Indian Law; or

iii. Breach of, or default under this Agreement.

11.4 *Notification of Force Majeure Event*

11.4.1 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 Party who receives the Force Majeure Notification, shall take a decision on the claim of occurrence of Force Majeure Event, within 30 days of the receipt of the intimation, accompanied with supporting documents available with the Affected Party.

11.4.2 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 weekly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

11.4.3 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.

11.5 ***Performance Excused***

11.5.1 The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice or any extended period as mutually agreed. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event. However, in case of the FM continuing up to a period of 180 days or any extended period as mutually agreed, either Party has the right to terminate the ESPA.

11.5.2 For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the ESSD shall be entitled for a day-to-day extension of the ESPA period. However, adjustment in tariff shall not be allowed on account of Force Majeure event.

11.5.3 Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.

11.5.4 Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

11.6 ***No Liability for Other Losses***

Save as otherwise provided in this Agreement, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event.

11.7 ***Resumption of Performance***

During the period that a Force Majeure Event is subsisting, the Affected Party shall, in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under the ESPA. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

11.8 ***Duty to Perform and Duty to Mitigate***

To the extent not prevented by a Force Majeure Event pursuant to Article 11.2, 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.

11.9 ***Available Relief for a Force Majeure Event***

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.

11.10 ***Available Relief & Termination Due to Force Majeure Event***

a) If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Force Majeure Event is likely to continue beyond such 180 (one hundred and eighty) Day period or any extended period agreed in pursuance of Article 11.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the ESPA, and the termination shall take effect from the date on which such decision is taken.

b) In case of occurrence of an event which is not a Force Majeure as per provision of this Agreement, but causes some hardship in operation of the Project, which may or may not be recognized by the Government of India and for which the Government of India has or hasn't granted any extension of time or any other relief; such event, even if sustained beyond 180 days shall not be considered as a reason for termination of ESPA under this Article.

c) Without prejudice to the provisions of Article 11.10.(a) above, the Affected Party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the ESPA in its sole discretion by issuing a notice to that effect.

d) On termination of the ESPA pursuant to Article 11.10.(b):

   i. In case of termination on account of event listed as Force Majeure under Article 11.2, no Termination Compensation shall be payable to the ESSD.

   ii. the ESSD shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

ARTICLE 12: CHANGE IN LAW

12.1 No relief shall be admissible for any gain/ loss incurred by either Party on account of Change in Law.

ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

13.1 *ESSD 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 of its obligations under this Agreement, shall constitute an ESSD Event of Default:

(i) the failure to commence availability of ESS for providing Energy Storage capacity to SECI up to the Contracted Capacity, by the COD, or failure to demonstrate guaranteed availability of such energy storage capacity to SECI within six months from the identification of reduced annual availability during the term of this Agreement, or

if

a) the ESSD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project in contravention of the provisions of this Agreement; or

b) the ESSD 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 ESSD 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 ESSD, or (c) the ESSD 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 ESSD will not be a ESSD 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 ESSD and expressly assumes all obligations of the ESSD under this Agreement and is in a position to perform them; or

(iii) the ESSD 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 ESSD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the ESSD within thirty (30) days of receipt of first notice in this regard given by SECI.

(v) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the ESSD.

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 ESSD 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 ESSD is unable to recover the amount outstanding to the ESSD 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 ESSD in this regard; or

(iii) except where due to any ESSD'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 ESSD 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 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) 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 ESSD Event of Default***

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

13.3.5 Subject to the terms of this Agreement, upon occurrence of an ESSD Event of Default under this Agreement, the ESSD shall be liable to pay to SECI, liquidated damages, as provided in Article 3.3.3 of the ESPA for failure to provide the ESS capacity for utilization from the COD and Article 4.4 for failure to provide Contracted Capacity in terms of the ESPA. For other cases, the ESSD shall be liable pay to SECI, damages, equivalent to 6 (six) months, or balance ESPA period, whichever is less, of charges for its contracted capacity. SECI shall have the right to recover the said damages by way of forfeiture of PBG, without prejudice to resorting to any other legal course or remedy.

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 ESSD shall have the right to deliver to SECI, a ESSD 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 ESSD 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 ESSD shall, subject to the prior consent of the ESSD, novate its part of the ESPA to any third party, including its Affiliates, within the stipulated period. In the event the aforesaid novation is not acceptable to the ESSD, or if no offer of novation is made by SECI within the stipulated period, then the ESSD may terminate the ESPA and continue operating the Project by itself finding an alternate procurer. In this case, SECI will pay to the ESSD, 'termination compensation' equivalent to 6 (six) months of energy billing corresponding to the declared availability, or balance Term of the ESPA, whichever is less, for its Contracted Capacity.

Provided further that at the end of three (3) months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the ESSD.

In the event of termination of ESPA, any damages or charges payable to the STU/ CTU, for the connectivity of the plant, shall be borne by the ESSD.

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, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice without any further liability to either Party from the date of such termination.

13.6 In all cases, the defaulting Party will be required to pay the applicable compensation within 3 months from the due date of such payment, subsequent to which, the defaulting Party will be required to pay a monthly interest @1% of the compensation.

ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1 *Indemnity*

14.1.1 The ESSD 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 ESSD of any of its obligations under this Agreement or due to the ESSD's willful misconduct, gross negligence or fraudulent behavior 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 ESSD of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the ESSD, for which specific remedies have been provided for under this Agreement).

14.1.2 SECI shall indemnify, defend and hold the ESSD harmless against:

a) any and all third party claims against the ESSD, 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 SECI of any of its obligations under this Agreement; and

b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the ESSD from third party claims arising by reason of a breach by SECI of any of its obligations.

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 ESSD nor SECI 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 SECI, the ESSD 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 ESSD or any Affiliate of the ESSD or any of its officers, directors or shareholders for such claims excluded under this Article. The ESSD shall have no recourse against any officer, director or shareholder of SECI, or any affiliate of SECI or any of its officers, directors or shareholders for such claims excluded under this Article.

14.5 *Duty to Mitigate*

14.5.1 The Parties shall endevour to take all reasonable steps so as 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, 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 the declaration of COD.

Notwithstanding above, this Agreement may be assigned to the Project Lenders or Lender's Representative under the Financing Agreements, under intimation to SECI. Provided that, such consent will 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 ESSD and SECI provided in this Agreement 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 + applicable GST per Transaction as Facilitation Fee (non-refundable) shall be deposited by the ESSD to SECI. Provided further that, such consent shall not be withheld by the ESSD 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 ESPA with a new entity, an amount of Rs. 10 Lakh + applicable GST per Transaction as Facilitation Fee (non-refundable) shall be deposited by the ESSD to SECI.

15.2 *Permitted Charges*

15.2.1 ESSD 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.

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**Dispute Resolution by the Appropriate Commission**

i) Where any Dispute or differences arises in relation to this agreement of any nature whatsoever including the construction, interpretation or implementation of the provisions of this agreement as well as claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, and relates to any matter agreed to be referred to the Appropriate Commission, shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

ii) SECI shall be entitled to co-opt 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 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 authorized 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 ESSD, 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 ESSD shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the ESSD, contractors or their employees that are required to be paid by the ESSD 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 ESSD 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 ESSD by SECI on behalf of ESSD.

17.10 ***Independent Entity***

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

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

17.13 ***Order of priority in application***

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

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

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

For and on behalf of [SECI]	For and on behalf of [ESSD]
Name, Designation and Address Signature with seal	Name, Designation and Address Signature with seal
Witness: 1. 2.	Witness: 1. 2.

SCHEDULE 1: PERFORMANCE BANK GUARANTEE (PBG)/ INSURANCE SURETY BOND (ISB)

Format for PBG/ ISB shall be in line with the Format-7.3C/ 7.3D of the RfS.

SCHEDULE 2: ILLUSTRATIONS

(Please refer Article 4.4 of this Agreement)

1. **System Availability**

Under a ESPA for a capacity 'C', the Schedule and Actual Injection into/Drawl from the Grid from the Project, as per the DSM/ UI Reports published by the Regional RPC for a Sample day is shown below:

Date	block	Drawl (from Grid) MUs (Charging) (X)	Injection (into Grid) MUs (Discharging) (Y)	Scheduled MUs (Z)	Time-block Availability, (TA) = (Xi/Zi) + (Yi/Zi)
01-May-27	1	0.088	0	0.088	1.00
01-May-27	2	0.088	0	0.088	1.00
01-May-27	3	0.075	0	0.088	0.85
01-May-27	4	0	0	0	NA
01-May-27	5	0	0	0	NA
01-May-27	6	0	0	0	NA
01-May-27	7	0	0	0	NA
01-May-27	8	0	0	0	NA
01-May-27	9	0	0	0	NA
01-May-27	10	0	0	0	NA
01-May-27	11	0	0	0	NA
01-May-27	12	0	0	0	NA
01-May-27	13	0	0	0	NA
01-May-27	14	0	0	0	NA
01-May-27	15	0	0	0	NA
01-May-27	16	0	0	0	NA
01-May-27	17	0	0	0	NA
01-May-27	18	0	0	0	NA
01-May-27	19	0	0	0	NA
01-May-27	20	0	0	0	NA
01-May-27	21	0	0	0	NA
01-May-27	22	0	0	0	NA
01-May-27	23	0	0	0	NA
01-May-27	24	0	0.075	0.075	1
01-May-27	25	0	0.075	0.075	1
01-May-27	26	0	0.075	0.075	1
01-May-27	27	0	0.075	0.075	1

01-May-27	28	0	0.075	0.075	1
01-May-27	29	0	0.075	0.075	1
01-May-27	30	0	0.06	0.075	0.8
01-May-27	31	0	0.05	0.075	0.67
01-May-27	32	0	0	0	NA
01-May-27	33	0	0	0	NA
01-May-27	34	0	0	0	NA
01-May-27	35	0	0	0	NA
01-May-27	36	0	0	0	NA
01-May-27	37	0	0	0	NA
01-May-27	38	0	0	0	NA
01-May-27	39	0	0	0	NA
01-May-27	40	0	0	0	NA
01-May-27	41	0	0	0	NA
01-May-27	42	0	0	0	NA
01-May-27	43	0	0	0	NA
01-May-27	44	0.088	0	0.088	1.00
01-May-27	45	0.08	0	0.088	0.91
01-May-27	46	0.08	0	0.088	0.91
01-May-27	47	0.088	0	0.088	1.00
01-May-27	48	0.088	0	0.088	1.00
01-May-27	49	0.088	0	0.088	1.00
01-May-27	50	0.088	0	0.088	1.00
01-May-27	51	0.088	0	0.088	1.00
01-May-27	52	0	0	0	NA
01-May-27	53	0	0	0	NA
01-May-27	54	0	0	0	NA
01-May-27	55	0	0	0	NA
01-May-27	56	0	0	0	NA
01-May-27	57	0	0	0	NA
01-May-27	58	0	0	0	NA
01-May-27	59	0	0	0	NA
01-May-27	60	0	0	0	NA
01-May-27	61	0	0	0	NA
01-May-27	62	0	0	0	NA
01-May-27	63	0	0	0	NA
01-May-27	64	0	0	0	NA
01-May-27	65	0	0	0	NA
01-May-27	66	0	0	0	NA
01-May-27	67	0	0	0	NA
01-May-27	68	0	0	0	NA
01-May-27	69	0	0	0	NA
01-May-27	70	0	0	0	NA
01-May-27	71	0	0	0	NA

01-May-27	72	0	0	0	NA
01-May-27	73	0	0	0	NA
01-May-27	74	0	0	0	NA
01-May-27	75	0	0	0	NA
01-May-27	76	0	0	0	NA
01-May-27	77	0	0	0	NA
01-May-27	78	0	0	0	NA
01-May-27	79	0	0	0	NA
01-May-27	80	0	0.075	0.075	1.00
01-May-27	81	0	0.075	0.075	1.00
01-May-27	82	0	0.075	0.075	1.00
01-May-27	83	0	0.075	0.075	1.00
01-May-27	84	0	0.075	0.075	1.00
01-May-27	85	0	0.075	0.075	1.00
01-May-27	86	0	0.075	0.075	1.00
01-May-27	87	0	0.07	0.075	0.93
01-May-27	88	0	0	0	NA
01-May-27	89	0	0	0	NA
01-May-27	90	0	0	0	NA
01-May-27	91	0	0	0	NA
01-May-27	92	0.088	0	0.088	1
01-May-27	93	0.088	0	0.088	1
01-May-27	94	0.088	0	0.088	1
01-May-27	95	0.088	0	0.088	1
01-May-27	96	0.088	0	0.088	1
Total		**1.379**	**1.155**		

i is the i^{th} Timeblock in the day.
The System Availability for the day is calculated as the mean of **Column TA**, for all time-blocks where **Column Z is not zero**.
From the above table, Day's System Availability = 0.97
Similarly, the System availability shall be calculated for 35040 time-blocks (96*365) in a year, excluding time-blocks where Grid is unavailable or in case of Force Majeure.
Assuming the following parameters:

i. Total Contracted Capacity = 50 MW, **C**
ii. Quoted monthly Capacity charges = 2 lakhs/MW/month, **D**
iii. Annual system availability (as per procedure above) is calculated to be 0.93, **B**

Liquidated Damages on account of shortage in annual system Availability, as calculated from formula provided in Clause 6.2:

Liquidated damages = (A – B) x C x D x** 12 **x 2

= (0.95-0.93) x 50 x 2 x 12 x 2

= 48 lakhs

2. System Round Trip Efficiency

The present illustration is for calculating the Daily System Efficiency as demonstration only. The same methodology shall be used for calculation of monthly system efficiency as per Clause 6.1.c.ii.

System Efficiency $= \frac{\text{Total of Column (Y)}}{\text{Total of Column (X)}} = \frac{1.155}{1.379} = 0.837 \sim 0.84$ (rounded off to 2 decimal places).

Assuming:

a. monthly System Efficiency = 0.84,

b. Total Monthly Drawl form Grid (Charging Power) = 41.1 MUs

Liquidated Damages is calculated @ Rs. 3.5 for excess loss of energy considering expected System Efficiency to be 85%

Excess conversion losses = (0.85-0.84) * Total Drawl from the grid in the month (i.e. Charging Energy)

Liquidated Damages for the month = Rs. 0.01x 41.1 x 3.5

= Rs. 1.438 Million

= Rs. **14.38 lakhs**