

MODEL

VGF SECURITIZATION AGREEMENT

FOR A VGF AMOUNT OF FOR

PROCUREMENT OF 5 MW SOLAR POWER

ON LONG TERM BASIS

UNDER SOLARIZATION OF INDO-PAK BORDER

BETWEEN

.....[Insert name of the SPD]

And

Solar Energy Corporation of India

December 2014

VGf SECURITIZATION AGREEMENT

THIS VGf SECURITIZATION AGREEMENT is made and executed at[Insert name of the Place] on[Insert date of execution] between [**Insert name of the SPD**], a Company within the meaning of the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013, as applicable and having its Registered office at [Insert registered office address] in the State of [Insert state of Incorporation] hereinafter called the "SPD" (which expression shall unless excluded by or repugnant to the context or meaning thereof be deemed to include its successors and assignees) as the **First Part**

AND

Solar Energy Corporation of India, a Company incorporated under Section-25 of the Companies Act, 1956, having its registered office at 1st Floor, A-Wing, D-3, District Centre, Saket, New Delhi-110017 (hereinafter referred to as "SECI", 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 SECI are individually referred to as 'Party' and collectively referred to as 'Parties'.

Whereas:

- A. SECI has been designated as implementing agency by MNRE for facilitating purchase & sale of power from "Solar PV Project for the Solarization of Indo-Pak Borders in Rajasthan.
- B. Pursuant to the above, SECI had invited project proposals from the eligible bidders for installation of a Solar Power Project of 5 MW capacity at.....[Insert Project location] on Build-Own-Operate (BOO) basis and generate power and sell to SECI as per the terms and conditions of RFS No. SECI/SOLAR/SPV/BSF/RfS/102014 dated 18th October 2014 (including amendments, clarifications and notifications);
- C.[Insert the name of the SPD] has been declared as a Successful Bidder in the bid process against the above mentioned RFS and have been issued a Letter of Intent (LOI) No. [Insert LOI No.] dated [Insert date of LOI] for development of a Solar Power Project of 5 MW Capacity at[Insert Project location], generation and sale of solar power from the Solar Power Project; *[Applicable in case the selected bidder is the SPD]*

.....[Insert the name of the selected bidder] has formed a Project Company [Insert name of the Project company] within the provisions of the RfS (hereinafter called “SPD”) for the purpose of setting up of Solar Power Project based on Photo Voltaic technology of 5 MW capacity at[Insert the Project location] in the state of[Insert name of the state] (hereinafter referred to as “the Project”) at an estimated cost of Rs..... [Insert the Project Cost in figures as well as in words];

D. Whereas the SPD and SECI have also signed a Power Purchase Agreement (PPA) dated[Insert date of signing of PPA] to supply power by SPD to SECI from the Project as per terms and conditions specified in the PPA and

E. Whereas pursuant to the issuance of LOI and signing of PPA and upon successful commissioning of the Project, the SPD would be eligible to receive VGF support amounting to maximum Rs.....[Insert VGF Amount in figures as well as in words], which shall be released by SECI, provided the Project meets the generation requirements as per Article 2.2 (c) of this Agreement & the SPD fulfils other terms & conditions as indicated hereinafter and in LOI and PPA.

IN CONSIDERATION OF THE PREMISES AND COVENANTS HEREIN CONTAINED,
THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE 1: DEFINITION AND INTERPRETATION

1.1. Definitions:

In this Agreement unless the context otherwise requires:

- (a) “Commissioning” shall mean commissioning as defined in the PPA;
- (b) “Commercial Operation Date” or “COD” shall mean the actual commissioning date of the full capacity of the Power Project where upon the SPD starts injecting power from the Power Project to the Delivery Point;
- (c) “Chartered Accountant” shall mean a person practicing in India or a firm whereof all the partners practicing in India as a Chartered Accountant(s) within the meaning of the Chartered Accountants Act 1949;
- (d) “Company Secretary” shall mean a person who is a member of the Institute of Company Secretaries of India either in whole time employment or in practice within the meaning of the Company Secretaries Act, 1980;
- (e) “Contracted Capacity” shall mean 5 MW contracted with SECI for supply by the SPD to SECI at the Delivery Point from the Solar Power Project;
- (f) “CUF” means Capacity Utilization Factor as defined in the PPA;
- (g) [Void];
- (h) “LOI” means Letter No. [Insert LOI No.] dated[Insert date of LOI] issued by SECI to the SPD for award of the Project;
- (i) “Lender” or “Lending Institution” means banks, financial institution or any other financial institution who lends funds to the SPD for execution and development of the Project;
- (j) "MNRE" means the Ministry of New and Renewable Energy, Government of India, New Delhi;
- (k) "Preliminary Estimated Project Cost" means the project cost of Rs.....[Insert Project Cost both in figures as well as in words] for the Project indicated by SPD as part of the bid submitted by SPD vide Ref No. [Insert ref. No. and date];
- (l) "Project" or “Power Project” shall mean the solar power generation facility of Contracted Capacity of 5 MW, located at District:, Tehsil:, Village:

..... in the state of having separate points of injection into the grid at inter-connection/metering point and having a separate boundary, control systems and metering. This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, dedicated transmission line upto 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 the PPA;

- (m) "Power Purchase Agreement" or "PPA" shall mean the Power Purchase Agreement signed between SECI and the SPD for procurement of 5 MW Solar Power by SECI from the SPD and annexed hereto as Schedule 1 of this Agreement;
- (n) "RfS" or "Request for Selection" means the bidding document SECI/SOLAR/SPV/BSF/RfS/102014 dated 18th October 2014 (including amendments, clarifications and notifications) issued by the SECI to prospective bidders;
- (o) "Consultation Period" shall mean the period of sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of Preliminary Default Notice as provided in Article 4.3 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
- (p) "VGF" means the Viability Gap Funding amount specified in Article 2.1 of this Agreement;
- (q) "Agreement" or "VGF Securitization Agreement" means this particular VGF Securitization Agreement and includes all schedules and all amendments and documents supplemental or incidental to the VGF Securitization Agreement entered by SECI with the SPD for creation of charges on the Power Project of the SPD;
- (r) "VGF disbursement schedule" means the disbursement schedule of VGF Amount as provided in Article 2.4 of the Agreement;
- (s) "Delivery Point" means delivery point as defined in the PPA and
- (t) "Project Assets" means all immovable and movable assets created by the SPD for the construction and operation of the Project within the Project premises and

power evacuation system including transmission line till the Delivery Point on which the charge of term loan lenders shall be created by the SPD.

1.2. Interpretation:

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

- (a) All the terms and expressions in capitalized form not defined herein in this Agreement shall have meaning as provided therein in the RfS documents and PPA.
- (b) 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; and shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures and the RfS Document (RfS No. SECI/SOLAR/SPV/BSF/RfS/102014 dated 18.10.2014 including its amendments, clarifications and notifications) shall for an integral part of this Agreement;
- (c) 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;
- (d) 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);
- (e) 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;
- (f) "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;
- (g) 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;

- (h) "Rupee", "Rupees", "Rs" or rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;
- (i) 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;
- (j) Words importing singular number shall be deemed to include plural number and vice versa.
- (k) A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- (l) A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- (m) 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;
- (n) 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;
- (o) 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;
- (p) The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;
- (q) 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;
- (r) "Good title" means the SPD is rightful owner and is in peaceful possession of the Land as per the revenue record and the SPD shall also have proper authority to

work on land for the term of 25 years, by way of permitted instruments by the RfS and requisite approval from the appropriate authority/ies the construction period.

ARTICLE 2: AGREEMENT AND TERMS OF VGF

2.1 Amount and Disbursement of VGF:

- (a) The SPD is eligible to receive VGF support amounting to maximum of Rs.....[Insert VGF Amount in figures as well as in words] subject to the compliance of terms and conditions as detailed in Article 2.2 hereinafter.
- (b) The above indicated VGF will be released in Six (6) tranches as follows:-

First tranche of 50% of VGF shall be released on successful Commissioning of the full Project Capacity. Balance 50% of the VGF shall be released progressively over next five (5) years in five equal instalments of 10% of the each; subject to plant meeting generation requirements (as per Clause 2.2 (c)) as under:

• First Tranche-	Upon successful Commissioning of the full capacity of the Project	:	50%
• Second Tranche-	End of 1 st Year from the COD	:	10%
• Third Tranche-	End of 2 nd Year from the COD	:	10%
• Fourth Tranche-	End of 3 rd Year from the COD	:	10%
• Fifth Tranche-	End of 4 th Year from the COD	:	10%
• Sixth (final) Tranche-	End of 5 th Year from the COD	:	10%

- (c) As per the terms and conditions of LOI, RfS and this Agreement, the VGF shall be released through SECI, subject to creation of the security by way of charge in favor of SECI on the assets of the Project in terms of Article 3 hereof and extension of any other security stipulated by the Lender of the Project in relation to the Project, if any, to establish, operate, maintain, generate and sell power from the Project for the entire period of 25 years at fixed tariff as per PPA.

2.2 Conditions to be fulfilled for Disbursement of VGF:

- a) First instalment of 50% of VGF amount indicated in Article 2.1 above shall be released at a date not later than three (3) months after Scheduled Commissioning Date as per PPA subject to fulfilment of following conditions:
- i) Successful commissioning of the full capacity of the Project as per the “Schedule 6 of the PPA”. A duly constituted Committee will physically inspect and certify satisfactory commissioning of the Project.
- ii) Creation of charge in line with Article 3.0 of this Agreement, including registration of the same with the Registrar of Companies (ROC).

- iii) [Void].
- iv) The SPD shall furnish financing documents (including financing agreements) to SECI;
- b) Balance 50% of the VGF shall be released progressively over the next five (5) years as indicated in Article 2.1 above subject to the Project meeting requirements of the Project Performance in line with Clause 2.2 (c) and provided that no event of default as per terms and conditions of the PPA, and VGF Securitization Agreement have occurred or such event of default has been unless waived by SECI or cured / remedied by the SPD in accordance with the PPA and this Agreement as the case may be. For avoidance of doubt, in case the Project is not meeting requirements of the Project Performance in line with Clause 2.2 (c), the SPD shall have to forego the VGF amount of such tranche for such year.
- c) For the purpose of determination of annual CUF, the SPD will declare the annual CUF of the Project at the time of commissioning and will be allowed to revise the same only once within 1 year of Commissioning. The declared annual CUF shall in no case be less than 17% over a year. The SPD shall maintain generation so as to achieve annual CUF within minus (-)15% and plus (+)10% of the declared value till the end of 10 years subject to the annual CUF remaining over minimum of 15%. For remaining term of the PPA, the SPD shall maintain generation so as to achieve annual CUF within minus (-) 20% and plus (+) 10% of the declared annual CUF. For the purpose of release of VGF, CUF will be calculated every year from the COD up to completion of 1 year from the COD. The upper limit will not be applicable for the purpose of release of VGF. The lower limit will, however, be relaxable by SECI in case of non-availability of grid for evacuation which is beyond the control of the SPD and /or abnormally low annual Global Horizontal Irradiance (GHI) year (i.e. if the actual annual GHI in the year under consideration is less than 50% of average values of two (2) years of annual GHI as available from the nearest IMD/SRRA stations). The adjustment in CUF shall be done as per methodology adopted by SECI in consultation with MNRE. The lower limit shall also be relaxable in case of occurrence of force majeure events as per Article 11.2. However for avoidance of any doubt, it is clarified that the extent of adjustment in CUF in case of non-availability of grid for evacuation which is beyond the control of SPD and / or abnormally low annual GHI year and /or force majeure shall not qualify for revenue billing. Moreover, in case of annual GHI is equal to or more than 50% of average value of two (2) years of annual GHI as available from the nearest IMD/SRRA stations, no adjustment shall be made in the annual CUF on account abnormally low annual GHI year.

d)VGF Disbursement Procedure:

- i) The SPD shall deliver to SECI a request for VGF Disbursement not less than (15) days from the proposed VGF disbursement date and confirming that all the conditions precedent to VGF Disbursement has been fulfilled;
- ii) The SPD shall provide the Project commissioning certificate issued by the committee duly constituted for the purpose;
- iii) The SPD shall provide a Chartered Accountant's Certificate regarding the completed Project Costs not later than at time of third tranche of VGF disbursement. The SPD shall submit the copies of the latest Annual Returns filed with ROC and Income Tax Returns filed with Income Tax department with each VGF Disbursement request;
- iv) The SPD shall provide a Chartered Accountant's Certificate regarding the sources and deployment of the funds towards the Project Implementation;
- v) The SPD shall provide a Chartered Accountant's Certificate towards equity commitment certifying that the minimum required equity contribution has been made and the proposed VGF disbursement shall not make the total VGF contribution after giving effect to the proposed VGF disbursement to exceed 30% of the Project Cost (estimated or as actual as applicable);
- vi) The SPD shall furnish not later than third Tranche of VGF Disbursement (i) a no objection/ Consent/ suitability/ Conversion certificate from the concerned and competent authority for land usage for development of Solar power Project. (ii) a certified English translation from an approved translator in case the certificate is in other than English and Hindi Languages;
- vii) At the time of First and Second Tranche of VGF Disbursement, the SPD shall provide a Certificate from Company Secretary; indicating share holding pattern of the company to establish maintenance of the controlling shareholding in the Company/Consortium developing the Project. The controlling shareholding shall mean not less than 51% of the voting rights and paid-up share capital (including fully, compulsory and mandatory convertible Preference shares) and
- viii) The SPD, at the time of all subsequent VGF Disbursements except the First VGF Disbursement, shall furnish self-declaration towards meeting of the Plant Performance as per Clause 2.2 (c) along with consolidated audited annual energy account.

ARTICLE 3: CREATION OF CHARGE TO SECURITIZE VGF

3.1 SPD shall create a charge in favour of SECI in following manner:-

- a) Term loan Lender or Lending Institution (if any) will have first charge on the Project Assets and the SPD shall create charge according to the requirement laid down by term loan Lender or Lending Institution. The SPD shall create second charge along with the first charge of term loan Lender or Lending Institution on the same Project Assets (save and except book debts) by way of mortgage/ hypothecation in favor of SECI to securitize the sanctioned VGF amount.
- b) In the absence of any charge in favor of term loan Lender or Lending Institution, SECI will have the first charge on the Project Assets of the value of 110% of sanctioned VGF Amount. The order of preference of project assets for charge creation in favour of SECI for securing value of 110% of the sanctioned VGF amount shall be project land, PV modules and any other project equipment respectively.
- c) Notwithstanding as provided in 3.1 (b) herein above, SECI hereby undertake to cede its first charge and accept second charge over the project assets upon the SPD availing finance from term loan Lender or Lending Institution (if any) after the COD. SECI shall have no-objection in creating first charge over Project Assets in favour of term loan Lender or Lending Institution as per their requirement by SPD and for filling requisite Form for modification of charge with the Registrar of Companies (ROC).
- d) [Void];
- e) any other security as the term Lender(s) of the Project may stipulate;

3.2 Notwithstanding, the SPD taking Loans from any Lender/Lending Institution subject to the SPD bringing minimum Rs.1.5 Cr. per MW as Equity contribution, the mortgage / hypothecation and all other securities/charges stipulated above, shall rank the charges created/to be created in favour of SECI subordinate (as a second charge holder) to term loan Lending Institutions (if any).

3.3 The SPD shall make out a good title to its immovable properties and comply with all such formalities as may be necessary or required for the said purposes. SPD shall file all necessary documents and forms to register a charge for the movable and immovable properties, with the relevant Registrar of Companies.

ARTICLE 4: EVENTS OF DEFAULT AND TERMINATION

4.1 Event of Default: The following shall constitute an Event of Default:

- a) If the Project fails to generate any power continuously for 1 year any time during the term of the PPA or
- b) If the Project is dismantled and / or its major assets (the Project components such as Solar PV modules, Inverters, Power Conditioning Units, Module Mounting Structures, Grid Interconnecting Transformers, Control, Protection and Metering equipment including switchgear equipment etc.) are sold by SPD during the term of the PPA except for replacement of any equipment including the major assets of the Project during the term of the PPA without diluting the charge of SECI over such asset or
- c) If it is found at any stage that the SPD has misrepresented the facts/ information to meet the eligibility conditions stipulated in RfS document issued by SECI or
- d) If the SPD defaults any terms and conditions of Loan documents and the Lender takes any step for recovery, including for winding up of the SPD or
- e) If (i) 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 (ii) any winding up or bankruptcy or insolvency order is passed against the SPD, or (iii) the SPD goes into liquidation or dissolution or has a receiver or any similar officer appointed to manage its affairs pursuant to Law or
- f) [Void]
- g) If SPD fails to maintain its Controlling Shareholding represented to SECI at the time of signing of PPA up to a period of one (1) year after COD of the Project in violation of PPA or
- h) [Void]
- i) [Void]
- j) If any attachment or distraint is levied on the mortgaged/charged property or any thereof and/or proceedings are taken or commenced for recovery of any dues from the SPD or
- k) [Void].
- l) If during subsistence of this Agreement, the SPD fails to comply with the applicable law in relation to the Project provided that such non-compliance results in revocation or reversal of any consent or approval obtained by the SPD in relation to the Project.

4.2 Remedies and Recovery of VGF in the Event of Default:

a) Upon occurrence of any Event of Default mentioned in Article 4.1 herein above, SECI shall have the right to refund of VGF and if not paid by the SPD, then a claim on the Project assets (irrespective of the book value of the Project assets available in the SPD's book of accounts) equal to the value of VGF released on pro-rata basis as specified hereunder:

- i) Up to end of 5th years from the COD- amount equal to the full value of VGF disbursed shall be recovered;
- ii) From 6th year and up to 25th year (20 years) from the COD - amount equal to the following percentage of full VGF disbursed shall be recovered-

Year of Default	SECI's Right on VGF (% of VGF Paid)
5-6 year	: 90%
6-7 year	: 80%
7-8 year	: 70%
8-9 year	: 60%
9-10 year	: 50%
10-11 year	: 40%
11-12 year	: 30%
12-13 year	: 25%
13-14 year	: 23%
14-15 year	: 21%
15-16 year	: 19%
16-17 year	: 17%
17-18 year	: 15%
18-19 year	: 13%
19-20 year	: 11%
20-21 year	: 9%
21-22 year	: 7%
22-23 year	: 5%
23-24 year	: 3%
24-25 year	: 1%

b) In case the lending institution exercises its right to step in or take over the Project, SECI will also have right to step in along with the lending institution to reclaim VGF in accordance with sub-clause 4.2 (a) above or handover the Project to another party for operation of the Project, provided that any substitution of the SPD under this Agreement can only be made with the condition that the substituted SPD meets

the eligibility requirements of Request for Selection (RfS) issued by SECI and accepts and honor all the terms and conditions of PPA signed by SPD with SECI.

4.3 Consequences and Procedure for cases of SPD Event of Default

- a) Upon the occurrence and continuation of any SPD Event of Default under Clause 4.1 (except sub-clause 4.1 (a)) for a period of Thirty (30) days and provided such event of default has not been cured / remedied in accordance with this Agreement, SECI with consent of term loan Lending Institutions (if any) 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 (SECI Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- b) 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, SECI may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the SPD. However upon occurrence of SPD Event of Default as per Clause 4.1 (a), SECI may terminate this Agreement within seven (7) days of written Termination Notice.
- c) Subject to the terms of this Agreement, upon occurrence of a SPD Event of Default under this Agreement, SECI, by a written notice to the SPD, will declare a percentage of the amount of the VGF released to the SPD, depending on the year in which such Event of Default occurs after the COD, as detailed in Clause 4.2, and other monies to be payable by the SPD and upon such declaration, the same shall become due and payable to SECI by the SPD with the period prescribed in the Notice which period shall in no event be less than thirty (30) days..
- d) Upon failure of the SPD to pay the entire declared due amount, within the period prescribed by SECI in its notice, SECI shall enforce the charge created in terms of Article 3.0 hereof for the entire amount so declared (or the outstanding balance thereof). Notwithstanding anything to the contrary contained in the Agreement, remainder VGF amount, if any to be paid /released by SECI shall automatically stand cancelled.

ARTICLE 5: INSPECTION OF SITE / WORKS AND PROGRESS REPORTING

5.1The SPD shall ensure that the site engineers and his other employees, contractors and other agents engaged by it on the site provide free access to and all other assistance for the inspection of the sites and works by SECI and/or its nominee(s)/Officers/ authorized 3rd party any time before and/or after the work is started during its execution and after the works are completed for the entire duration of the PPA. SPD shall furnish monthly progress report on all activities on mutually agreed format between the SPD and SECI during construction phase upto the commissioning and throughout the term of the PPA.

ARTICLE 6: INSURANCE OF CHARGED PROPERTIES

6.1The SPD shall at its own expense keep the charged properties in good condition and shall take insurance policy covering all the insurable risks against any loss or damage by theft, fire, lightning, earthquake, explosion, riot, strike, civil commotion, tempest, flood, marine risk, erection risk, war risk etc. The SPD shall deliver copy of the relevant policy of insurance to SECI, and maintain such insurance throughout the term of the Agreement. The policy shall be taken with Agreed Banker's clause providing SECI as a second charge holder. In the absence of any charge in favor of Term Loan Lending Institution, SECI shall be the first charge holder for such policy.

ARTICLE 7: INSPECTION OF BOOKS OF ACCOUNTS ETC.

- 7.1) a) The VGF is supported by the Government of India through budgetary resources, and therefore SPD shall maintain accounts and documents related to VGF in a manner which shall meet the requirements of guidelines / instructions issued by the Government of India from time to time.
- b) SECI shall have the right to appoint, whenever it considers necessary, any person, firm, Company or association of persons engaged in technical, management or any other consultancy business at its own cost to inspect and examine the working of the SPD and its Project and to report to SECI. SECI shall also have the right to appoint, whenever it considers necessary, any Chartered Accountants / Cost Accountants as auditors to examine the Annual returns including balance sheets and Profit and Loss Statements pertaining to the VGF granted under this Agreement financial or cost accounting system and procedures adopted by the SPD at SPD's cost for its working or as concurrent or for conducting a special audit of the SPD.
- c) The SPD agrees and undertakes that it shall not to sell, gift, lease, rent, transfer or dispose off in any other manner, the Project during the tenure of the PPA for which VGF is being granted except as permitted in the PPA.

ARTICLE 8: SPD'S WARRANTIES / GUARANTEES

8.1 The SPD hereby warrants and undertakes to SECI/MNRE as follows:-

a)Title to the charged properties:

The SPD has good title free from any encumbrances to the properties to be charged in favor of SECI save any charge created with Lenders for the Project. The SPD shall all the time during the course of operation of the Project keep Project facility including equipment in good order and condition and faulty/defective equipment shall be replaced forthwith.

b)Notice to SECI on the happening of an Event of default

If any event of default or any event which, after the notice or lapse of time or both would constitute an event of default shall have happened, the SPD shall forth with give SECI notice thereof in writing specifying such event of default, or such event.

c)Expenses of Preservation of Assets of the SPD and of Collection:

All costs and expenses incurred by SECI after an Event of Default has occurred in connection with (i) preservation of the SPD's Assets (whether now or hereafter Existing); or (ii) Collection of amounts due under this Agreement shall be added to the dues of SECI and shall be paid by the SPD or reimbursed by it as SECI shall specify and in default of such payment/reimbursement interest shall be charged at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis.

ARTICLE 9: WAIVER

9.1 Waiver not to impair the rights of SECI:

- a) Any delay or omission in exercising any right, power, or remedy available to SECI under the Agreement and any extension, accommodation, consent, compromise, release, or indulgence granted or shown by SECI shall not impair such right, power or remedy nor shall be construed as a waiver of any of the SECI's rights, powers or remedies hereunder.
- b) Waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorized representative of such Party.

ARTICLE 10: MISCELLANEOUS

10.1 Governing Law and Jurisdiction

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

10.2 Amicable Settlement and Dispute Resolution

- a) 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 description of the Dispute, the grounds for such Dispute; and all written material in support of its claim. (ii) Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 10.2. Both Parties shall endeavor and make all efforts to amicably settle the Dispute. (iii) If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 10.2, upon notice from either party the Dispute shall be referred for dispute resolution in accordance Article 10.2 (b). SECI shall address a copy of the notice mentioned in this clause 10.2 (a) to the lenders (if any).
- b) If the Dispute arises out of or in connection with any claims as per Article 10.2 (a), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as under provided not settled amicably as follows:
- i) The Arbitration Tribunal shall consist of three (3) Arbitrators. Each party shall appoint one Arbitrator within 30 days of the receipt of request for settlement of dispute by Arbitration. The two appointed Arbitrators shall within 30 days of their appointment, appoint a third Arbitrator who shall act as presiding Arbitrator. In case the party fails to appoint an Arbitrator within 30 days from the date of receipt of request or the two appointed Arbitrator fails to agree on third Arbitrator within 30 days of their appointment, the appointment of Arbitrator, as the case may be, shall be made in accordance with the Indian Arbitration and Conciliation Act, 1996.
 - ii) The place of arbitration shall be Delhi. The language of the arbitration shall be English.
 - iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
 - iv) The provisions of this Article shall survive the termination of this Agreement for any reason whatsoever.
 - v) The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.
 - vi) SECI or the SPD shall be entitled to co-opt the lenders (if any) as a supporting party in such arbitration proceedings.

- 10.3** All monies due and payable to SECI under this Agreement shall be paid and remitted by the SPD to SECI at its Registered Office at 1st Floor, A- Wing, D-3, District Centre, Saket, New Delhi-110017 (unless otherwise directed by SECI) in proper time and the SPD shall so arrange that the amount(s) in question is/are realizable by SECI at par in New Delhi.
- 10.4** This Agreement may only be amended or supplemented by a written agreement between the Parties.
- 10.5** 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. The Parties herein further agree that in the event any provision is so held to be invalid, illegal or unenforceable they shall substitute the same with a valid, legal and/or enforceable provision as close in intent as possible to that held. In case the provision so affected is fundamental to the Agreement, the Agreement may be terminated with mutual consent in writing of both the Parties.
- 10.6** 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.
- 10.7** 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.

10.8 Service of Notice:

- i) Any notice to be served on the SPD shall for the purpose of these presents be deemed to be sufficiently served, if it is left at Registered Office or Principal Office of the SPD or the project site as mentioned in the preamble of the Agreement or at such other place where the Registered Office or Principal Office of the SPD may for the time being be, and such notice shall also be deemed to be properly and duly served if it is sent by registered post to the SPD at such address as aforesaid, and such service shall be deemed to have been made at the time at which the Registered letter would in the ordinary course be delivered even though returned unserved on account of refusal of the SPD to accept such notice or any other reason whatsoever.
- ii) Any notice required to be served on SECI shall for the purpose of these presents be deemed to be sufficiently served if it is delivered to SECI at its Registered Office at 1st Floor, A- Wing, D-3, District Centre, Saket, New Delhi 110017. Such notice shall also be deemed to be properly and duly served if it is sent by registered post to SECI at such address as aforesaid, and such service shall be deemed to

have been made at the time at which the Registered letter would in the ordinary course be delivered even though returned unserved on account of refusal of the SECI to accept such notice or any other reason whatsoever.

10.9 Documentation Charges:

The Documentation charges paid by the SPD, if any at the time of submission of bid document to SECI or this Agreement with SECI are not refundable under any circumstances. The SPD shall have to bear the cost of stamp duty, registration charges and the cost, if any, incurred by SECI for title investigation in respect of the properties to be mortgaged / charged to SECI. SECI shall be indemnified and held harmless by the SPD against any claims that may be made against SECI in relation to the matters set out hereinabove and also shall not be held liable for any payment of, taxes, duties, levies and cess that are required to be paid by the SPD as per the Law in relation to the execution of the Agreement.

10.10 The Agreement is executed at New Delhi, and the VGF will be advanced by SECI to the SPD and refunded by the SPD to SECI in New Delhi.

ARTICLE 11 - SPECIAL CONDITIONS

11.1.The VGF disbursement or the VGF to be disbursed shall also be subjected to the SPD complying with the special conditions set out below:-

- a) This agreement has been executed in duplicate and custody of the original Agreement shall be with SECI.
- b) The SPD shall arrange to display a notice board at a prominent place at the Project site indicating that the Project has been financially supported by SECI.

11.2.Force Majeure

11.2.1A '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 (i.e. SECI or the SPD whose performance has been affected by an event of Force Majeure) 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;
- 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;
- 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

11.2.2Force Majeure Exclusions : 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 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

11.2.3 Notification of Force Majeure Event:

- a) 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 seven (7) 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.
- b) 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.
- c) 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

11.2.4 Duty to Perform and Duty to Mitigate

- a) To the extent not prevented by a Force Majeure Event pursuant to Article 11.2, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.2.5 Available Relief for a Force Majeure Event: Subject to the Article 11.2

- 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) 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
- c) 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 Events

- d) In case the occurrence or continuation of any of Force Majeure events resulting in partial damage or total damage of the Project, SPD shall make efforts to operationalize the Project within mutually agreed timelines. The disbursement of VGF amount shall continue after revival of the Project by the SPD within the mutually agreed timeliness. However, if SPD is unable to revive the Project, SECI shall have claim from the insurance settlement of the Project as per Article 4.2 (a) of this Agreement.

ARTICLE 12 - EFFECTIVE DATE OF AGREEMENT

12.1 Agreement to become effective from the Date of Execution:

The Agreement shall become binding on the SPD and SECI on and from **[Insert date of signing]**. The term of this Agreement shall be co-terminus with the PPA.

IN WITNESS WHEREOF the SPD has caused its Common Seal to be affixed hereto and to a duplicate hereof on the day, month and year first hereinabove written and SECI have caused the same and the said duplicate to be executed by the hand of Shri..... of SECI, as hereinafter appearing.

THE COMMON SEAL OF THE [Insert name of .
the SPD] has pursuant to the Resolutions of
its Board of Directors passed in that behalf on
the _____ day of _____
hereunto been affixed in the presence of Shri
_____,
and _____ Shri
_____,
Directors and Shri
_____,
Authorized Person of the SPD who have
signed these presents in token thereof.

SIGNED AND DELIVERED BY the within
named Solar Energy Corporation of India by
the hand of Shri, an authorized
official of SECI.

For and on behalf of
[Solar Energy Corporation of India]

For and on behalf of
[the SPD]

Witness:

1.

2.

Witness:

1.

2.