

STANDARD

POWER PURCHASE AGREEMENT FOR

PROCUREMENT OF 500 kW SOLAR POWER

ON LONG TERM BASIS

Between

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

And

Power Development Department, Leh

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

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

Between

..... [Insert name of the Solar Power Developer] (CIN-_____), a Company incorporated under the Companies Act 1956 or Companies Act 2013, having its registered office at [Insert address of the registered office of Solar Power Developer] (hereinafter referred to as “**Solar Power Developer or SPD**”, 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

Power Development Department, Leh (CIN-_____), a Company incorporated under the Companies Act 2013, having its registered office [Insert address of the registered office of Power Development Department, Leh] (hereinafter referred to as “PDD”, 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 SPD and PDD are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

WHEREAS:

- A. The Government of India has announced the Policy for promotion of the renewable energy-based project installation in the country and has set an ambitious target to achieve 500 GW of non-fossil-based installed energy capacity by the year 2030.
- B. SECI had initiated a Tariff-Based Competitive Bid Process for selection of Solar Power Developer for setting up of 500 kW ground mounted Solar Power Pilot Project at Pang, Leh on the terms and conditions contained in the Request for Selection (herein after referred to as ‘**RfS**’ issued by SECI vide RfS No..... dated..... including its subsequent amendments and clarifications, if any.
- C.[Insert name of the Bidding Company] has been selected in the Competitive Bidding Process, {in case Bidding Company is executing the Project through SPV} has constituted a Special Purpose Vehicle,..... [Insert the name of SPV, if applicable] (hereinafter referred to as ‘**SPD**’) for development, generation and supply of electricity from the 500 kW Solar Power Pilot Project to

be established by SPD at identified location at Pang, Leh and for supply of such electricity to PDD.

- D. SECI has issued the Letter of Award No..... dated.....in favour of the[Insert the name of Bidding Company] for development and establishment of the 500 kW Solar Power Pilot Project at Pang, Leh in the UT of Ladakh as per the terms and conditions contained in the RfS, and draft of this Power Purchase Agreement, including amendments and clarifications thereto circulated at the time of the bidding and other bidding documents as well as the conditions contained in the aforementioned Letter of Award.
- E. PDD has agreed to purchase such Solar Power from the SPD as per the provisions of the RfS.
- F. In terms of the RfS and the Bidding Documents, the SPD has furnished the Performance Bank Guarantee/ Payment on Order Instrument in the sum of Rs.....in favour of SECI as per the format provided as a part of the Bidding Documents and a copy of the Bank Guarantee/ Payment on Order Instrument provided is in Schedule – 1/ 2 to this Agreement.
- G. The SPD has fulfilled the terms of the bidding and the terms of the Letter of Award for signing this Power Purchase Agreement as a definitive agreement for establishing the Solar Power Project of.....kW at, [Insert Project location] for generation and sale of electricity by the SPD to PDD.
- H. The parties have agreed to execute this Power Purchase Agreement in terms of the provisions of the RfS, the bidding documents and the Letter of Award in regard to the terms and conditions for establishment of the Solar Power Project at, [Insert name of state] and for generation and supply of electricity by the SPD to PDD.

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.

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| “Act” or “Electricity Act, 2003” | shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time; |
| Affiliate | shall have the same meaning as contained in the RfS document; |
| “Agreement” or “Power Purchase Agreement” or “PPA” | shall mean this Power Purchase Agreement including its recitals and Schedules, Appendixes amended or modified from time to time in accordance with the terms hereof; |
| "Appropriate Commission" | shall mean Joint Electricity Regulatory Commission; |
| “Awarded capacity” | Shall mean kW [enter the capacity as awarded by SECI as per the LoA] |
| “Backdown” | shall mean part of Contracted capacity available for scheduling but not scheduled based on instructions from Buying Utility/SLDC /RLDC, as the case may be; |
| "Bill Dispute Notice" | shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party; |
| “Business Day” | shall mean with respect to SPD and PDD, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Delhi or UT of Ladakh; |
| “Capacity Utilization Factor” or “CUF” | shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time; However, for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity; In any Contract Year, if ‘X’ MWh of energy has been metered out at the Delivery Point for ‘Y’ MW Project capacity, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) * 100\%$; Declared CUF for this Project shall be ____ % (to be revised as applicable). |
| “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. |

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| “Change in Law” | shall have the meaning ascribed thereto in Article 12 of this Agreement; |
| “Commissioning” | The Project shall be commissioned in line with the provisions of the Grid Code. |
| “Commercial Operation Date (COD)” | shall mean the date as defined in “Commissioning” or in line with the provisions of the Grid Code. |
| “Competent Court of Law” | shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement; |
| “Consents, Clearances and Permits” | shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power; |
| “Consultation Period” | shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a SPD Preliminary Default Notice or PDD Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances; |
| “Contract Year” | shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that: (i) in the financial year in which commissioning of the first part capacity of the Contracted Capacity would occur, the Contract Year shall commence from the date of commissioning of first capacity and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement |
| "Contracted Capacity" | shall mean [Insert capacity] kW, which is the AC capacity contracted with PDD for supply of power by the SPD to PDD at the Delivery Point from the Solar Power Pilot Project. |
| “Day” | shall mean a day, if not a Business Day, the immediately succeeding Business Day. |
| “Delivery Point” / “Interconnection Point” | shall mean a single point or multiple points at the substation (at voltage level as applicable by State Regulations) including the transmission line connecting the Solar Power Project with the substation system as specified in the RfS document. Metering shall be done at this interconnection point where the power is injected into. For interconnection with grid and metering, the SPD shall |

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| | <p>abide by the relevant and applicable regulations, Grid Code notified by the CERC or and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time, or orders passed thereunder by the appropriate commission or CEA.</p> <p>Pursuant to Article 4.2.6, all charges and losses related to Transmission of power from project up to Delivery Point (including but not limited to open access, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, RLDC/SLDC charges etc.) as notified by the competent authority / regulator shall be borne by the SPD and beyond the Delivery Point all charges and losses as notified by the competent authority / regulator from time to time shall be borne by the PDD.</p> |
| "Dispute" | shall mean any dispute or difference of any kind between PDD and the SPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement. |
| "Due Date" | shall mean the forty-fifth (45th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hard copy and duly acknowledged by the PDD 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 PDD. |
| "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; PDD 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 mean the date occurring twenty-five (25) years from the Scheduled Commissioning Date (SCD) or from the rescheduled date of commencement of supply to the extent of extension given by PDD. |

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| "Force Majeure" or "Force Majeure Event" | shall have the meaning ascribed thereto in Article 11 of this Agreement; |
| "GNA Regulations" | shall mean the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 notified on 07.06.2022, including subsequent amendments and clarifications issued thereof. Any reference to the terms "connectivity" or "network access" or "general network access" in this Agreement shall be interpreted in terms of the provisions of these Regulations. |
| "Grid" | shall mean as per the definition contained in the Act. |
| "Grid Code" or "Indian Electricity Grid Code" or "IEGC" or "State Grid Code" | shall mean the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, as specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable.; |
| "Indian Governmental Instrumentality" | shall mean the Government of India, Governments of State(s)..... [Insert the name(s) of the State(s) in India, where the Power Project, PDD and SPD 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; |
| "Installed Capacity" or "Project Capacity" | shall mean the rated AC capacity of the Project to be installed by the SPD, in line with Article 3.1 of this Agreement. |
| "Insurances" | shall mean the insurance cover to be obtained and maintained by the SPD in accordance with Article 8 of this Agreement; |
| "Interconnection Facilities" | shall mean the facilities on SPD'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; |
| "Joint Control" | shall have same meaning as defined in RfS Document. |
| "Late Payment Surcharge" | shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement; |

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| "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; |
| "MNRE" | shall mean the Ministry of New and Renewable Energy, Government of India; |
| "Month" | shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month; |
| "Party" and "Parties" | shall have the meaning ascribed thereto in the recital to this Agreement; |
| "Payment on Order Instrument" | shall mean the irrevocable unconditional letter of undertaking issued by either of the three institutions, viz., (i) Indian Renewable Development agency Limited (IREDA) or (ii) Power Finance Corporation Limited or (iii) REC Limited., as an alternative to submission of Performance Bank Guarantee by the SPD, issued in the form attached hereto as Schedule 2; |
| "Payment Security Mechanism" | shall have the meaning ascribed thereto in Article 10.4 of this Agreement; |
| "Performance Bank Guarantee" | shall mean the irrevocable unconditional bank guarantee, submitted by the SPD to SECI in the form attached hereto as Schedule 1; |
| "Solar Power Project" or "Power Project" or "Project" | shall mean the Solar Power generation facility of Contracted Capacity of[Insert capacity] kW, located at [Insert name of the place] in [Insert name of the District and State] having a separate control system, metering and a single or multiple point(s) of injection into the grid at Delivery /Interconnection/Metering point at the substation. The project shall include all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement; |
| "Preliminary Default Notice" | shall have the meaning ascribed thereto in Article 13 of this Agreement; |

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| "Prudent Utility Practices" | shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project; b) the requirements of Indian Law; and the physical conditions at the site of the Power Project |
| "RBI" | shall mean the Reserve Bank of India; |
| "RE Power" or "Renewable Energy Power" | shall refer to power from Solar Power Generating Systems, Wind Power Generating Systems, Wind Solar hybrid or any other renewable energy resource based Generating System or a combination thereof, with or without Energy Storage System (ESS). |
| "Request for Selection / RfS/Bidding Documents" | shall mean Request for Selection Documents issued by SECI vide RfS No. SECI/C&P/IPP/..... dated2024 including subsequent clarifications, amendments and addenda thereof. |
| "RLDC" | shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003; |
| "RPC" | shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region; |
| "Rupees", "Rs.", "₹" | shall mean Indian rupees, the lawful currency of India; |
| "Scheduled Commencement of Power Supply Date" or "SCSD" | shall mean [Insert Date as per applicable provisions of the RfS]; |
| "SERC" | shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Subsection (1) of Section 83 of the Electricity Act 2003; |
| "SLDC" | shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located; |
| "SLDC Charges" | shall mean the charges levied by the SLDC of the state wherein the Solar Power Project is located; |
| "SECI" | shall mean Solar Energy Corporation of India Limited; |

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| “Solar Power” | shall mean power generated from the Solar Photovoltaic Power Project; |
| “Solar Power Project” | shall mean the solar photovoltaic power project that uses sunlight for conversion into electricity and that is being set up by the SPD to provide Solar Power to SECI as per the terms and conditions of this Agreement; |
| “State Transmission Utility” or “STU” | shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act; |
| "Tariff" or “Applicable Tariff” | Shall have the same meaning as provided for in Article 9 of this Agreement; |
| "Tariff Payment" | shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills; |
| “Termination Notice” | shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement; |
| "Term of Agreement" | shall have the meaning ascribed thereto in Article 2 of this Agreement; |
| "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, Letter of Award, Guidelines including subsequent clarifications, addenda, 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. Power Purchase Agreement
 2. RfS Documents

ARTICLE 2: TERM OF AGREEMENT

2.1 *Effective Date*

2.1.1 This Agreement shall come into effect from..... and such date shall be referred to as the Effective Date.

2.2 *Term of Agreement*

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

2.2.2 The SPD is free to operate its plant beyond the Expiry Date if other conditions like land lease / Right to Use of Land (as applicable), permits, approvals and clearances etc. allow. In such case unless otherwise agreed by the PDD, PDD shall not be obligated to procure power beyond the Expiry Date.

2.3 *Early Termination*

2.3.1 This Agreement shall terminate before the Expiry Date if either PDD or SPD 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: INSTALLED CAPACITY AND PERFORMANCE SECURITY

3.1 Installed Capacity

- 3.1.1 The SPD shall configure the project with the objective of supplying solar power to the PDD. Accordingly, the Project Capacity, i.e. the Installed Capacity shall mean the rated capacities of the Solar Power Project, in the following configuration:

Solar: ____ kW

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

- 3.2.1 The Performance Bank Guarantee (PBG)/ Payment on Order Instrument (POI)/Insurance Surety Bond (ISB), having validity from the date of submission of PBG/POI/ISB until(insert validity period as per RfS conditions), submitted for a value of Rs. _____ (in words) under this Agreement, shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement as per format provided in Schedule 1/2/3.
- 3.2.2 The failure on the part of the SPD to furnish and maintain the Performance Bank Guarantee/ POI/ISB shall be a material breach of the term of this Agreement on the part of the SPD.
- 3.2.3 If the SPD fails to commence supply of power from SCD specified in this Agreement or any further extension thereof granted by SECI/PDD, subject to conditions mentioned in Article 4.5, SECI shall encash the Performance Bank Guarantee/ POI/ISB equivalent to the amount calculated as per penalties applicable under Article 4.6 as on the date of encashment without prejudice to the other rights of SECI/PDD under this Agreement.

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

- 3.3.1 Subject to Article 3.2, SECI shall return / release the Performance Bank Guarantee/ Payment on Order Instrument within 30 days after the successful commencement of Power supply from the Project after taking into account any liquidated damages / penalties due to delays in commencement of power supply beyond SCD as per provisions stipulated in this Agreement.
- 3.3.2 The return / release of the Performance Bank Guarantee/ Payment on Order Instrument shall be without prejudice to other rights of SECI/PDD under this Agreement.

ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 *SPD's Obligations*

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

- a) The SPD shall be solely responsible and make arrangements for land & associated infrastructure for development of the Project and for Connectivity with the substation for confirming the availability of power system required for supply of power by the SCD and all clearances related thereto.
- b) Obtaining all Consents, Clearances (including Environmental clearance, if applicable) and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. SECI/PDD shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the Solar Power project. The Solar Power Developer shall, on his own, obtain permissions/ sanctions from Government authorities, if any required for establishing the Project. Any steps that may be taken by PDD in regard to grant of such consents and permits or any other approval to be taken by the SPD shall only be a voluntary facilitating endeavour on the part of PDD with no intention of being bound by any legal or binding obligation.
- c) Designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.
- d) The SPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point to connect the Power project switchyard with the Interconnection facilities at the Delivery Point.
- e) Obtaining Connectivity and executing connectivity agreement as per provision of GNA regulation issued by CERC, for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement. It is further clarified that the Entities (SPD and PDD) as indicated in the detailed procedure issued subsequently under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, will be responsible for their respective obligation as notified in the detailed procedure irrespective of the provisions of the RfS and PPA.
- f) The commencement of supply of power up to the Contracted Capacity to PDD no later than the SCD and continuance of the supply of power in line with Article 4.4 of this Agreement throughout the term of the Agreement.

- g) Owning the Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15.
- h) Maintaining minimum 51% shareholding prevalent at the time of signing of PPA up to a period of one (1) year after the SCD in line with Clause 21 of the RfS;
- i) Fulfilling all obligations undertaken by the SPD under this Agreement and also as per the terms of the RfS.
- j) The SPD shall be responsible to for directly coordinating and dealing with the PDD, Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Solar Power and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the SPD and PDD are the Grid connected entities.
- k) For the Solar PV, the SPD shall fulfil the technical requirements according to criteria mentioned under Annexure B of the RfS. The modules used in the Project shall be sourced only from the models and manufacturers included in List-I under the “Approved List of Models and Manufacturers” as published by MNRE and valid as on the date of invoicing of such modules.
- l) The SPD shall be solely responsible for and obligated to ensure that the Project being implemented under this Agreement shall fulfil the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof.
- m) For the Project being implemented under this Agreement, the SPD shall submit a detailed completion Schedule for the Project prior to the signing of PPA. Broad details to be captured in the Schedule are the land procurement, grid connectivity; order, supply and erection status of various Project components; financial arrangement/ tie up etc. The SPD shall also submit the progress report to SECI/PDD in a form acceptable to SECI/PDD and shall contain percentage completion achieved compared with the planned percentage completion for each activity, and any such other information as required by SECI/PDD. The SPD shall be required to submit the progress status of Project to SECI/PDD as and when requested by SECI/PDD, strictly within the timelines provided by SECI/PDD. Further, on 5th day of every calendar month, the SPD shall be required to submit the Project progress status. In case of failure to comply with the same, SECI/ PDD at its discretion, may or may not consider the SCD extension request of the SPD.

4.2 *Information regarding Interconnection Facilities*

- 4.2.1 The SPD shall be required to obtain all information from the STU/CTU/concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the SPD's side of the Delivery Point to enable delivery of electricity at the Delivery Point. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the SPD at his own cost.
- 4.2.2 Penalties, fines and charges, etc. imposed by the STU under any statute or guidelines in relation to delay in commissioning of the Project shall be entirely dealt by the SPD and any such amounts claimed by such agency(ies) shall be payable by the SPD.
- 4.2.3 The responsibility of getting connectivity with the transmission system up to the Interconnection Point, will lie with the SPD. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the SPD at his own cost. The maintenance of Transmission system up to the designated point as per the applicable terms and conditions shall be the responsibility of the SPD to be obtained at his own cost. All costs and charges including but not limited to the wheeling charges and losses up to and including at the Interconnection Point associated with this arrangement will also be borne by the SPD.
- 4.2.4 The arrangement of connectivity shall be made by the SPD through a transmission line. The entire cost of transmission including cost of construction of line, any other charges, losses etc. from the Project up to the Interconnection Point will be borne by the SPD. In case of non-availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the SPD, provisions of Article 4.10 shall be applicable.

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

- 4.3.1 Subject to the terms and conditions of this Agreement, the SPD undertakes to sell solar power to PDD and PDD undertakes to purchase such power and pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.

4.4 *Right to Contracted Capacity & Energy*

- 4.4.1 For supply of power, the CUF declared by the SPD is _____(insert the amount as per SECI's LoA). The SPD will be allowed to revise the CUF of the Project once within first year after the date of commencement of power supply from full Project Capacity. In case of revision in CUF, the revised CUF shall, in no case, be lower than

the originally committed value. Subsequent to commencement of power supply from the Project, PDD, in any Contract Year, except for the Contract Year ending on 31st March immediately after the date of commencement of power from the Project, shall not be obliged to purchase any additional energy from the SPD beyond Million kWh (MU) [Insert value of energy corresponding to CUF of 110% of the declared CUF for the Project or the modified CUF]. If for any Contract Year, except for the Contract Year ending on 31st March immediately after the date of commencement of power from the Project, it is found that the SPD has not been able to supply minimum energy amounting to Million kWh (MU) [Insert values corresponding to a CUF of 85% of the declared CUF for the project or the modified CUF] till the end of 10 years from the SCSD and Million kWh (MU) [Insert values corresponding to a CUF of 80% of the declared CUF for the project or the modified CUF] for the rest of the Term of the Agreement, save and except in case of Force Majeure, the SPD shall be liable to pay penalty to PDD.

For the first year of operation of the Project, the above limits shall be considered for the complete year after the date of commencement of power from the Project. Subsequently, the annual CUF will be calculated every year from 1st April of the year to 31st March next year. Similarly, for the last year of operation of the Project, these limits shall be considered for the complete year before the expiry of the PPA.

The lower limit will, however, be relaxable by Buyer to the extent of Generation Compensation due to grid non-availability to the Project for evacuation which is beyond the control of the SPD as determined under provisions of Article 4.10.1. The amount of such penalty will be equal to 1.5 times the Applicable Tariff for the shortfall in energy terms, which in turn, shall be remitted to the Buying Entity. The penalty as per above shall be applied on the amount of shortfall in generation from the Project during any Contract Year. This penalty shall not be applicable in events of Force Majeure identified under this Agreement, affecting supply of Solar Power by SPD.

- 4.4.2 Any excess generation over and above as per Article 4.4.1, may be purchased by PDD at the tariff as per Article 9. While the SPD would be free to install the DC solar field as per its design of required output, including its requirement of auxiliary consumption and to repower the Project from time to time during the term of the PPA, it will not be allowed to sell any excess power to any other entity other than PDD (unless refused by PDD). The SPD shall be required to intimate PDD about the proposed excess quantum of energy likely to be generated from the Project within any

Contract Year, at least 60 days prior to the proposed date of commencement of excess generation in that Contract Year. PDD shall be required to intimate its approval/refusal to the SPD, for buying such excess generation not later than 15 days of receiving the above offer from the SPD. In the event the offer of the SPD is not accepted by PDD within the said period of 15 deviation days, such right shall cease to exist and the SPD shall, at its sole discretion, may sell such excess power to any third party.

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

- 4.4.5 The SPD agrees that the methodology specified hereinabove for calculation of compensation in the form of penalties payable by the SPD as indicated above is a genuine and accurate pre-estimation of the actual loss that will be suffered by PDD. SPD shall further acknowledge that a breach of any of the obligations contained herein result in injuries and that the amount of the penalty or the method of calculating the penalty specified in this document is a genuine and reasonable pre-estimate of the penalty that may be suffered by the PDD in each case specified under this Agreement.
- 4.4.6 The parties agree that penalties shall not be applicable in events of Force Majeure identified under the PPA, affecting supply of power by the SPD. SPD shall not be liable to pay any penalty whatsoever including consequential damages for any shortfall in generation in excess of what becomes payable under Article 4.4.7 and/or Article 4.4.10.

4.5 *Extensions of Time*

- 4.5.1 In the event that the SPD is prevented from performing its obligations under Article 4.1 by the SCD due to:
- a) any PDD Event of Default; or
 - b) Force Majeure Events affecting PDD , or
 - c) Force Majeure Events affecting the SPD,
- the SCD and the Expiry Date shall be deferred, for a reasonable period but not less than ‘day for day’ basis, to permit the SPD or PDD through the use of due diligence,

to overcome the effects of the Force Majeure Events affecting the SPD or PDD, or till such time such Event of Default is rectified by PDD.

4.5.2 Subsequent to grant of connectivity, in case there is a delay in Start Date of Connectivity by the CTU/STU and/or there is a delay in readiness of the substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the network until SCD of the Project, and it is established that:

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

The above shall be treated as delays beyond the control of the SPD and SCD for the Project shall be revised as the date as on 60 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or Start Date of Connectivity. Decision on requisite extension on account of the above factor shall be taken by PDD.

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

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

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

4.5.6 Delay in commencement of power supply from the project beyond the SCD for reasons other than those specified in Article 4.5.1 & Article 4.5.2 shall be an event of default on part of the SPD and shall be subject to the consequences specified in the Article 4.6.

4.6 *Penalty for delay in Commencement of Power Supply*

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

- (a) Delay beyond the SCD upto (& including) the date as on 6 months after the SCD or the extended SCD, if applicable: The total PBG/POI amount shall be encashed on pro-rata basis and proportionate to the Project capacity that has not commenced supply of power.
- (b) For avoidance of doubt it is clarified that provisions of Article 4.6.1 will be applicable even in cases where no capacity (**i.e. 0 MW**) has commenced power supply.

4.6.2 The maximum time period allowed for commencement of power supply from the full Project Capacity with encashment of Performance Bank Guarantee/ Payment on Order Instrument shall be limited to 6 months after the SCD/extended SCD of the Project. In case, the commencement of power supply from the Project is delayed beyond 6 months after the SCD/ extended SCD, following shall be applicable:

- (i) The Contracted Capacity shall stand reduced / amended to the capacity corresponding to the Project Capacity that has commenced power supply until the date as on 6 months after the SCD/ extended SCD and the PPA for the balance capacity will stand terminated and shall be reduced from the Contracted Capacity.

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

4.7 *Acceptance/Performance Test*

4.7.1 Prior to synchronization of the Power Project, the SPD shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by

Central Electricity Authority or an agency identified by the central government/state government to carry out testing and certification for the Solar Power project.

4.8 Third Party Verification

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

4.9 Breach of Obligations

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

4.10 Generation compensation for Off-take constraints

- 4.10.1 Generation Compensation in offtake constraints due to Grid Unavailability:** During the operation of the plant, there can be some periods where the Project can generate power but due to temporary transmission unavailability, the power is not evacuated, for reasons not attributable to the Solar Power Developer. In such cases, subject to the submission of documentary evidences from the competent authority, the generation compensation shall be restricted and payable by the PDD as under and there shall be no other claim, directly or indirectly against PDD:

| Duration of Grid unavailability | Provision for Generation Compensation |
|---|---|
| Grid unavailability beyond 175 hours in a Contract Year (as defined in Article 1) | <i>Generation Compensation= ((Tariff X Solar Power (MW) offered but not scheduled by the Buying Entity)) X 1000 X No. of hours of grid unavailability.</i> |

| | |
|--|--|
| | However, in the case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realized, after deducting expenses, shall be adjusted against the Generation compensation payable, on monthly basis. |
|--|--|

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

4.10.2 Payment in case of reduced off take: In case the plant is available to supply power but the off take of power is not done by PDD, including non-dispatch of power due to non-compliance with “Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified by the Ministry of Power vide Gazette notification dated 3rd June 2022” and any clarifications or amendment thereto, considering the principle of “must run” status for RE Power, the SPD shall be eligible for payment from the Buying Entity, corresponding to the reduced off take, in terms of following manner:

| Reduced Off-take | Provision for Generation Compensation |
|--|--|
| Reduced off-take beyond 175 hours in a Contract Year (as defined in Article 1) | <p><i>Generation Compensation=</i> <i>(Applicable Tariff X Solar PV Power (MW) offered but not scheduled by the Buying Entity) X 1000 X no. of hours of Reduced Off take.</i></p> <p>However, in the case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realized, after deducting expenses, shall be adjusted against the Generation compensation payable, on monthly basis.</p> |

4.10.3 The SPD shall be eligible for payment from the PDD, corresponding to the reduced offtake of power as per above mentioned methodology. The Payment is to be done as part of the energy bill for the successive month after receipt of Energy Accounts (REA)/SEA/JMR. The SPD shall not be eligible for any compensation in case the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions or Force Majeure.

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

- 5.1 The SPD shall give the concerned RLDC/SLDC (if applicable), SECI and PDD at least Fifteen (15) days' advanced preliminary written notice and at least seven (7) days' advanced final written notice, of the date on which it intends to synchronize the Solar Power Project to the Grid System.
- 5.2 Subject to Article 5.1, the Project may be synchronized by the SPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.3 The synchronization equipment and all necessary arrangements / equipment including RTU for scheduling of power generated from the Solar Project and transmission of data to the concerned authority as per applicable regulations shall be installed by the SPD at its generation facility at its own cost. The SPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/Grid System and checking/verification is made by the concerned authorities of the Grid System and RLDC, in line with the provisions of the Grid Code.
- 5.4 The SPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the generation facility including Solar Project(s) is electrically connected and also to the RLDC in accordance with applicable Grid Code under intimation to PDD.
- 5.5 The SPD shall commission the Project in line with provisions of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, as amended from time to time. The SPD shall also give a notice of not less than seven (7) days, for trial run or repeat of trial run, to the concerned RLDC, SECI and PDD. However, in case the repeat trial run is to take place within 48 hours of the failed trial run, fresh notice shall not be required.

For issuance of commissioning/completion certificate, the following documents will be deemed to form the completion documents:

- i. At least 15 days' prior intimation to SECI and PDD for witnessing the project's inspection/performance.
- ii. Project Completion report (PCR) containing the detailed checklist for inspection of the Pilot project as per SECI's format.

- iii. Photographs of the project.
- 5.6 PDD & SPD agree that for the purpose of commencement of the supply of power by SPD to PDD, penalty for delay etc., the SCD/extended SCD as defined in this Agreement shall be the relevant date.
- 5.7 The SPDs will be free to reconfigure and repower various components of the Project configuration from time to time during the PPA duration at its own risk and cost, pursuant to Articles 3.1 and 4.4 of this Agreement. However, PDD will be obliged to buy power only upto the Contracted Capacity as per this Agreement.
- 5.10 In additions to the requirements mentioned above, SPD shall also comply with all the requirements as mentioned in the Indian Electricity Grid Code.

ARTICLE 6: DISPATCH AND SCHEDULING

6.1 *Dispatch and Scheduling*

- 6.1.1 The SPD shall be entirely responsible to schedule its power as per the applicable regulations / requirements / guidelines of CERC / SERC /SLDC / RLDC or any other competent agency and same being recognized by the RLDC/SLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC/RLDC from time to time. Any deviation from the schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the SPD.
- 6.1.2 The SPD shall be responsible for directly coordinating and dealing with the Buying Entity, State Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the SPD and PDD are the Grid connected entities.
- 6.1.3 The SPD shall be responsible for any deviation from scheduling and for any resultant liabilities on account of charges for deviation as per applicable regulations. UI charges on this account shall be directly paid by the SPD.
- 6.1.4 Auxiliary power consumption will be treated as per the concerned Central/State regulations.

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 SPD and PDD 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 SPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at SPD's side of Delivery Point.
- 7.1.3 In addition to ensuring compliance of the applicable codes, the SPD shall install Main & Check meters at the Delivery Point, along with Stand-by meter(s) as per the applicable Central/State regulations.

7.2 *Reporting of Metered Data and Parameters*

- 7.2.1 The grid-connected Solar PV Power Projects will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI, and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the Project.

ARTICLE 8: INSURANCES

8.1 *Insurance*

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

8.2 *Application of Insurance Proceeds*

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

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

8.2.2 If a Force Majeure Event renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, PDD shall have claim on such proceeds of such Insurance limited to outstanding dues of PDD against SPD.

8.3 *Effect on liability of PDD*

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 SPD can claim compensation, under any Insurance shall not be charged to or payable by PDD. It is for the SPD to ensure that appropriate insurance coverage is taken for payment by the insurer for the entire loss and there is no under insurance or short adjustment etc.

ARTICLE 9: APPLICABLE TARIFF

- 9.1 Subsequent to commencement of power supply by the SPD on the terms contained in this Agreement, the SPD shall be entitled to receive the Tariff of Rs. / kWh [Insert the Tariff discovered through the bidding process conducted by SECI], fixed for the entire term of this Agreement.
- 9.2 Any excess generation over and above energy specified in Article 4.4.1, may be purchased by PDD at the Applicable Tariff (as per Article 9.1).
The SPD will not be allowed to sell energy generated prior to SCD or excess energy during any Contract Year to any other entity other than PDD (unless refused by PDD).

ARTICLE 10: BILLING AND PAYMENT

10.1 *General*

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

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

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

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

10.2.1 The SPD shall issue to PDD hard copy of a signed Monthly Bill/Supplementary Bill for the immediately preceding Month/relevant period based on the issuance of Energy Accounts along with all relevant documents (payments made by SPD for drawal of power, payment of reactive energy charges, Metering charges or any other charges as per guidelines of SERC/CERC, if applicable).

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

10.3 *Payment of Monthly Bills*

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

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

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

The SPD shall open a bank account (the "SPD's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by PDD to the SPD, and notify PDD of the details of such account at least thirty (30) Days before the dispatch of the first Monthly Bill. PDD shall also designate a bank account ("PDD Designated Account") for payments to be made by the SPD to PDD, if any, and notify the SPD of the details of such account thirty (30) Days before the SCD. PDD and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD's Designated Account or PDD's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

10.3.3 **Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by PDD beyond the Due Date, a Late Payment Surcharge shall be payable by PDD to the SPD 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 SPD 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.

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

10.4 Not used

10.5 Disputed Bill

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

10.5.2 If the PDD 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 SPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the SPD 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 SPD 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 PDD 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 PDD under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the PDD and SPD 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 the despite a Dispute regarding an invoice, PDD shall, without prejudice to its right to Dispute, be under an obligation to make payment of undisputed amount or 50% of the invoice amount, whichever is higher, in the Monthly Bill.

10.6 Quarterly and Annual Reconciliation

10.6.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment payments, 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 SPD and PDD shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the SPD 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 SPD may raise a ("Supplementary Bill") for payment on account of:

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

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

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

ARTICLE 11: FORCE MAJEURE

11.1 *Definitions*

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

11.2 *Affected Party*

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

11.3 *Force Majeure*

11.3.1 A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

- a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if and only if it is declared / notified by the competent state / central authority / agency (as applicable);
- b) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action if and only if it is declared / notified by the competent state / central authority / agency (as applicable); or
- c) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.

11.4 *Force Majeure Exclusions*

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

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;

- b. Delay in the performance of any contractor, sub-contractor or their agents;
- c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d. Strikes at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with an Indian Law; or
 - iii. Breach of, or default under this Agreement.

11.5 *Notification of Force Majeure Event*

- 11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than fifteen (15) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. The other Party shall respond on the claim of the Affected Party within 15 days of receipt of the said intimation of Force Majeure.
- 11.5.2 Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.
- 11.5.3 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

11.6 *Duty to Perform and Duty to Mitigate*

- 11.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 11.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement.

The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.7 Available Relief for a Force Majeure Event

11.7.1 Subject to this Article 11:

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

ARTICLE 12: CHANGE IN LAW

12.1 Definitions

In these rules, unless the context otherwise requires, -

12.1.1 In this Article 12, the term “Change in Law” shall refer to the occurrence of any of the following events pertaining to this Project only after _____ [last date of bid submission], including any enactment or amendment or repeal of any law, leading to corresponding changes in the cost requiring change in tariff, and includes-

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

but does not include-

- a. Any change in any withholding tax on income or dividends distributed to the shareholders of the generating company or transmission licensee; or
- b. change in respect of deviation settlement charges or frequency intervals by an Appropriate Commission.
- c. Any Change in Law event occurring after the SCD/extended SCD, which would not have affected the Project had the Project been commissioned before the SCD/extended SCD.

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

12.2 Adjustment in tariff on account of Change in Law

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

12.2.2 For the purposes of 12.2.1 above, the affected party, which intends to adjust and recover the costs due to change in law, shall give a 21 days’ prior notice to the other

party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

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

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

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

Let financial impact of change in law=P

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

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

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

Where, -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12.2.12 “Project Cost” wherever applicable under this Article, shall mean the cost incurred by the SPD towards supply and services only for the Project concerned, upto the actual date of commencement of power supply from the last part capacity or upto the SCSD/extended SCSD, whichever is earlier.

ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

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

- (i) the failure to commence supply of power to PDD up to the Contract Capacity, by the end of the period specified in Article 4, or failure to continue supply of annual energy corresponding to the minimum CUF power to PDD after the commencement of supply of power, for any Contract Year (except for the first and final Contract Years), throughout the term of this Agreement, or if
 - a) the SPD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Project in contravention of the provisions of this Agreement; or
 - b) the SPD 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 SPD 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 SPD, or (c) the SPD 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 SPD will not be a SPD 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 SPD and expressly assumes all obligations of the SPD under this Agreement and is in a position to perform them; or

- (iii) the SPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from PDD in this regard; or
- (iv) except where due to any PDD's failure to comply with its material obligations, the SPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPD within thirty (30) days of receipt of first notice in this regard given by PDD; or
- (v) change in shareholding of the SPD before the specified time frame as mentioned in Article 4.1.1 of this Agreement, without prior consent of PDD; or ceding of control by the promoters of M/s [Insert name of the bidding company which was issued LoA by SECI under the RfS] within 1 year of SCD, without prior consent of PDD; or
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SPD; or
- (vii) If any concealment of material information, in line with Clause 21.3 and 21.4 of the RfS is discovered subsequent to the Effective Date of this Agreement.
- (viii) Revoking of connectivity of the SPD on account of non-compliance by the SPD.

13.2 PDD 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 SPD of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting PDD:

- (i) PDD 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,
- (ii) PDD repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the SPD in this regard; or
- (iii) except where due to any SPD's failure to comply with its obligations, PDD is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by PDD within sixty (60) days of receipt of notice in this regard from the SPD to PDD; or
- (iv) if
 - PDD 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 PDD, or
 - PDD 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 PDD Event of Default, where such dissolution or liquidation of Buyer or PDD 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 PDD and expressly assumes all obligations of PDD 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 PDD.

13.3 *Procedure for cases of SPD Event of Default*

- 13.3.1 Upon the occurrence and continuation of any SPD Event of Default under Article 13.1, PDD shall have the right to deliver to the SPD, with a copy to the representative of the lenders to the SPD with whom the SPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (PDD 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 PDD 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 SPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, PDD may terminate this Agreement by giving a written Termination Notice of sixty (60) days to the SPD.
- 13.3.5 Subject to the terms of this Agreement, upon occurrence of a SPD Event of Default under this Agreement, the SPD shall be liable to pay to PDD, penalty, as provided in Article 4.6 of the PPA for failure to commence supply of power within the stipulated

time and Article 4.4.1 for failure to supply power in terms of the PPA. For other cases, the SPD shall be liable to pay to PDD damages, equivalent to 24 (twenty-four) months, or balance PPA period, whichever is less, of tariff for its Contracted Capacity, corresponding to the committed annual CUF.

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

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

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

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

13.4 *Procedure for cases of PDD Event of Default*

13.4.1 Upon the occurrence and continuation of any PDD Event of Default specified in Article 13.2, the SPD shall have the right to deliver to PDD, a SPD 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 SPD 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 PDD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, PDD under intimation to the SPD shall, subject to the prior consent of the SPD, novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the SPD, or if no offer of novation is made by PDD within the stipulated period, then the SPD may terminate the PPA and at its discretion require PDD to pay to the SPD, damages, equivalent to 24 (twenty-four) months, or balance PPA period, whichever is less, of charges of its Contracted Capacity corresponding to the committed annual CUF.

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

13.5 Termination due to Force Majeure

If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.5.3, termination of this Agreement shall be caused solely at the discretion of PDD and there shall not be any liability (to PDD) arising out of such termination. In such an event, this Agreement shall terminate on the date of such Termination Notice issued by PDD without any further liability to either Party from the date of such termination.

ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1 *Indemnity*

14.1.1 The SPD shall indemnify, defend and hold PDD harmless against:

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

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) the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(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) 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), 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 SPD nor PDD 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 PDD, the SPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 PDD shall have no recourse against any officer, director or shareholder of the SPD or any Affiliate of the SPD or any of its officers, directors or shareholders for such claims excluded under this Article. The SPD shall have no recourse against any officer, director or shareholder of Buyer, or any affiliate of Buyer 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 endeavour to take all reasonable steps so as to mitigate any loss or damage which has occurred under this Article 14.

ARTICLE 15: ASSIGNMENTS AND CHARGES

15.1 *Assignments*

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

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

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

The enforcement of the rights and obligation between the SPD and PDD 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 taxes per Transaction as Facilitation Fee (non-refundable) shall be deposited by the SPD to PDD. Provided further that, such consent shall not be withheld by the SPD if PDD seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

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

15.2 *Permitted Charges*

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

ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION

16.1 *Governing Law*

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

16.2 *Amicable Settlement and Dispute Resolution*

16.2.1 *Amicable Settlement*

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

16.3 *Dispute Resolution*

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

16.4 *Parties to Perform Obligations*

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

ARTICLE 17: MISCELLANEOUS PROVISIONS

17.1 *Amendment*

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

17.2 *Third Party Beneficiaries*

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

17.3 *Waiver*

17.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party.

17.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

17.4 *Confidentiality*

17.4.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- a) to their professional advisors;
- b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- c) disclosures required under Law, without the prior written consent of the other Party.

17.5 *Severability*

17.5.1 The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this

Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

17.6 Notices

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

17.6.2 If to the SPD, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address :

Attention :

Email :

Fax. No. :

Telephone No. :

17.6.3 If to PDD, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

(i) Address :

Attention

Email :

Fax. No. :

Telephone No. :

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

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

17.7 *Language*

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

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

17.8 *Restriction of Shareholders / Owners' Liability*

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

17.9 *Taxes and Duties*

17.9.1 The SPD shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the SPD, contractors or their employees that are required to be paid by the SPD 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 PDD shall be indemnified and held harmless by the SPD against any claims that may be made against PDD in relation to the matters set out in Article 17.9.1.

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

17.10 *Independent Entity*

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

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

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

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.

17.13 *Breach of Obligations*

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages 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.

17.14 *Order of priority in application*

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

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

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

For and on behalf of

For and on behalf of

[PDD]

[SPD]

Name, Designation and Address

Name, Designation and Address

Signature with seal

Signature with seal

Witness:

Witness:

1.

1.

2.

2.

PDD-SPD PPA

SCHEDULE 1: FORMAT FOR PERFORMANCE BANK GUARANTEE (PBG)

SCHEDULE 2: FORMAT FOR PAYMENT ON ORDER INSTRUMENT (POI)

SCHEDULE 3: FORMAT FOR INSURANCE SURETY BOND (ISB)

(As per the format provided in the RfS document.)