

**STANDARD**  
**POWER PURCHASE AGREEMENT FOR**  
**PROCUREMENT OF ..... MW WIND-SOLAR HYBRID POWER**  
**ON LONG TERM BASIS**

**Between**

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

**And**

**Solar Energy Corporation of India Limited**

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

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

Between

..... [Insert name of the Hybrid Power Developer], a Company incorporated under the Companies Act 1956 or Companies Act 2013, having its registered office at ..... [Insert address of the registered office of Hybrid Power Developer] (hereinafter referred to as “**Hybrid Power Developer or HPD**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **First Part**;

And

**Solar Energy Corporation of India Limited**, a company incorporated under the Companies Act 1956, having its registered office at 1<sup>st</sup> Floor, A-Wing, D-3, District Centre, Saket, New Delhi-110017 (hereinafter referred to as “SECI”, or “Procurer” or “Buyer” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the **Second Part**;

The HPD and SECI are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

WHEREAS:

- A. SECI has been designated as the implementing agency for implementation of the scheme for setting-up of ISTS-connected Wind-Solar Hybrid Power Projects, under the National Wind-Solar Hybrid Policy issued by MNRE dated 14.05.2018.
- B. The Ministry of New and Renewable Energy, Government of India has issued the Guidelines for the Tariff Based Competitive Bidding Process for procurement of power generated from the Grid connected Wind-Solar Hybrid Power Projects vide Resolution dated \_\_\_\_\_, including subsequent amendments and clarifications.
- C. SECI had initiated a Tariff Based Competitive Bid Process for procurement of 1200 MW of the power generated from the ISTS connected Wind-Solar Hybrid Power Projects on the terms and conditions contained in the Request for Selection (herein after referred to as ‘RFS’) issued by SECI vide RFS No..... dated..... .

- D. The Hybrid Power Developer (hereinafter referred to as ‘**HPD**’) has been selected in the Competitive Bidding Process for development, generation and supply of electricity from the .....MW Hybrid Power Project to be established by HPD anywhere in India and for supply of such electricity by SECI as an Intermediary Agency to the Buying Utility(ies) [as defined] under a Power Sale Agreement to be entered into between SECI and such Buying Utility (ies);
- E. SECI has issued the Letter of Award No..... dated.....in favour of the HPD for development and establishment of the .....MW Hybrid Power Project in the State of .....as per the terms and conditions contained in the RfS, draft of this Power Purchase Agreement circulated at the time of the bidding and other bidding documents as well as the conditions contained in the Letter of Award;
- F. SECI has agreed to purchase such power from the HPD as an Intermediary Procurer and sell it to Buying Utility on back-to-back basis as per the provisions of the RfS. Accordingly, SECI has agreed to sign/has signed a Power Sale Agreement with the Buying Utility to sell such power as per the provisions of the above said scheme;
- G. In terms of the RfS and the Bidding Documents, the HPD has furnished the Performance Bank Guarantee 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 provided is in Schedule – 1 to this Agreement;
- H. The HPD 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 Hybrid Power Project of.....MW at ....., [Insert Project location] for generation and sale of electricity by the HPD to SECI to enable SECI to make available such power to the Buying Utility(ies), as SECI may consider appropriate, under a Power Sale Agreement and on a back-to-back basis to the Power Purchase Agreement to be entered into with the HPD;
- I. SECI has signed the Power Sale Agreement with the Buying Utility(ies) of States in India.

- J. 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 Hybrid Power Project at ....., [Insert name of state] and for generation and supply of electricity by the HPD to SECI.

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

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

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued / framed by the Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

“Act” or “Electricity Act, 2003”	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
“Adjusted Equity”	<p>shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “Reference Date”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date;</p> <p>i. On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date;</p> <p>ii. An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”);</p> <p>iii. After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three three three percent) thereof at the commencement of each month following the COD [reduction of 1% (one percent) per quarter of an year] and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date;</p> <p>For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the PPA period is extended, but the revision on account of WPI shall continue to be made.</p>
“Agreement” or “Power Purchase Agreement” or “PPA”	shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	Unless otherwise stated, Appropriate Commission shall mean Central Electricity Regulatory Commission;

"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 HPD and SECI, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Delhi;
"Buying Entity"	Shall mean Distribution companies and shall include wherever admissible the Distribution licensees or buying entity in any State or any bulk consumer who agreed to purchase the wind-solar hybrid power from SECI and execute the Power Sale Agreement from time to time with SECI, and requires hybrid power to fulfil its solar and non-solar RPO under respective RPO regulations;
"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, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) * 100\%$ ;
"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
"CTU" or "Central Transmission Utility"	shall mean the Government Company notified by the Central Government under Sub-Section (1) of Section 38 of the Electricity Act, 2003.
"Change in Law"	shall have the meaning ascribed thereto in Article 12 of this Agreement;
"Commissioning"	The Project will be considered as commissioned if all equipment as per rated Project Capacity has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the PPA.
"Commercial Operation Date (COD)"	The Commercial Operation Date (COD) shall be considered as the actual date of commissioning of the project as declared by the Commissioning Committee constituted by procurer. In case of part commissioning COD will be declared only for that part of project capacity;
"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 HPD Preliminary Default Notice or SECI Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
“Contract Year”	shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that: (i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement
"Contracted Capacity"	shall mean ..... [Insert capacity] MW contracted with SECI for supply by the HPD to SECI at the Delivery Point from the Hybrid Power Project. It shall be equal to the Project Capacity as defined;
“Day”	shall mean a day, if not a Business Day, the immediately succeeding Business Day.
“Debt Due”	shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date: i. The principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the ‘Principal’) but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date; ii. All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (i) above until the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Utility Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by lenders

	<p>for financing the Total Project Cost.</p> <p>Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken.</p> <p>Provided further that the Debt Due, on or after COD, shall in no case exceed 80% (eighty percent) of the Total Project Cost.</p>
“Delivery Point”	<p>“Delivery Point” shall mean the point at the voltage level of 220 kV or above of the CTU Sub-station including the dedicated transmission line connecting the Projects with the substation system as specified in the RfS document. Interconnection at 132kV will be allowed exclusively in case the project is granted connectivity at an available bay of an existing ISTS substation, if any. Metering shall be done at this interconnection point where the power is injected into. For interconnection with grid and metering, the HPD shall abide by the relevant and applicable regulations, Grid Code notified by the CERC or and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time, or orders passed thereunder by the appropriate commission or CEA.</p> <p>Pursuant to Article 4.2.6, all charges and losses related to Transmission of power from project up to Delivery Point (including but not limited to open access, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, RLDC/SLDC charges etc.) as notified by the competent authority / regulator shall be borne by the HPD and beyond the Delivery Point all charges and losses as notified by the competent authority / regulator from time to time shall be borne by the Buying Utilities. In case it is paid by SECI on behalf of Buying Utilities / HPD, the same shall be recovered from the Buying Utilities / HPD (as applicable);</p>
“Discoms”	shall mean the Buying Entity or the distribution utilities who have signed/will sign the PSA (s) with SECI for purchase of Power;
“Dispute”	shall mean any dispute or difference of any kind between SECI and the HPD, 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"	Due Date shall mean the forty-fifth (45th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hard copy and duly acknowledged by the SECI or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the SECI.

“Effective Date”	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
“Electricity Laws”	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Accounts"	shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof or where such regional energy accounts/state energy accounts are not issued, Joint Meter Reading (JMR) will be considered; SECI reserves the right to choose from any of the above, i.e. JMR/SEA/REA, based on the acceptance of the same by the Buying Utility;
“Event of Default”	shall mean the events as defined in Article 13 of this Agreement;
“Expiry Date”	Shall mean the date occurring twenty five (25) years from the Scheduled Commissioning Date subject to that the supply of power shall be limited for a period of 25 years from the Scheduled Commissioning Date unless extended by the Parties as per this Agreement;
“Financial Closure”	shall mean compliance with the requirements under Article 3.1 of this Agreement;
“Financing Agreements”	shall mean the agreements pursuant to which the HPD has sought financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of SECI;
"Force Majeure" or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 11 of this Agreement;
“Guidelines: or “Scheme”	shall mean the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power From Grid Connected Wind Solar Hybrid Projects issued by the Ministry of New and Renewable Energy on _____, including subsequent amendments and clarifications;
"Grid Code" / “IEGC” or “State Grid Code”	shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub- section (1) of Section 86 of the Electricity Act 2003, as applicable;

“Indian Governmental Instrumentality”	shall mean the Government of India, Governments of state(s)..... [Insert the name(s) of the state(s) in India, where the Power Project, SECI and HPD are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the above state Government(s) or both, any political sub-division of any of them; including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
“Insurances”	shall mean the insurance cover to be obtained and maintained by the HPD in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on HPD’s side of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;
Intermediary agency or Intermediary nodal agency or Intermediary Procurer”	shall mean Solar Energy Corporation of India Limited;
“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 mean a situation where none of the promoter shareholders has at least 51 % shareholding in the paid up share capital and voting rights in the HPD, and the control is exercised jointly;
“Late Payment Surcharge”	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
“Letter of Credit” or “L/C”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“MNRE”	shall mean the Ministry of New and Renewable Energy, Government of India;

"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment 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 HPD to SECI in the form attached hereto as Schedule 1;
"Pooling Substation/ Pooling Point"	means a point where more than one project may connect to a common transmission system. Multiple projects can be connected to a pooling substation from where common transmission system shall be constructed and maintained by the HPD(s) to get connected to the ISTS substation. The voltage level for such common line shall be 220 kV and above. Further, the metering of the pooled power shall be done at the injection point, i.e. the ISTS substation. However, the voltage level of transmission system of individual projects up to the pooling substation may be at 33 kV and above. Sub-meters shall be installed at the pooling substation for metering and forecasting and scheduling of individual projects. The losses in the common transmission system up to the injection point shall be apportioned to the individual Projects for the purpose of billing. In such case, it shall be responsibility of the HPD to obtain and furnish the meter reading jointly by the HPD and any competent authority (State Government or Central Government) (if applicable).
"Power Project" or "Project"	shall mean the Wind-Solar hybrid power generation facility of Contracted Capacity of .....[Insert capacity] MW, located at ..... [Insert name of the place] in .... [Insert name of the District and State] having a separate control system, metering and separate points of injection into the grid at Delivery/Interconnection/Metering point at ISTS substation or in case of sharing of transmission lines, by separate injection at pooling point. 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 up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement;
"Power Sale Agreement" or "PSA"	shall mean the power sale agreement entered between the Buying Entity and SECI (Buyer- Buying Entity(ies) PSA) for selling the power as per the provisions of Guidelines;
"Preliminary Default Notice"	shall have the meaning ascribed thereto in Article 13 of this Agreement;

“Project Capacity”	shall mean the maximum AC capacity of the Project at the point of injection on which the Power Purchase Agreement has been signed.
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project; b) the requirements of Indian Law; and the physical conditions at the site of the Power Project
“RBI”	shall mean the Reserve Bank of India;
“Rebate”	shall have the same meaning as ascribed thereto in Article 10.3.4 of this Agreement;
"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 Commissioning Date” or “SCD” of the Project	shall mean ..... [Insert Date that is eighteen (18) months from the Effective Date of this Agreement as applicable];
“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 Hybrid Power Project is located;
“Solar Photovoltaic Project” or “Solar PV Project”	shall mean the solar photovoltaic power project that uses sunlight for conversion into electricity and that is being set up by the HPD to provide Solar Power to SECI as per the terms and conditions of this Agreement;
“Solar Power”	shall mean power generated from the Solar Photovoltaic Power Project;

“SECI”	shall mean Solar Energy Corporation of India Limited;
“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;
“Sub-pooling Substation”	shall mean the intermediate pooling point where power from the Solar and Wind Project components of the Hybrid Power Project is injected into and from where the hybrid power is evacuated through a single transmission line and injected into Delivery Point;
"Tariff"	Shall have the same meaning as provided for in Article 9 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
“Termination Notice”	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
“Unit/ Part Commissioning”	Subject to the compliance of conditions / procedure as detailed under Schedule-2 of this Agreement, Unit / Part Commissioning shall mean the Hybrid Power Capacity (AC MW) to be commissioned as per provisions of the this Agreement and RfS document. Part Commissioning shall not be applicable for Projects having capacity less than 50 MW;
“Unit Commercial Operation Date (UCOD)”	shall mean the date of issuance of commissioning certificate for the respective part(s) of the Power Project subsequent to the demonstration of the compliance of commissioning as per this Agreement and witnessed by the Committee duly constituted and also start of injection and scheduling power from the Power Project to the Delivery Point and availability / installation of all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
“Wind Power”	Shall mean power generated from the Wind Power Projects;
“Wind Power Project”	shall mean the project that uses wind for conversion into electricity and that is being set up by the HPD to provide Wind Power to Buyer as per the terms and conditions of this Agreement;
“Wind Solar Hybrid Power Project”	means the wind-solar hybrid power project where the rated power capacity of one resource is atleast 25% of the rated power capacity of the other resource.

## **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;

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- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18 This Agreement and other documents such as Request for Selection Documents, Guidelines including subsequent clarifications, amendments and further clarifications in regard to the tender shall be read in conjunction with each other and interpreted in harmonious manner. However, in case of any mismatch/contradiction between provisions of different documents, following shall be the order of precedence:
1. 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 (Enter the date as on 90<sup>th</sup> day of the issuance of Letter of Intent to the HPD) and such date shall be referred to as the Effective Date.

2.1.2 The Parties agree that decisions pertaining to adoption of the Tariff and SECI's trading margin, and approval of the same, for procurement of contracted capacity, shall be binding on all Parties concerned, as contained in the Electricity Act, 2003 and any amendments thereof.

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

### **2.3 *Early Termination***

2.3.1 This Agreement shall terminate before the Expiry Date if either SECI or HPD 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: CONDITIONS SUBSEQUENT**

#### **3.1 Satisfaction of conditions subsequent by the HPD**

The HPD agrees and undertakes to duly perform and complete all of the following activities including Financial Closure at the HPD's own cost and risk within 12 Months from the Effective Date, unless such completion is affected by any Force Majeure event, or for the activities specifically waived in writing by SECI:

- a) The HPD shall make Project financing arrangements its Projects(s) and shall provide necessary certificates to SECI in this regard;

The HPD shall submit to SECI the relevant documents as stated above, complying with the Conditions Subsequent, within twelve (12) months from the Effective Date.

#### **3.2 Consequences of non-fulfilment of conditions subsequent and financial closure**

- 3.2.1 In case of a failure to submit the documents as above, SECI shall encash the Performance Bank Guarantee submitted by the HPD, terminate this Agreement and remove the Project from the list of the selected Projects by giving a notice to the HPD in writing of at least seven (7) days, unless the delay (subject to the conditions that HPD has made / is making all possible efforts) is on account of delay in allotment of Land by the Government not owing to any action or inaction on the part of the HPD or caused due to a Force Majeure. Unless extended as per provisions of Article 3.2.1 (i) of this Agreement in writing, the termination of the Agreement shall take effect upon the expiry of the 7<sup>th</sup> day of the above notice.

- 3.2.1 (i) An extension, without any impact on the Scheduled Commissioning Date, can however be considered, on the sole request of HPD, on payment of Rs. 1000/- per day per MW to SECI. Such extension charges are required to be paid to SECI in advance, for the period of extension required. In case of any delay in depositing this extension charge, HPD shall pay an interest on this extension charge for the days lapsed beyond due date of Financial Closure @ SBI-MCLR (1Year). In case such delay in making payment of the extension charges to SECI is more than 7 days, the termination of the Agreement shall take effect upon the expiry of such 7<sup>th</sup> day. This amount will go into the Payment Security Mechanism. In case of the HPD meeting the requirements of conditions subsequent and financial closure before the last date of such proposed delay period, the remaining amount deposited by the HPD shall be returned by SECI without interest. This extension will not have any impact on the Scheduled Commissioning Date. Any extension charges paid so by the HPD, shall be returned to the HPD without

any interest on achievement of successful commissioning within the Scheduled Commissioning Date, on pro-rata basis, based on the project capacity commissioned as on Scheduled Commissioned Date. However, in case the HPD fails to commission the Contract Capacity by Scheduled Commissioning Date, the extension charges deposited by the HPD shall not be refunded by SECI.

3.2.2 For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

3.2.4 In case of inability of the HPD to fulfil the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfilment of the Conditions Subsequent and Financial Closure as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.

Further, it is presumed that in terms of Clause 10.4 of the Guidelines, the tariff will be adopted by the Appropriate Commission within 60 days of such submission. However, notwithstanding anything contained in the Guidelines, any delay in adoption of tariff by the Appropriate Commission, beyond 60 (sixty) days, shall entail a corresponding extension in the deadline as stipulated in Article 3.1.

3.2.5 Provided that due to the provisions of this Article 3.2.4, any increase in the time period for completion of conditions subsequent and financial closure mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Commissioning Date.

### **3.3 Performance Bank Guarantee**

3.3.1 The Performance Bank Guarantee (PBG) having validity from the date of submission of PBG until thirty (30) months from the Effective Date and of Rs. 20 Lakh/MW to be furnished 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.

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

3.3.3 If the HPD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement or any further extension thereof granted by SECI, subject to conditions mentioned in Article 4.5, SECI shall encash the Performance Bank Guarantee without prejudice to the other rights of SECI under this Agreement.

It is to be noted that the damages/dues recovered by SECI by encashing the PBG, upon  
(Insert Project ID)

## SECI-HPD PPA

the default of the HPD under the PPA, shall be credited to the payment security fund maintained by SECI under the PPA.

### **3.4 Return of Performance Bank Guarantee**

3.4.1 Subject to Article 3.3, SECI shall return / release the Performance Bank Guarantee immediately after the successful Commissioning of the Project after taking into account any liquidated damages / penalties due to delays in commissioning as per provisions stipulated in this Agreement.

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

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

**4.1 *HPD's Obligations***

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

- a) The HPD shall be solely responsible and make arrangements for Land & associated infrastructure for development of the Project and for Connectivity with the CTU System for confirming the evacuation of power by the Scheduled Commissioning date and all clearances related thereto;

On or before Scheduled Commissioning Date, the HPD shall demonstrate possession of 100% (Hundred Percent) of the land identified for the Project in its name for a period not less than the complete Term of this Agreement. In this regard, the HPD shall submit documents/ Lease Agreement to establish possession/ right to use 100% of the required land in the name of the HPD or its Affiliate. In case the land is in the name of the Affiliate, the land should be transferred in the name of the HPD prior to the SCD. Wherever leasing of private land is involved, the lease should allow transfer of land to the lenders or SECI, in case of default of the HPD. The HPD shall submit a sworn affidavit from the authorized signatory of the HPD listing the details of the land and certifying that total land required for the Project is under clear possession of the HPD;

- b) Obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. SECI shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the Hybrid Power project. The Hybrid Power Developer shall, on his own, obtain permissions/sanctions from Government authorities, if any required for establishing the project. Any steps that may be taken by SECI in regard to grant of such consents and permits or any other approval to be taken by the HPD shall only be a voluntary endeavour 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 commencement of supply of power up to the Contracted Capacity to SECI no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement;

- e) connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point; The HPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point.
- f) owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;
- g) maintaining its controlling shareholding (controlling shareholding shall mean more than 50% of the voting rights and paid-up share capital) prevalent at the time of signing of PPA up to a period of one (1) year after Commercial Operation Date of the Project in line with the provisions of the RfS; However transfer of controlling shareholding within the same Group Companies will be allowed with the permission of SECI after COD subject to the condition that the management control remains within the same Group Companies; and
- f) fulfilling all obligations undertaken by the HPD under this Agreement.
- g) Obtaining Long Term Access (LTA) and executing transmission service agreement with CTU/STU as the case may be, for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement.
- h) The HPD shall be responsible to for directly coordinating and dealing with the corresponding Buying Utility(ies), Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of hybrid Power and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the HPD and the corresponding Buying Utility(ies) are the Grid connected entities and SECI as an Intermediary Procurer/trading licensee is not a Grid connected entity in respect of the Hybrid Power contracted under this Agreement.
- i) The HPD shall fulfil the technical requirements according to criteria mentioned under Annexure II–Technical requirement for Grid Connected Solar PV Power Stations under Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects, issued by Ministry of Power, vide resolution no.23/27/2017-R&R dated 03.08.2017, including subsequent amendments and clarifications. Further, the type-certified wind turbine models listed in Revised List of Models and Manufacturers (RLMM) issued by MNRE as updated as on the date of commissioning of the Projects will be allowed for deployment under this Agreement. The wind power

projects will be developed as per Guidelines issued by MNRE on Development of Onshore Wind Power Projects

- j) Further, the Project being implemented under this Agreement shall fulfil the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof,
- k) As part of scheduling of power from the Project, the HPD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces of all the RLDCs concerned for the corridor of power flow, including the RLDC of the Buying Entity/Discom, as per the Regulations in force, under intimation to SECI. SECI may facilitate in identification of any discrepancy and assist the HPD for its early rectification without any liability on SECI. The HPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.

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

- 4.2.1 The HPD 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 HPD'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 HPD at his own cost.
- 4.2.2 Penalties, fines and charges imposed by the CTU/ STU under any statute or regulation in relation to delay in commissioning of Project shall be payable by the HPD to the extent the delay is attributable to the HPD.
- 4.2.3 The responsibility of getting connectivity with the transmission system up to the Interconnection Point, will lie with the HPD. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the HPD 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 HPD. 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 HPD.

- 4.2.4 In case of Pooling substation, losses in the transmission line shall be apportioned among the HPDs who share such a Pooling arrangement and duly signed by all HPDs, based on their monthly generation.
- 4.2.5 The arrangement of connectivity shall be made by the HPD through a dedicated 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 HPD. In case of non-availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the HPD, provisions of Article 4.10 shall be applicable.
- 4.2.6 Government of India from time to time issues order for waiver of inter-state transmission system (ISTS) charges and losses on transmission of wind/solar power till a certain date. In case the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver, arising out of any reasons whatsoever, SECI shall bear no liability with respect to transmission charges and losses levied, if any. Further, in case SCD of the Project is prior to the above deadline of waiver of ISTS charges and losses, and commissioning of the Project is delayed beyond the above date for the reasons attributable to the HPD, the applicable transmission charges and losses shall be borne by the HPD.

### **4.3 Purchase and sale of Contracted Capacity**

- 4.3.1 Subject to the terms and conditions of this Agreement, the HPD undertakes to sell to SECI and SECI undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.
- 4.3.2 Energy procured from the Project under this Agreement shall be allocated on a pro-rata basis, to all the Buying Entities which have signed their respective Power Sale Agreements with SECI under the referred RfS.

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

- 4.4.1 The HPD will declare the CUF of the Project and will be allowed to revise the same once within three years after COD of the full project capacity. Subsequent to commissioning/part-commissioning of the Project, SECI, in any Contract Year except for the first year of operation, shall not be obliged to purchase any additional energy from the HPD beyond ..... Million kWh (MU) [Insert value of energy generated corresponding to 120% of the declared CUF for the Project].

If for any Contract Year except for first year of operation, it is found that the HPD has not been able to generate minimum energy of .....Million kWh (MU) of the energy generated from the Project [Insert value of energy generated corresponding to 80% of the declared CUF for the Project], on account of reasons solely attributable to the HPD, the non-compliance by HPD shall make the HPD liable to pay the compensation provided in the respective PSA as payable to Buying Entity(ies) by Buyer to enable Buyer to remit the amount to Buying Entity(ies). In case of full commissioning of the Project, for the first year of operation, the above limits shall be considered on pro-rata basis. In case of part commissioning of the Project, the above limits shall be considered on pro-rata basis till the commissioning of full Contracted Capacity of the Project.

The lower limit will, however be relaxable by Buyer to the extent of grid non-availability for evacuation which is beyond the control of the HPD (as certified by the SLDC/RLDC). This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of such compensation shall be will be calculated @ 50% (fifty percent) of the PPA tariff for the shortfall in energy terms, in accordance with the terms of the PPA. This compensation shall not be applicable in events of Force Majeure identified under PPA with SECI affecting supply of power by HPD.

- 4.4.2 Any excess generation over and above as per Article 4.4.1, may be purchased by SECI at the tariff in term of as per Article 9, provided the Buying Entity consents to purchase such power. While the HPD would be free to install the DC solar field as per its design of required output, including its requirement of auxiliary consumption and to reconfigure and 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 SECI (unless refused by SECI). Further, any addition to the installed capacity (including but not limited to solar panels and/or wind turbines) subsequent to commissioning of the full capacity/part capacity of the Project (as applicable), shall not be eligible for any future claims made by the HPD, seeking compensation on account of any changes in the applicable provisions covered under Change in Law as defined in this Agreement.

The HPD shall be required to intimate SECI about the proposed excess quantum of energy likely to be generated from the Project within any Contract Year, at least 60 days prior to the proposed date of commencement of excess generation. SECI shall

be required to intimate its approval/refusal to the HPD, for buying such excess generation not later than 30 days of receiving the above offer from the HPD. In the event the offer of the HPD is not accepted by SECI within the said period of 30 days, such right shall cease to exist and the HPD 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 HPD 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.

Any energy produced and flowing into the grid before Scheduled Commissioning Date shall not be at the cost of SECI. SECI may agree to buy such power at a tariff as agreed to between SECI and the Buying Entity (including SECI's trading margin), provided the Buying Utility consents for purchase of such power.

#### 4.5 *Extensions of Time*

4.5.1 In the event that the HPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

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

the Scheduled Commissioning Date and the Expiry Date shall be deferred, subject to Article 4.5.6, for a reasonable period but not less than 'day for day' basis, to permit the HPD or SECI/ Buying Entity(ies) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the HPD or SECI/Buying Entity(ies), or till such time such Event of Default is rectified by SECI.

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

- (i) The HPD has complied with the complete application formalities as per RfS,
- (ii) The HPD has adhered to the applicable Procedure in this regard as notified by the CERC/CTU, and

(iii) The delay in grant of connectivity/LTA by the CTU and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network, is a factor attributable to the CTU/transmission licensee and is beyond the control of the HPD;

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

- 4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of 180 days from the date of the Force Majeure Notice, any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.10. In case neither party terminates the Agreement under this clause, the Agreement shall stand terminated on the expiry of twelve (12) months of the continuation of the Force Majeure event unless the parties mutually agree to extend the Agreement for the further period.
- 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 Scheduled Commissioning Date or the Expiry Date should be deferred, any 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 Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.
- 4.5.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond the date pursuant to Article 4.6.2.
- 4.5.7 Delay in commissioning of the project beyond the scheduled commissioning date 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 HPD and shall be subject to the consequences specified in the Article 4.6.

**4.6 *Liquidated Damages not amounting to penalty for delay in Commissioning***

4.6.1 The Project shall be fully commissioned within the Scheduled Commissioning Date as defined in this Agreement. If the HPD is unable to commission the Project by the Scheduled Commissioning Date for the reasons other than those specified in Article 4.5.1 and 4.5.2, the HPD shall pay to SECI, damages for the delay in such commissioning and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:

(a) Delay beyond the Scheduled Commissioning Date upto (& including) the date as on 270 months after the Scheduled Commissioning Date: The total PBG amount shall be encashed on per day basis and proportionate to the balance capacity not commissioned. In case of calculation of liquidated damages, a 'month' shall comprise 30 days.

4.6.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee shall be limited to the date as on 270 days after the SCD of the Project. In case, the Commissioning of the Project is delayed beyond 270 days after the SCD, it shall be considered as an HPD Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced / amended to the Project Capacity Commissioned within 270 days after the SCD and the PPA for the balance Capacity will stand terminated and shall be reduced from the project capacity.

4.6.3 The HPD further acknowledges that the amount of the liquidated damages fixed is genuine and reasonable pre-estimate of the damages that may be suffered by SECI/ Buying entity(s) as specified under this Agreement or in the PSA.

**4.7 *Acceptance/Performance Test***

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

**4.8 *Third Party Verification***

4.8.1 The HPD shall be further required to provide entry to the site of the Power Project free of all encumbrances at all times during the Term of the Agreement to SECI and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the HPD at the site of the Power Project.

4.8.2 The third party may verify the construction works/operation of the Power Project being carried out by the HPD 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 HPD or require the works to be stopped or to comply with the instructions of such third party.

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

4.9.1 The Parties herein agree that during the subsistence of this Agreement, subject to SECI being in compliance of its obligations & undertakings under this Agreement, the HPD 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 Hybrid Power Developer. In such cases, subject to the submission of documentary evidences from the competent authority, the generation compensation shall be restricted to the following and there shall be no other claim, directly or indirectly against SECI:

<b>Duration of Grid unavailability</b>	<b>Provision for Generation Compensation</b>
Grid unavailability in a billing month as beyond 4 hours in that particular billing month	<p><b><i>Generation Loss = [(Average Generation per hour during the Contract Year) × (number of hours of grid unavailability during the Contract Year)]</i></b></p> <p>Where, Average Generation per hour during the billing month (kWh) = Total generation in the billing month (kWh) ÷ (24 x number of days in that particular billing month) hours less total hours of grid unavailability in that particular billing month.</p>

The compensation calculated corresponding to the generation loss as above, shall be at the PPA tariff, on a monthly basis.

4.10.2 Offtake constraints due to Backdown: The Hybrid Power Developer and Buying Entity shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), encourages a status of “must-run” to wind and solar power projects. Therefore wind solar hybrid power plant, duly commissioned, should never be directed to back down by a Discom/ Load Dispatch Centre (LDC) except grid security or safety of any equipment or personnel where it should be duly recorded, the justification of which can be verified by any third party agency, and be notified in writing. No back-down / curtailment to be ordered without giving formal/ written instruction for the same. The details of back-down / curtailment, including justifications for such curtailment, specifying data to back such curtailment, to be made public by the concerned Load Dispatch Centre. In the event of any backing down, the HPD shall be eligible for a Generation Compensation, in the manner detailed below and there shall be no other claim, directly or indirectly against SECI:

<b>Duration of Backdown</b>	<b>Provision for Generation Compensation</b>
Hours of Backdown during a monthly billing cycle.	<p><b><i>Generation Compensation = 100% of [(Average Generation during the month corresponding to the capacity backed down) X PPA tariff</i></b></p> <p>Where, Average Generation during the month corresponding to the capacity backed down (kWh) = (CUF during the month) x <math>\Sigma</math> (Backed down capacity in MW) x corresponding time of backdown in hours x 1000)</p>

The Generation Compensation shall be paid as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA)/SEA/JMR. No Trading Margin shall be applicable on the Generation Compensation as provided in Article 4.10.2 only.

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It is hereby clarified that for the purpose of Article 4.10, “generation” shall mean scheduled energy based on Energy Accounts. Notwithstanding anything mentioned above, the provisions of Article 4.10 shall be applicable subject to the acceptance of the same by the respective Buying Utility in the Power Sale Agreement.

**ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION**

**5.1 Synchronization, Commissioning and Commercial Operation**

- 5.1.1 The HPD shall give the concerned RLDC/SLDC and SECI and also Buying Entity at least sixty (60) days' advanced preliminary written notice and at least thirty (30) days' advanced final written notice, of the date on which it intends to synchronize the Power Project to the Grid System.
- 5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the HPD 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.
- 5.1.3 The synchronization equipment and all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the HPD at its generation facility of the Power Project at its own cost. The HPD 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.
- 5.1.4 The HPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code under intimation to SECI. In addition, the HPD will inject in-firm power to grid time to time to carry out operational/ functional test prior to commercial operation. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.
- 5.1.5 The HPD shall commission the Project as detailed in "Schedule 2: Commissioning Procedure" within eighteen (18) Months of the Effective Date. Declaration of COD / UCOD shall only be done subject to the demonstration of the compliances as per Schedule-2 and subsequent upon the successful visit by the Commissioning Committee.
- 5.1.6 There can be part Commissioning of the Project. Part commissioning of the project shall mean that all equipment corresponding to the part capacity have been installed and commissioned and corresponding energy has flown into the grid.

5.1.7 The Parties agree that for the purpose of commencement of the supply of electricity by HPD to SECI, liquidated damages for delay etc., the Scheduled Commissioning Date as defined in this Agreement shall be the relevant date.

**ARTICLE 6: DISPATCH AND SCHEDULING**

**6.1 *Dispatch and Scheduling***

6.1.1 The HPD shall be required 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 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 HPD.

6.1.2 The HPD shall be responsible for directly coordinating and dealing with the Buying Entity, State Load Dispatch Centre's, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of hybrid Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the HPD and Buying Entity are the Grid connected entities and SECI as an intermediary procurer/ trading licensee is not a Grid connected entity in respect of the power contracted under this Agreement.

6.1.3 The HPD 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 HPD.

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

**7.2 Reporting of Metered Data and Parameters**

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

**ARTICLE 8: INSURANCES**

**8.1 *Insurance***

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

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

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

**ARTICLE 9: APPLICABLE TARIFF**

- 9.1 The HPD 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, with effect from the SCD, for the power sold by the Buyer to the Buying Entity for the scheduled energy as reflected in the Energy Accounts. In case of early commissioning, subject to the consent for such purchase by the Buying Utility, SECI may purchase the generation at the PPA tariff.
- 9.2 Any excess generation over and above energy specified in Article 4.4.1, will be purchased by SECI at the tariff as per Article 9.1, provided the Buying Entity consents for purchase of such excess generation. Any energy produced and flowing into the grid before SCD shall not be at the cost of SECI. SECI may agree to buy such power provided Buying Entity consents to purchase such energy. However, the HPD will not be allowed to sell energy generated prior to SCD or excess energy during any Contract Year to any other entity other than SECI (unless refused by SECI).

**ARTICLE 10: BILLING AND PAYMENT**

10.1 *General*

- 10.1.1 Subject to the funds being made available by MNRE, SECI shall set up a payment security fund in order to ensure timely payment to the HPDs. This fund will have a corpus to cover 3 months' payment.
- 10.1.2 From the commencement of supply of power, SECI shall pay to the HPD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with Article 9. All Tariff Payments by SECI shall be in Indian Rupees.
- 10.1.3 For the purpose of payment of the bills raised by the HPD(s), in case Energy Account is published on cumulative basis, payment to the HPD(s) for the energy delivered shall be apportioned based on JMR taken for the HPD's Project at the Pooling substation/metering point.
- 10.1.4 The HPD shall be required to make arrangements and payments for import of energy (if any) as per applicable regulations.

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

- 10.2.1 The HPD shall issue to SECI hard copy of a signed Monthly Bill/Supplementary Bill for the immediately preceding Month/relevant period based on the issuance of Energy Accounts along with all relevant documents (payments made by HPD for drawal of power, payment of reactive energy charges, Metering charges or any other charges as per guidelines of SERC/CERC, if applicable).
- Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RPC or any other competent authority which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy as per Energy Accounts and the Applicable Tariff. Energy drawn from the grid will be regulated as per the regulations of respective State the Project is located in.
- 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, shall be borne by the HPD.

10.3 ***Payment of Monthly Bills***

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

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

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

The HPD shall open a bank account (the "HPD's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by SECI to the HPD, and notify SECI of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. SECI shall also designate a bank account at New Delhi ("SECI Designated Account") for payments to be made by the HPD to SECI, if any, and notify the HPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. SECI and the HPD shall instruct their respective bankers to make all payments under this Agreement to the HPD's Designated Account or SECI's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

10.3.3 Late Payment Surcharge

In the event of delay in payment of a Monthly Bill by SECI beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable to the HPD at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis subject to such late payment being duly received by SECI under the PSA from the Buying Entity(ies). The Late Payment Surcharge shall be claimed by the HPD through the Supplementary Bill.

10.3.4 Subject to the Article 9 of this Agreement, in the event of early Commissioning of the Project and subject to acceptance by SECI, the payment for the power fed to the grid may be accounted from the date of UCOD, but HPD would be allowed to raise

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Bills against such power only from the Scheduled Commissioning Date or UCOD whichever is later subject to the conditions as stipulated in Article 9.

### 10.3.5 Rebate

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

- a) A Rebate of 1.5% shall be payable to the SECI for the payments made within a period of 10 (ten) days of the presentation of hard copy of Bill.
- b) Any payments made after ten (10) days of the date of presentation of Bill through hard copy up to the Due Date shall be allowed a rebate of 1 %.
- c) For the above purpose, the date of presentation of Bill shall be the next Business Day of delivery of the physical copy of the Bill at SECI. .
- d) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc. and on Supplementary Bill.

For the above purpose date of presentation of bill shall be the same day of delivery in hard copy. However, for consideration of rebate, next business day shall be considered.

## 10.4 Payment Security Mechanism

### Letter of Credit (LC):

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

10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, SECI through a scheduled bank open a Letter of Credit in favour of the HPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

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

10.4.3 Provided that the HPD shall not draw upon such Letter of Credit prior to 30 days beyond the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, SECI shall restore such shortfall within fifteen (15) days.

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

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

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

10.4.8 If SECI fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the date as on 30 days beyond the Due Date, then, subject to Article 10.4.6 & 10.5.2, the HPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from SECI, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to HPD and;
- ii) a certificate from the HPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

## **10.5 Disputed Bill**

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

10.5.2 If the SECI disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 50% of the invoice amount and it shall within fifteen (15) 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 HPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the HPD 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 HPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the SECI providing:

- i) reasons for its disagreement;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its counter-claim.

10.5.5 Upon receipt of the Bill Disagreement Notice by the SECI under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the SECI and HPD 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, SECI shall, without prejudice to its right to Dispute, be under an obligation to make payment of 50% of the invoice amount in the Monthly Bill.

## **10.6 Quarterly and Annual Reconciliation**

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

10.6.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the HPD and SECI shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the HPD 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 HPD may raise a ("Supplementary Bill") for payment on account of:

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

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

10.7.2 SECI shall remit all amounts due under a Supplementary Bill raised by the HPD to the HPD's Designated Account by the Due Date, except open access charges, RLDC or scheduling charges and transmission charges (if applicable). For Supplementary Bill on account of adjustment required by energy account and payments under Article 4.10, Rebate as applicable to Monthly Bills pursuant to Article 10.3.5 shall equally apply. Payment will be made after realization of the same from the Buying

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Utility. No surcharge will be applicable other than that on the monthly energy payment and associated debit and credit note.

10.7.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 10.3.3.

## **ARTICLE 11: FORCE MAJEURE**

### **11.1 *Definition of Force Majeure***

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

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

### **11.2 *Categorization of Force Majeure Events:***

#### **11.2.1 Natural Force Majeure Event**

- 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 it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of Procurer;
- b) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party;
- c) the discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land; or
- d) any event or circumstances of a nature analogous to any of the events as specified under Article 11.2.1 (a), 11.2.1 (b) and 11.2.1 (c).

### **11.2.2 Non-Natural Force Majeure Event**

- a) 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;
- b) nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its contractors;
- c) nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the HPD, as a result of which the HPD or its shareholders are deprived (wholly or partly) of their rights or entitlements under the Power Purchase Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the HPD or the HPD related parties;
- d) action of a Government Authority having Material Adverse Effect including but not limited to Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 12 of this Agreement; any unlawful or unauthorised or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the HPD or any of the clearance, licence, authorization to be obtained by the contractors to perform their respective obligations under the relevant PPA and/or the Project Documents; provided that such delay, modification, denial, refusal or revocation did not result from the HPD's or any contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, licence, authorization, as the case may be.

### **11.3 Force Majeure Exclusions**

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

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

#### **11.4 *Notification of Force Majeure Event***

11.4.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than 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.

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

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

### **11.5 Performance Excused**

- 11.5.1 The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the PPA as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.
- 11.5.2 For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the generator shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the PPA period, as the case may be.
- 11.5.3 Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.
- 11.5.4 Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

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

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

### **11.7 Resumption of Performance**

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

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

To the extent not prevented by a Force Majeure Event pursuant to Article 11.2, the Affected Party shall continue to perform its obligations pursuant to this Agreement, in line with provisions of Article 11.5. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

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

Subject to this Article 11:

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

### **11.10 Termination Due to Force Majeure Event**

#### **11.10.1 Termination due to Natural Force Majeure Event**

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

- b) Without prejudice to the provisions of Article 11.10.1.(a) above, the Affected Party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the PPA in its sole discretion by issuing a notice to that effect.
- c) On termination of the PPA pursuant to Article 11.10.1(b):
  - i. no Termination Compensation shall be payable to the HPD.
  - ii. the HPD shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

**11.10.2 Termination due to Non-Natural Force Majeure Event**

- a) Upon occurrence of a Non-Natural Force Majeure Event, the HPD shall, at its discretion, have the right to terminate the PPA forthwith after the completion of the period of 180 (one hundred and eighty) Days from the date of the Force Majeure Notice.
- b) On termination of the PPA pursuant to Article 11.10.2(a):
  - i. SECI shall pay to the HPD, 'Force Majeure Termination Compensation' equivalent to the amount of the Debt Due and the 110% (one hundred and ten per cent) of the Adjusted Equity, as defined in the PPA, and takeover the Project assets.
  - ii. the HPD shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

**ARTICLE 12: CHANGE IN LAW**

**12.1 *Definitions***

In this Article 12, the following terms shall have the following meanings:

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 the last date of the bid submission, including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Hybrid Power Developer; or (v) any change in the rates of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up the power project and supply of power from the Project by the HPD which have a direct effect on the Project.

However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the HPD.

In the event a Change in Law results in any adverse financial loss/ gain to the Hybrid Power Developer then, in order to ensure that the Hybrid Power Developer is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the Hybrid Power Developer / Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

It the event of any decrease in the recurring/ nonrecurring expenditure by the HPD or any income to the HPD on account of any of the events as indicated above, HPD shall file an application to the appropriate commission no later than sixty (60) days from the occurrence of such event, for seeking approval of Change in Law. In the event of the HPD failing to comply with the above requirement, in case of any gain

to the HPD, SECI shall withhold the monthly tariff payments on immediate basis, until compliance of the above requirement by the HPD.

**12.2 *Relief for Change in Law***

12.2.1 The aggrieved Party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.

12.2.2 The decision of the Appropriate Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.

**ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION**

**13.1 *HPD Event of Default***

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

(i) the failure to commence supply of power to SECI up to the Contracted Capacity, by the end of the period specified in Article 4, or failure to continue supply of Contracted Capacity to SECI after Commercial Operation Date throughout the term of this Agreement, or

if

a) the HPD 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 HPD 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 HPD 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 HPD, or (c) the HPD 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 HPD will not be a HPD Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains

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creditworthiness similar to the HPD and expressly assumes all obligations of the HPD under this Agreement and is in a position to perform them; or

- (iii) the HPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from SECI in this regard; or
- (iv) except where due to any SECI's failure to comply with its material obligations, the HPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the HPD within thirty (30) days of receipt of first notice in this regard given by SECI.
- (v) change in controlling shareholding before the specified time frame as mentioned in Article 4.1.1 of this Agreement; or
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the HPD.
- (vii) except where due to any SECI's failure to comply with its material obligations, the HPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the HPD within thirty (30) days of receipt of first notice in this regard given by SECI.

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

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

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

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

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

13.3.1 Upon the occurrence and continuation of any HPD Event of Default under Article 13.1, SECI shall have the right to deliver to the HPD, with a copy to the representative of the lenders to the HPD with whom the HPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (SECI Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

13.3.2 Following the issue of a SECI Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

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

13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the HPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, SECI may terminate this Agreement by giving a written Termination Notice of sixty (60) days to the HPD.

13.3.5 Subject to the terms of this Agreement, upon occurrence of a HPD Event of Default under this Agreement, the HPD shall be liable to pay to SECI, liquidated damages, as provided in Article 4.6 of the PPA for failure to commission within stipulated time and Article 4.4.1 for failure to supply power in terms of the PPA. For other cases, the HPD shall be liable pay to SECI, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity. SECI shall have the right to recover the said damages by way of forfeiture of bank guarantee, if any, without prejudice to resorting to any other legal course or remedy. In addition to the levy of damages as aforesaid, the lenders in concurrence with the Buying Entity and SECI, may exercise their rights, if any, under Financing Agreements, to seek substitution of the HPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the HPD and performing the obligations of the HPD. However, in the event the lenders are unable to substitute the defaulting HPD within the stipulated period, SECI may terminate the PPA and the Buying Entity may acquire the Project assets for an amount equivalent to 90% of the Debt Due or less as mutually agreed, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets. Provided that any substitution under this Agreement can only be made with the prior consent of SECI including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by SECI and accepts the terms and conditions of this Agreement.

13.3.6 The lenders in concurrence with the Buying Utility and SECI, may seek to exercise right of substitution under Article 13.3.5 by an amendment or novation of the PPA in favour of the selectee. The HPD shall cooperate with SECI to carry out such

substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized. In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a new entity, an amount of Rs. 10 Lakh per Project+ 18% GST per transaction as facilitation fee (non-refundable) shall be deposited by the HPD to SECI.

13.3.7 In the event the lenders are unable to substitute the defaulting HPD within the stipulated period, SECI may terminate the PPA and the Buying Utility may acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.

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

13.4.1 Upon the occurrence and continuation of any SECI Event of Default specified in Article 13.2, the HPD shall have the right to deliver to SECI, a HPD 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 HPD Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

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

13.4.4 After a period of two hundred ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or SECI Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, SECI under intimation to the Buying Entity and the HPD shall, subject to the prior consent of the HPD, 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 HPD, or if no offer of novation is made by SECI within the stipulated period, then the HPD may terminate the PPA and at its

## SECI-HPD PPA

discretion require Buying Entity to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the Debt Due and 110% (one hundred and ten per cent) of the Adjusted Equity, less Insurance Cover, if any, or, (ii) pay to the HPD, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the HPD.

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

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

### **13.5** Not Used.

**ARTICLE 14: LIABILITY AND INDEMNIFICATION**

**14.1 Indemnity**

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

- a) any and all third party claims against SECI for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the HPD of any of its obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by SECI from third party claims arising by reason of a breach by the HPD of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the HPD, for which specific remedies have been provided for under this Agreement).

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

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

**14.2 Procedure for claiming Indemnity**

**14.2.1 Third party claims**

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

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

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

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

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

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

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

- 14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of nonpayment of such

losses after a valid notice under this Article 14.3, such event shall constitute a payment default under Article 13.

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

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

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

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

14.5.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and accept that the SECI is an Intermediary Company to purchase and resell the electricity to the Buying Utility(ies) to enable them to fulfill the Renewable Purchase Obligations (RPO) and, therefore, the performance of the obligations of the SECI under this Agreement shall be subject to the ability of the SECI to enforce the corresponding obligations assumed by the Buying Utility(ies) on re-sale under the Power Sale Agreement to be entered into by the Buying Utility(ies) with SECI. It is however, specifically agreed that the payment of money becoming due from the SECI

to the HPD under this Agreement for supply of Power to the extent of the Contracted Capacity shall not be on a back to back basis and will be as per:

(i) the recourse under the Payment Security Mechanism provided in the PSA, as follows:

a) Letter of Credit opened by the Buying Entity;

(b) State Government Guarantee/ Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government of the Buying Entity, covering security for payment of energy charges, as applicable

(c) Payment Security Fund provided by the Buying Entity, and

(ii) Payment security fund as referred in Article 10.1.1 of the PPA. SECI shall discharge the tariff payment obligation in terms of the provisions of this Agreement.

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

#### ***14.6 Duty to Mitigate***

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

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

### **15.1 *Assignments***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **16.3.1 Dispute Resolution by the Appropriate Commission**

- i) Where any Dispute or differences arises in relation to this agreement of any nature whatsoever including the construction, interpretation or implementation of the provisions of this agreement as well as claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, and relates to any matter agreed to be referred to the Appropriate Commission, shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.
  
- ii) SECI shall be entitled to co-opt the Buying Entity(ies) and/or the lenders (if any) as a supporting party in such proceedings before the Appropriate Commission.

#### **16.3.2 Not used.**

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

Address :  
Attention :  
Email :  
Fax. No. :  
Telephone No. :

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

(i) Address :  
Attention :  
Email :  
Fax. No. :  
Telephone No. :

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

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

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

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

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

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

17.10.2 Subject to the provisions of the Agreement, the HPD shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the HPD or contractors engaged by the HPD in connection with the performance of the Agreement shall be under the complete control of the HPD and shall not be deemed to be employees, representatives, contractors of SECI and nothing contained in the Agreement or in any agreement or contract awarded by the HPD shall be construed to create any contractual relationship between any such employees, representatives or contractors and SECI.

**17.11 Compliance with Law**

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

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

**17.13 Breach of Obligations**

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

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

For and on behalf of For and on behalf of  
[SECI]

[HPD]

Name, Designation and Address  
Signature with seal

Name, Designation and Address  
Signature with seal

Witness:

1.

2.

Witness:

1.

2.

**SCHEDULE 1: FORMAT OF THE PERFORMANCE BANK GUARANTEE**

(to be submitted separately for each Project)

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution.)

In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected Hybrid Power Developer') submitting the response to RfS inter alia for selection of the Project of the capacity of ..... MW, at .....[Insert name of the place] under .....[Insert name of the RfS], for supply of power there from on long term basis, in response to the RfS dated..... issued by Solar Energy Corporation of India Ltd (hereinafter referred to as SECI) and SECI considering such response to the RfS of .....[insert the name of the selected Hybrid Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Hybrid Power Project of the Hybrid Power Developer and issuing Letter of Intent No ----- to (Insert Name of selected Hybrid Power Developer) as per terms of RfS and the same having been accepted by the selected HPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Hybrid Power Developer or a Project Company, M/s ----- {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable ]. As per the terms of the RfS, the \_\_\_\_\_ [insert name & address of bank] hereby agrees unequivocally, irrevocably and unconditionally to pay to SECI at [Insert Name of the Place from the address of the SECI] without demure forthwith on demand in writing from SECI or any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees----- [Total Value] only, on behalf of M/s \_\_\_\_\_ [Insert name of the selected Hybrid Power Developer / Project Company]

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

Our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ only.  
Our Guarantee shall remain in force until..... SECI shall be entitled to invoke this Guarantee till .....

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

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

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

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

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

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

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

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

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

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Power of Attorney No. \_\_\_\_\_

For  
\_\_\_\_\_ [Insert Name of the Bank] \_\_\_\_\_

E-mail ID of the bank:

(Insert Project ID)

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Banker's Stamp and Full Address.

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

Witness:

1. ....

Signature

Name and Address

2. ....

Signature

Name and Address

Notes:

1. The Stamp Paper should be in the name of the Executing Bank and of appropriate value.
2. The Performance Bank Guarantee shall be executed by any of the Bank from the List of Banks enclosed.

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**SCHEDULE 2: COMMISSIONING PROCEDURE:**