

Amendment - III

RfS No: SEC/C&P/RfS/SGW MANUFACTURING/P-1/052018 dated 25.05.2018							
SELECTION OF SOLAR POWER DEVELOPERS FOR SETTING UP OF 10GW ISTS CONNECTED SOLAR PV POWER PLANT LINKED WITH 3GW (PER ANNUM) SOLAR MANUFACTURING PLANT UNDER GLOBAL COMPETITIVE BIDDING (PHASE-I)							
Reference of Original RfS Document							
Sl. No.	Section	Page No.	Clause	Original Version	Amendment-I	Amendment - II	Amendment - III
1	I (IFB)	5	2.0	This RfS document has been prepared in line with the above Guidelines issued by MoP dated 03.08.2017 including its amendment dated 15.06.2018 and Guidelines issued by MNRE for "Setting up of Solar Manufacturing Plant linked with PPAs for Solar PV Power Plant" vide OM No. 336/39/2017-NSM-Part (2) dated 20.04.2018 including its Amendment vide OM No. 336/39/2017-NSM-Part (2)/Pt dated 23.08.2018.	This RfS document has been prepared in line with the above Guidelines issued by MoP dated 03.08.2017 including its amendment dated 15.06.2018 and Guidelines issued by MNRE for "Setting up of Solar Manufacturing Plant linked with PPAs for Solar PV Power Plant" vide OM No. 336/39/2017-NSM-Part (2) dated 20.04.2018 including its Amendment vide OM No. 336/39/2017-NSM-Part (2)/Pt dated 23.08.2018.		This RfS document has been prepared in line with the above Guidelines issued by MoP dated 03.08.2017 including its amendment dated 15.06.2018 and Guidelines issued by MNRE for "Setting up of Solar Manufacturing Plant linked with PPAs for Solar PV Power Plant" vide OM No. 336/39/2017-NSM-Part (2) dated 20.04.2018 including its Amendments vide OM No. 336/39/2017-NSM-Part (2)/Pt dated 23.08.2018, OM No. 336/39/2017-NSM-Part (2)/Pt dated 17.09.2018 and OM No. 336/39/2017-NSM-Part (2)/Pt dated 28.09.2018.  <b><i>The related clauses pertaining to the reference of guidelines elsewhere mentioned in the RfS shall be interpreted accordingly.</i></b>
2	II (ITB)	27	11.0	Bidders selected by SECI based on this RfS shall submit 02 separate Performance Bank Guarantees per Project (i.e. 1GW of Solar Manufacturing including 2GW Solar PV Power Plant) for values (i) INR 220 Crore for Solar Manufacturing and (ii) INR 400 Crore for Solar PV Power Plant within 30 days of issuance of Letter of Intent (LoI) or before signing of PPA, whichever is earlier. It may be noted that successful Bidders shall submit the Performance Bank Guarantee according to the Format 7.3 B with an initial validity period from the date of submission of the PBG until 66 months from the Effective Date of the 1st Year PPA. On receipt and after successful verification of the total Performance Bank Guarantee in the acceptable form, the BG submitted towards EMD shall be returned by SECI to the successful Bidder.	Bidders selected by SECI based on this RfS shall submit 02 separate Performance Bank Guarantees per Project (i.e. 600MW of Solar Manufacturing including 2GW Solar PV Power Plant) for (i) INR 66 Crore (Indian Rupees Sixty Six Crores) for Solar Manufacturing Plant and (ii) INR 400 Crore (Indian Rupees Four hundred Crores) for Solar PV Power Plant.  Both the PBGs amounting INR 66 Crore (corresponding to Solar Manufacturing Plant) and INR 400 Crore (corresponding to Solar PV Power Plant) shall be submitted within 90 days of issuance of Letter of Award (LoA) or before signing of PPA, whichever is earlier.  The successful Bidders shall submit the Performance Bank Guarantees according to the Format 7.3 B and ensure the validities until 51 (Fifty One) months from the Effective Date of the PPAs. On receipt and after successful verification of both the Performance Bank Guarantees (amounting INR 66 Crore towards Solar Manufacturing Plant and INR 400 Crore towards Solar PV Power Plant) in the acceptable form, the BG submitted towards EMD shall be returned by SECI to the successful Bidders within 15 working days. The EMD of all unsuccessful bidders will be returned as promptly as possible but not later than 10 days of the e-RA.  <b><i>It may be noted that the PBG shall be submitted by the successful bidders only and no PBG shall be accepted from the SPV/ Project Company of the successful bidders.</i></b>	Bidders selected by SECI based on this RfS shall submit 03 (Three) separate Performance Bank Guarantees per Project (i.e. 600MW of Solar Manufacturing including 2GW Solar PV Power Plant) for (i) INR 60 Crore (Indian Rupees Sixty Crores) for Solar Manufacturing Plant, (ii) INR 6 Crore (Indian Rupees Six Crores) for Solar Manufacturing Plant and (iii) INR 400 Crore (Indian Rupees Four Hundred Crores) for Solar PV Power Plant.  All the PBGs amounting INR 60 Crore and INR 6 Crore (corresponding to Solar Manufacturing Plant) and INR 400 Crore (corresponding to Solar PV Power Plant) shall be submitted within 90 days of issuance of Letter of Award (LoA) or before signing of PPA, whichever is earlier.  The successful Bidders shall submit the Performance Bank Guarantees according to the Format 7.3 B. The validities of the PBGs amounting INR 6 Crore and INR 400 Crore have to be ensured until 51 (Fifty One) months from the Effective Date of the Package-I PPAs. The validity of the the PBG amounting INR 60 Crore has to be ensured until 45 (Forty Five) months from the Effective Date of the Package-I PPAs. On receipt and after successful verification of all the Performance Bank Guarantees (amounting INR 60 Crore and INR 6 Crore towards Solar Manufacturing Plant and INR 400 Crore towards Solar PV Power Plant) in the acceptable form, the BG submitted towards EMD shall be returned by SECI to the successful Bidders within 15 working days. The EMD of all unsuccessful bidders will be returned as promptly as possible but not later than 10 days of the e-RA.  The PBG amounting INR 60 Crore submitted against Solar Manufacturing Plant shall be released within 03 (Three) Months upon MCOD (i.e. commencement of commercial operation of the cumulative manufacturing capacity) of the entire Solar Manufacturing Plant at the sole discretion of SECI. The PBG amounting INR 6 Crore submitted against Solar Manufacturing Plant shall be released within 03 (Three) Months upon successful demonstration of production obligation as defined under Clause No. 47 of Amendment-I at the sole discretion of SECI.  Successful Bidders/ Developers shall extend the validity of PBGs as and when desired by SECI without any additional commercial implication to SECI.  <b><i>It may be noted that the PBG shall be submitted by the successful bidders only and no PBG shall be accepted from the SPV/ Project Company of the successful bidders.</i></b>	Bidders selected by SECI based on this RfS shall submit 03 (Three) separate Performance Bank Guarantees per Project (i.e. 600MW of Solar Manufacturing including 2GW Solar PV Power Plant) for (i) INR 60 Crore (Indian Rupees Sixty Crores) for Solar Manufacturing Plant, (ii) INR 6 Crore (Indian Rupees Six Crores) for Solar Manufacturing Plant and (iii) INR 400 Crore (Indian Rupees Four Hundred Crores) for Solar PV Power Plant.  All the PBGs amounting INR 60 Crore and INR 6 Crore (corresponding to Solar Manufacturing Plant) and INR 400 Crore (corresponding to Solar PV Power Plant) shall be submitted within 90 days of issuance of Letter of Award (LoA) or before signing of PPA, whichever is earlier.  The successful Bidders shall submit the Performance Bank Guarantees according to the Format 7.3 B. The initial validities of all the PBGs amounting INR 60 Crore, INR 6 Crore and INR 400 Crore have to be until 51 (Fifty One) months from the Effective Date of the Package-I PPAs. On receipt and after successful verification of all the Performance Bank Guarantees (amounting INR 60 Crore and INR 6 Crore towards Solar Manufacturing Plant and INR 400 Crore towards Solar PV Power Plant) in the acceptable form, the BG submitted towards EMD shall be returned by SECI to the successful Bidders within 15 working days. The EMD of all unsuccessful bidders will be returned as promptly as possible but not later than 10 days of the e-RA.  The PBG amounting INR 60 Crore submitted against Solar Manufacturing Plant shall be released within 03 (Three) Months upon MCOD (i.e. commencement of commercial operation as per the prescribed qualitative criteria as mentioned under Clause no. 47 of Amendment-I) of the entire obligated Solar Manufacturing Plant. The PBG amounting INR 6 Crore submitted against Solar Manufacturing Plant shall be released within 03 (Three) Months upon successful demonstration of production obligation as defined under Clause No. 47 of Amendment-I.  Incase the MCOD of the entire obligated manufacturing capacity is achieved on or before the scheduled MCOD (i.e. 36 months from the date of issuance of LoA), the PBG amounting INR 400 Crore submitted against Solar PV Power Plant shall be released on pro rata basis within 03 (Three) Months upon Commissioning of Solar PV Projects within maximum time allowed for commissioning with tariff and PPA term reduction in line with the provisions of RfS documents including its amendments and clarifications.  Successful Bidders/ Developers shall extend the validity of PBGs as and when desired by SECI without any additional commercial implication to SECI.  <b><i>It may be noted that the PBG shall be submitted by the successful bidders only and no PBG shall be accepted from the SPV/ Project Company of the successful bidders.</i></b>
3	II (ITB)	31	15.0	<b>MILESTONES INCLUDING FINANCIAL CLOSURE OR PROJECT FINANCING ARRANGEMENTS</b>	Annexure-I to Amendment-I may kindly be referred in this regard.	Annexure-I to Amendment-II may kindly be referred in this regard.	Annexure-I to Amendment-III may kindly be referred in this regard.
4	II (ITB)	36	16.b	<b>a. Delay upto six months from the MCOD:</b>  <b>For Solar Manufacturing Plant</b> , in case the MCOD of the Project is delayed upto 06 (Six) months from the scheduled MCOD, LD of INR 8.22 Lacs (Indian Rupees Eight Lacs Twenty Two Thousand Only) per day per project (i.e. 1GW of Solar Manufacturing Plant) shall be levied. The amount towards LD shall be encashed out of the available PBG.  <b>b. Delay of more than six months from the MCOD:</b>  <b>For Solar Manufacturing Plant</b> , in case the MCOD of the Project is delayed by more than 06 (Six) months from the scheduled MCOD, the PPA tariff discovered after reverse auction for setting up of Solar PV Power Plant shall be reduced at the rate of INR 0.002/ kWh per day of delay. The revised reduced tariff shall be applicable w.e.f. the original enforcement date of individual PPAs. Any recovery, applicable on such cases shall be done by SECI.  The maximum time period allowed for MCOD of the full Solar Manufacturing Capacity with encashment of Performance Bank Guarantee and reduction in the fixed tariff shall be limited to 48 months from the date of issuance of LOI. In case, the MCOD of the Project is delayed beyond 48 months from the date of issuance of LOI, a duly constituted committee by SECI shall assess the situation and submit its report/ recommendation for further course of action. The failure to set up the Solar Manufacturing Plant within 48 months from the date of issuance of LOI, (i) shall attract forfeiture of the PBG (amounting INR 400 Crore) submitted against setting up of Solar PV Power Plant (ii) may also attract the termination of PPA based on the report/ recommendation of the committee at the sole discretion of SECI.	<b>a. Delay from the MCOD:</b>  <b>For Solar Manufacturing Plant</b> , in case the MCOD of the Project is delayed upto 12 (Twelve) months from the scheduled MCOD, the PPA tariff discovered after reverse auction for setting up of Solar PV Power Plant shall be reduced at the rate of INR 0.0005 per day of delay after MCOD and till further 12 (Twelve) months from MCOD. The revised reduced tariff shall be applicable w.e.f. the original enforcement date of individual PPAs. Such penalty will be levied on the complete Project capacity (2000 MW Solar Plant Capacity) wherein the delay is under consideration for respective manufacturing capacity (600 MW). Any recovery applicable for already commissioned capacity under the Project shall be done by SECI applicable from the date COD on the individual Project basis along with interest at the rate applicable SBI 1 year MCLR rate on per day basis.  In case, the MCOD of the Project is delayed beyond 36 months from the date of issuance of LoA, the PBG submitted for the Manufacturing plant will be forfeited (INR 66 Crore). Further, a duly constituted committee by SECI shall assess the status of the manufacturing facility and submit its report/ recommendations for further course of action. The committee may diagnose following course of actions including but not limited to:  (i) Forfeiture of the PBG (amounting INR 400 Crore) submitted against setting up of Solar PV Power Plant (ii) Further reduction in tariff or termination of whole PPA of Project under consideration. In case it is decided by the committee for the termination of PPA, then this termination clause will supersede any other clause in the tender documents & its amendments therof, which may survive the PPA.  In addition to the MCOD, the manufacturing plant developed shall achieve the specified efficiency levels & annual production targets for initial 02 years from the MCOD. The Performance Bank Guarantee submitted against manufacturing shall also be linked towards faithful performance of this contractual obligations. In case of any default or failure in achieving so, the constituted committee may examine & recommend the further course of action including forfeiture of the Performance Bank Guarantee linked to the manufacturing facility.	<b>a. Delay from the MCOD:</b>  <b>For Solar Manufacturing Plant</b> , in case the MCOD of the Solar Manufacturing Plant is delayed upto 12 (Twelve) months from the scheduled MCOD (i.e. 30 months from the date of LoA), the PPA tariff discovered after reverse auction for setting up of Solar PV Power Plant shall be reduced at the rate of INR 0.0005/ kWh per day of delay after MCOD until 12 (Twelve) Months beyond scheduled MCOD. The revised reduced tariff shall be applicable w.e.f. the scheduled commissioning date of individual PPAs. Such penalty will be levied on the complete Project capacity (2000 MW Solar PV Power Plant Capacity) wherein the delay is under consideration for respective manufacturing capacity (600 MW). Any recovery applicable for already commissioned capacity under the Project shall be done by SECI applicable from the COD on the individual Project basis along with interest equivalent to the applicable SBI 1 Year MCLR rate on per day basis. However, in case of any reduction in tariff in line with the terms of the PPA, same shall be passed on to the Buying Entity.  In case, the MCOD of the Solar Manufacturing Plant is delayed beyond 42 months from the date of issuance of LoA, the PBG submitted for the Manufacturing plant will be forfeited (amounting INR 66 Crore cumulatively). Further, a duly constituted committee by SECI shall assess the status of the manufacturing facility and submit its report/ recommendations for further course of action. The committee may diagnose following course of actions including but not limited to:  (i) Forfeiture of the PBG (amounting INR 400 Crore) submitted against setting up of Solar PV Power Plant  (ii) Further reduction in tariff or termination of whole PPA of Project under consideration. In case it is decided by the committee for the termination of PPA, then this termination clause will supersede any other clause in the tender documents & its amendments therof, which may survive the PPA. The decision of SECI regarding termination of the PPA shall be final and binding.  In addition to the MCOD, the manufacturing plant developed shall achieve the specified efficiency levels & annual production targets for initial 02 years from the MCOD. The Performance Bank Guarantees against manufacturing shall also be linked towards faithful performance of this contractual obligations. In case of any default or failure in achieving so, the constituted committee may examine & recommend the further course of action including forfeiture of the Performance Bank Guarantees linked to the manufacturing facility.  The parties agree that the amount of Liquidated Damages mentioned herein above are the genuine pre-estimate of damages arising from the delay in commissioning of the Project.	<b>a. Delay from the MCOD:</b>  <b>For Solar Manufacturing Plant</b> , in case the MCOD of the Solar Manufacturing Plant is delayed upto 12 (Twelve) months beyond the scheduled MCOD (Scheduled MCOD is 36 months from the date of LoA), the PPA tariff discovered after reverse auction for setting up of Solar PV Power Plant shall be reduced at the rate of INR 0.0005/ kWh per day of delay after MCOD until 12 (Twelve) Months beyond scheduled MCOD. The revised reduced tariff shall be applicable w.e.f. the scheduled commissioning date of individual PPAs. Such penalty will be levied on the complete Project capacity (2000 MW Solar PV Power Plant Capacity) wherein the delay is under consideration for respective manufacturing capacity (600 MW). Any recovery applicable for already commissioned capacity under the Project shall be done by SECI applicable from the COD on the individual Project basis along with interest equivalent to the applicable SBI 1 Year MCLR rate on per day basis. However, in case of any reduction in tariff in line with the terms of the PPA, same shall be passed on to the Buying Entity.  In case, the MCOD of the Solar Manufacturing Plant is delayed beyond 48 months from the date of issuance of LoA, the PBG submitted for the Manufacturing plant will be forfeited (amounting INR 66 Crore cumulatively). Further, a duly constituted committee by SECI shall assess the status of the manufacturing facility and submit its report/ recommendations for further course of action. The committee may diagnose following course of actions including but not limited to:  (i) Forfeiture of the PBG (amounting INR 400 Crore) submitted against setting up of Solar PV Power Plant  (ii) Further reduction in tariff or termination of whole PPA of Project under consideration. In case it is decided by the committee for the termination of PPA, then this termination clause will supersede any other clause in the tender documents & its amendments therof, which may survive the PPA. The decision of SECI regarding termination of the PPA shall be final and binding.  In addition to the MCOD, the manufacturing plant developed shall achieve the specified efficiency levels & annual production targets for initial 02 years from the MCOD. The Performance Bank Guarantees against manufacturing shall also be linked towards faithful performance of this contractual obligations. In case of any default or failure in achieving so, the constituted committee may examine & recommend the further course of action including forfeiture of the Performance Bank Guarantees linked to the manufacturing facility.  The parties agree that the amount of Liquidated Damages mentioned herein above are the genuine pre-estimate of damages arising from the delay in commissioning of the Project.

RfS No: SEC/C&P/RfS/SGW MANUFACTURING/P-1/052018 dated 25.05.2018							
SELECTION OF SOLAR POWER DEVELOPERS FOR SETTING UP OF 10GW ISTS CONNECTED SOLAR PV POWER PLANT LINKED WITH 3GW (PER ANNUM) SOLAR MANUFACTURING PLANT UNDER GLOBAL COMPETITIVE BIDDING (PHASE-I)							
Reference of Original RfS Document							
Sl. No.	Section	Page No.	Clause	Original Version	Amendment-I	Amendment - II	Amendment - III
5	II (ITB)	36	16.b	<p><b>For Solar PV Power Plant</b>, the Scheduled Commissioning Date (SCD) of the Project needs to be achieved in line with the milestones/ timelines indicated under clause no. 15.B.1. Incase the SCD of the projects are delayed beyond original SCD (as indicated against each milestone under clause no. 15.B.1) and upto 12 months delay period, the PPA shall be in force w.e.f. end of original SCD period onwards (i.e. end of 12th month, 24th month, 36th month or 48th month as the case may be) without change in final closing period (i.e. the term/ duration of PPA will get reduced from 25 years to 24 years or so on pro-rata basis). Incase the projects are not commissioned within maximum SCD period (i.e. 24th month, 36th month, 48th month or 60th month as the case may be), the PBG submitted against Solar PV Power Plant (i.e. INR 400 Crore) shall be forfeited proportionately and PPA Capacity shall be reduced on pro-rata basis related to the capacity due for commissioning as on respective original SCD.</p>	<p><b>For Solar PV Power Plant</b></p> <p>For Solar PV Power Plant, in case the COD of the Package I/ Package II under the project is delayed upto 12 (Twelve) months from the scheduled COD, the PPA tariff discovered after reverse auction for setting up of Solar Power Plant shall be reduced at the rate of INR 0.0005 per day of delay till 12 (Twelve) months from COD for such delayed capacities only. The revised reduced tariff shall be applicable for the capacity delayed beyond COD. This tariff reduction is in addition to the tariff reduction exercised on account of delays in the commissioning of manufacturing capacity. Both reductions in the tariff (Manufacturing Capacity and Solar Plant) are mutually exclusive of each other and will be applicable independently.</p> <p>In case, the COD of the Project is delayed beyond 12 months from the scheduled COD, the PPA will be terminated for the uncommissioned capacity &amp; the PBG submitted for the Solar Power plant will be forfeited (INR 400 Crore) on pro rata basis.</p> <p><i>In case the commissioning is delayed beyond 31.03.2022, the SPD shall be liable to bear the applicable ISTS charges levied/ leviable on the Buying Entity. In such case, ISTS charges or the tariff reduction due to the delay in Solar Plant commissioning, whichever is higher will be applicable on the SPD. Both ISTS charges and tariff reduction on account of delay will not be levied simultaneously.</i></p>		<p><b>For Solar PV Power Plant</b></p> <p>For Solar PV Power Plant, in case the COD of the Package I/ Package II under the project is delayed upto 12 (Twelve) months from the scheduled COD, then the PPA Term will be reduced for the corresponding period of delay and the PPA tariff discovered after reverse auction for setting up of Solar Power Plant shall be reduced at the rate of INR 0.0005/ kWh per day of delay until 12 (Twelve) months from COD for such delayed capacities only. The revised reduced tariff shall be applicable for the capacity delayed beyond COD. This tariff reduction is in addition to the tariff reduction exercised on account of delays in the commissioning of manufacturing capacity. Both reductions in the tariff (Manufacturing Capacity and Solar Plant) are mutually exclusive of each other and will be applicable independently.</p> <p>In case, the COD of the Project is delayed beyond 12 months from the scheduled COD, the PPA will be terminated for the uncommissioned capacity &amp; the PBG submitted for the Solar Power plant will be forfeited (INR 400 Crore) on pro rata basis.</p> <p><i>ISTS Charges Waiver is presently allowed for projects commissioned upto March'2022. However, if the project's commissioning go beyond March'2022 on account of non-completion at that time of already indicated ISTS evacuation capacity in the bid document, then the delay due to this would be treated as Force Majeure, and the power projects under this bid shall be eligible for extension for that period and shall also be eligible for ISTS Charges Waiver for commissioning even beyond March'2022. Incase it is established that the SPD has complied with the complete application formalities and has adhered to the applicable Procedure in this regard as notified by the CERC/ CTU within 03 months (for Package-I PPAs) and within 06 months (for Package-II PPAs) from the date of issuance of LoA, then the delay due to this will be treated as Force Majeure with a condition that the SPD shall commission the Solar PV Power Plant maximum within 15 (Fifteen) days from the date of completion of ISTS evacuation capacity. Incase of non-commissioning of the Solar PV Projects maximum within 15 (Fifteen) days from the date of completion of ISTS evacuation capacity, the penalty shall be levied as mentioned above.</i></p> <p><i>Despite connectivity being ready as defined above, in case the commissioning is delayed beyond 31.03.2022, the SPD shall be liable to bear the applicable ISTS charges levied/ leviable on the Buying Entity. In such case, ISTS charges or the tariff reduction due to the delay in Solar Plant commissioning, whichever is higher will be applicable on the SPD. Both ISTS charges and tariff reduction on account of delay will not be levied simultaneously.</i></p> <p>The bidder has to mandatorily indicate the proposed location for connectivity in the Covering Letter and same shall be submitted at the time of submission of bids in line with the provisions of RfS documents. The same shall be treated as bid documents and Force Majeure shall be applicable only incase of non-completion of ISTS evacuation capacity at the location indicated in the bid document.</p>
6	V	63	3.0	REVERSE AUCTION (STEP - 3)			Annexure-I to Amendment-III may kindly be referred in this regard.
7	VII	95	Format 7.12	<b>FORMAT FOR CONTRACT AGREEMENT (MANUFACTURING PLANT)</b>	NIL	Annexure-I to Amendment-II may kindly be referred in this regard.	Annexure-I to Amendment-III may kindly be referred in this regard.
8				<b>CHANGE IN LOCATION FOR CONNECTIVITY</b>		<p>However, it may be noted that the Successful Bidder/ SPVs of the Successful Bidder shall be allowed to change the proposed Project locations, upto Financial Closure, subject to clause 7.9 of Annexure-I to Amendment-I.</p>	<p>The bidder has to mandatorily indicate the proposed location for connectivity in the Covering Letter and same shall be submitted at the time of submission of bids in line with the provisions of RfS documents. The same shall be treated as bid documents and Force Majeure shall be applicable only incase of non-completion of ISTS evacuation capacity at the location indicated in the bid document.</p> <p>Further, it may be noted that the SPD shall be allowed to change the proposed Project locations, upto Financial Closure, subject to clause 7.9 of Annexure-I to Amendment-I. No Force Majeure shall be allowed incase of change in location for connectivity. Delay in connectivity and/ or LTA for the Project(s) on account of such change in Project locations, which differ from the details provided in the Covering Letter, shall be at the risk and cost of the SPD.</p> <p><i>The related clauses pertaining to the location for connectivity elsewhere mentioned in the RfS shall be interpreted accordingly.</i></p>

## **CLAUSES AMENDED IN THE RfS**

(Annexure-I to Amendment-III dated 30.09.2018)

### **Page No. 31, Section-II, Instructions to Bidders (ITB) (Sr. No. 03 of Amendment-III)**

#### **15 MILESTONES INCLUDING FINANCIAL CLOSURE OR PROJECT FINANCING ARRANGEMENTS AND LAND ARRANGEMENTS**

##### **15.A FOR SOLAR MANUFACTURING PLANT**

15.A.1 Following Milestones need to be achieved for setting up of Solar Manufacturing Plant by the SPD.

S.N.	Milestone	Details	Duration (Months) from LoA
1	I	Land Acquisition, EPC Order for Plant and Equipments, Permits and Clearance, Detailed Project Report (DPR) including Detailed Layout for Proposed Solar Manufacturing Plant	09
2	II	Readiness of Major Civil and Infrastructure	18
3	III	Receipt of Material (Machinery etc.)	21
4	IV.a	Establishment of Manufacturing Facilities for Cells and Modules of the entire Obligated Capacity as per the prescribed Qualitative Criteria	24
5	IV.b	Manufacturing Plant Commercial Operation Date (MCOD) of entire obligated Manufacturing Capacity for all the Facilities for Ingots, Wafers, Cells and Modules as per the prescribed Qualitative Criteria	36
6	IV.c	Commissioning of entire obligated Manufacturing Capacity for all the Facilities for Ingots, Wafers, Cells and Modules as per the prescribed Qualitative Criteria (With Tariff Reduction beyond MCOB)	48

15.A.2 SECI shall constitute a committee or may authorize any individual or committee or organization to witness and validate the achievement of above mentioned Milestones. The committee/ individual/ organization shall submit its report after each visit by duly assessing the progress of the activity(ies). The SPD needs to give atleast 30 (Thirty) days advance notice to SECI in order to arrange the visit of the committee/ organization/ individual to witness and validate the achievement of milestones. In case of delay in submission of notice, SECI shall not be liable for delay in verification of documents and subsequent delay in witness and validation against achievement of milestone. The reports submitted by the committee/ individual/ organization will form a basis for deciding any future course of actions in regard of achieving the MCOB. The milestone shall be treated as having been fulfilled only on the date of validation of the achievement of milestone by the committee constituted or individual/ organization authorized by SECI.

15.A.3 The milestone IV.b indicated in the table above shall be considered as completed with a condition that, all the technologies involved in the manufacturing facility corresponding to entire allocated capacity are ready for commercial operation, failing which Liquidated Damages inline with the provisions of RfS documents including its amendments shall be imposed.

Selection of Solar Power Developers for Setting up of 10GW ISTS Connected Solar PV Power Plant linked with 3GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding (Phase - I)

- 15.A.4 The Successful Bidder has to establish the Solar Manufacturing Plant so as to ensure the annual production capacity of entire obligated capacity of Modules (600MW per Annum per Project) and Cells (600MW per Annum per Project) is to be achieved. The production capacities of balance individual processes/ stages (i.e. Ingots and Wafers) shall ensure the annual capacity of such facilities either in terms of numbers or in MT (Metric Tonnes) or if any shall correspond to the requirements of 600MW per Annum capacity of Solar PV Modules/ 600MW per Annum capacity of Solar Cells production.
- 15.A.5 The milestone IV.a indicated in the table above is applicable for Silicon based manufacturing technology only. For Thin Film technology, the production should commence w.e.f. 36<sup>th</sup> month from the date of issuance of LoA.

**15.B FOR SOLAR PV POWER PLANT**

- 15.B.1 Following Milestones pertaining to commissioning of Solar PV Projects shall be applicable:

S.N.	Package	Scheduled Commissioning Date (SCD) (Months)	Maximum time allowed for commissioning with Tariff and PPA Term Reduction (Months)
1	Package-I (Minimum 40% of awarded Solar PV Project Capacity)	24 Months from Effective Date of PPAs against Package-I	36 Months from Effective Date of PPAs against Package-I
2	Package-II (Balance awarded Solar PV Project Capacity)	36 Months from Effective Date of PPAs against Package-II or 31 <sup>st</sup> March'2022 whichever is earlier	48 Months from Effective Date of PPAs against Package-II

- 15.B.2 SECI may authorize any individual or committee or organization to witness and validate the commissioning procedure on site. In case commissioning of any of the Solar PV Power Plants is delayed beyond the SCD (as indicated above) and upto the maximum commissioning period allowed, then the PPA Term will be reduced for the corresponding period of delay, in line with the provisions of the PPA and Tariff reduction as per Amendment-III will be applicable. For example, in case of delay in commissioning of the any of the Solar PV Power Plant by a period of 20 days beyond the SCD, the Term of the respective PPA shall be reduced by the above period of 20 days along with the applicable Tariff reduction. In case any of the commissioning of any of the Solar PV Power Plants gets delayed beyond the maximum time period allowed with reduction in Tariff and PPA Term as stipulated above, the PBG submitted against Solar PV Power Plants shall be forfeited on pro-rata basis and PPA Capacity shall be reduced to the capacity commissioned until the maximum deadline as indicated above. For example, in case of a 250 MW Solar PV Power Plant Project, commissioning of 100 MW gets delayed beyond the maximum time period as stipulated above, the PBG amount shall be encashed as follows: (Total PBG amount/ Total awarded Solar PV Project Capacity) x Total Capacity not commissioned.

Selection of Solar Power Developers for Setting up of 10GW ISTS Connected Solar PV Power Plant linked with 3GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding (Phase - I)

**ISTS Charges Waiver is presently allowed for projects commissioned upto March'2022. However, if the project's commissioning go beyond March'2022 on account of non-completion at that time of already indicated ISTS evacuation capacity in the bid document, then the delay due to this would be treated as Force Majeure, and the power projects under this bid shall be eligible for extension for that period and shall also be eligible for ISTS Charges Waiver for commissioning even beyond March'2022. Incase it is established that the SPD has complied with the complete application formalities and has adhered to the applicable Procedure in this regard as notified by the CERC/ CTU within 03 months (for Package-I PPAs) and within 06 months (for Package-II PPAs) from the date of issuance of LoA, then the delay due to this will be treated as Force Majeure with a condition that the SPD shall commission the Solar PV Power Plant maximum within 15 (Fifteen) days from the date of completion of ISTS evacuation capacity. Incase of non-commissioning of the Solar PV Projects maximum within 15 (Fifteen) days from the date of completion of ISTS evacuation capacity, the penalty shall be levied as mentioned above.**

**Despite connectivity being ready as defined above, in case the commissioning is delayed beyond 31.03.2022, the SPD shall be liable to bear the applicable ISTS charges levied/ leviable on the Buying Entity. In such case, ISTS charges or the tariff reduction due to the delay in Solar Plant commissioning, whichever is higher will be applicable on the SPD. Both ISTS charges and tariff reduction on account of delay will not be levied simultaneously.**

The bidder has to mandatorily indicate the proposed location for connectivity in the Covering Letter and same shall be submitted at the time of submission of bids in line with the provisions of RfS documents. The same shall be treated as bid documents and Force Majeure shall be applicable only incase of non-completion of ISTS evacuation capacity at the location indicated in the bid document.

- 15.1 For setting up of Solar PV Power Plant, the SPD shall achieve Financial Closure as mentioned below: -

S.N.	Packages	Scheduled Financial Closure (Months)
1	Package-I (Minimum 40% of Cumulative awarded Solar PV Project Capacity)	12 months from Effective Date of PPAs for Package-I (i.e. 15 months from the date of issuance of LoA)
2	Package-II (Balance awarded Solar PV Project Capacity)	24 months from Execution Date of PPAs for Package-II (i.e. 27 months from the date of issuance of LoA)

The SPD will have to submit the required documents to SECI at least 14 days prior to the scheduled Financial Closure date. In case of delay in submission of documents mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in Financial Closure. SPD shall furnish documentary evidence towards the following: -

- At these stages, the SPDs shall report tie-up of Financing Arrangements for the 100% Project Cost corresponding to the respective PPAs Capacity. In this regard, the SPD shall submit a certificate from all financing agencies regarding the tie-up of the entire estimated Project Cost

**Selection of Solar Power Developers for Setting up of 10GW ISTS Connected Solar PV Power Plant linked with 3GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding (Phase - I)**

- b. The SPD shall be required to submit the connectivity letter from Central Transmission Utility (CTU), confirming technical feasibility of connectivity of the plant to the CTU substation and Long-Term open Access (LTA) approval prior to Financial Closure of the Project.
- c. Within 12 months or 24 months, from the Effective Date of the PPAs for both Package-I & II, as the case may be, the SPD shall demonstrate possession of 100% (hundred percent) of the land identified for the Project (for e.g. if Effective Date of the PPA is 30.12.2018, then the above deadline shall be 29.12.2019 and 29.12.2020 respectively) before the scheduled Financial closure. In this regard, the SPD shall submit documents/ Lease Agreement to establish possession/ right to use 100% of the required land in the name of the SPD or its Affiliate. In case the land is in the name of the Affiliate, the land should be transferred in the name of the SPD 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 SPD.
- d. The SPD shall submit a sworn affidavit from the authorized signatory of the SPD listing the details of the land and certifying that total land required for the Project is under clear possession of the SPD.
- e. In case of delay in achieving specify conditions (Financing arrangement, conforming Technical feasibility for connectivity, LTA and Land for the Project) as may be applicable, SECI shall encash Performance Bank Guarantees and shall remove the Project from the list of the selected Projects on pro-rata basis, unless the delay is on account of delay in allotment of land by the Government and not owing to any action or inaction on the part of the SPD, or is caused due to a Force Majeure as per PPA (excluding clause no. 11.3.1 e of the draft PPA). An extension can however be considered, on the sole request of SPD, on advance payment of extension charges of INR 5000/ MW/ Day related to the capacity due for Financial Closure. This extension will not have an impact on the Scheduled Commissioning Date of the Project. Subsequent to the completion of deadline for achieving financial closure, SECI shall issue notices to the SPDs who are not meeting the requirements of Financial Closure as per the RfS deadlines. The notice shall provide a period of 7 business days to the respective SPDs to either furnish the necessary documents or make the above-mentioned payment of INR 5000/ MW/ Day. In case of non-submission of either-the requisite documents or the necessary amount upon expiry of the above-mentioned notice period of 7 days, SECI shall encash the PBG and terminate the PPA for the corresponding capacity of the Project. The amount of INR 5000/ MW/ Day shall be paid by the SPDs in advance prior to the commencement of the said delay period and shall be calculated based on the period of delay as estimated by the SPD. Interest on account of delay in deposition of the above-mentioned charges or on any subsequent extension sought, shall be levied @ one-year SBI MCLR rate/ annum on pro-rata basis. Any extension charges paid so, shall be returned to the SPD without any interest on achievement of successful commissioning within the Scheduled Commissioning Date, based on the project capacity commissioned on pro-rata basis.
- f. In case, Financing arrangement, conforming Technical feasibility for connectivity, LTA and Land for the Project, is not achieved 100% by the SPD for Packages upto Scheduled Financial Closure, then the extension charges as mentioned shall be levied on pro-rata basis, applicable on the criteria based upon lowest percentage of completeness achieved under all these parameters.

E.g.: Achievement %: Financing arrangement 100%, conforming Technical feasibility for connectivity 50%, LTA 60% and Land 70%. In this case, the minimum criteria

Selection of Solar Power Developers for Setting up of 10GW ISTS Connected Solar PV Power Plant linked with 3GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding (Phase - I)

achieved is 50% (**conforming Technical feasibility for connectivity**), hence the pro rata extension charges will be calculated according to the 50% achievement basis only.

- g. In case the SPD is unable to demonstrate possession of 100% of the above FC requirements (Financing arrangement, conforming Technical feasibility for connectivity, LTA and Land for the Project) until the SCD, then the extension charges related to capacity due to financial closure will be applicable till SCD only.

Such delay will lead to the overall delay in commissioning & henceforth, the applicable LD for delay in commissioning beyond SCD, will only be applicable.



**Page No. 63, Section-V, Bid Evaluation and Selection of Projects (Sr. No. 06 of Amendment-III)**

**3 REVERSE AUCTION (STEP 3)**

- 3.1 The reverse auction for the cumulative Project capacity (5GW of Solar Manufacturing and 10GW of Solar PV Power Plants) shall be conducted through [www.tcil-india-electronictender.com](http://www.tcil-india-electronictender.com) portal on the day as intimated by SECI to the eligible Bidders.
- 3.2 The Total eligible bidders for the Project for reverse auction shall be decided as mentioned below:

Assuming

**T** = Total Techno-Commercially Qualified Bidders, and

**S<sub>k</sub>** = Cumulative capacity till the 'k'th serial number bidder (**not the 'k'th rank bidder**) after ranking is done in ascending order from L1 onwards

$S_E =$ (Eligible capacity for award)	(i) In case $400\text{MW} \leq S_T \leq 10000\text{ MW}$ , $S_E = S_T - 2000\text{ MW}$ (ii) In case $S_T > 10000\text{ MW}$ , $S_E = 10000\text{ MW}$	
$n = \{$	$T$ , if $T = m$ or $m+1$	Where <b>m</b> =Total number of techno-commercially qualified Bidders ( <i>after ranking is done in ascending order from L1 onwards</i> ) such that ( $S_{m-1} < S_E\text{ MW}$ and $S_m \geq S_E$ ) and $1 \leq m \leq T$
	$m+(T-m)/2$ , if $S_m \geq S_E$ and $T-m$ is even	
	$m+(T-m+1)/2$ , if $S_m \geq S_E$ and $T-m$ is odd	

**Total eligible Bidders for e-Reverse Auction = Bidders from Sl. No. 1 to Sl. No. n.**

**For e.g. (Shortlisting of Bidders for e-Reverse Auction):**

Total bid capacity of techno-commercially shortlisted bidders =  $S_T=52000\text{ MW}$

Sl. No.	Techno commercially qualified Bidder	Rank	Capacity (MW)	T	m	$S_E$	N	Shortlisted Bidders
1	B8	L1	2000	11	4	10000 MW	8*	B8
2	B5	L2	2000					B5
3	B1	L3	4000					B1
4	B4	L3	2000					B4
5	B2	L4	2000					B2
6	B3	L5	10000					B3
7	B7	L6	8000					B7
8	B6	L7	2000					B6
9	B10	L8	4000					B10
10	B9	L9	6000					B9
11	B11	L10	10000					



\*n = 4 + (11-4+1)/2 = 8 as per above formula

- 3.3 At least one week prior to e-Reverse Auction, an advance intimation regarding the date and time of the reverse auction will be sent by e-mail to all the Bidders whose technical bids have been opened and found to be qualified. However, from this advance intimation it shall not be construed by the Bidders that they have been shortlisted for e-Reverse Auction (e-RA). Further at least two hours before the schedule start time of e-RA, final intimation for participation in the e-RA will be sent to all those Bidders only who have been shortlisted based on the criteria mentioned at Clause No. 3.2 of Section-V of RfS.
- 3.4 Shortlisted Bidders for e-RA will be able to login into the TCIL website of reverse auction 15 minutes before the start time of reverse auction.
- 3.4.1 During the 15 minutes prior to start of reverse auction process, the respective tariff of the Bidder shall be displayed on its window.
- 3.4.2 The minimum decrement value for tariff shall be INR 0.01 per kWh. The Bidder can mention its revised discounted tariff which has to be at least 1 (One) Paisa less than its current tariff.
- 3.4.3 Bidders can only quote any value lower than their previous quoted tariff taking into consideration the minimum decrement value mentioned in the previous clause. However, at any stage, increase in tariff will not be permissible. Bidders can improve their ranking by quoting the tariff lower than their last quoted tariff.
- 3.4.4 During reverse auction, the Bidder shall not have the option of changing the total Project capacity while quoting tariff.
- 3.4.5 In the Bidder's bidding window, the following information can be viewed by the Bidder:
- a. Its tariff as the initial start price and there after last quoted tariff along with the Project capacity for which the Bidder is qualified.
  - b. The list of all the Bidders with their following details: Pseudo Identity, last quoted tariff and project capacity
- 3.4.6 The initial auction period will be of 01 (One) Hour with a provision of auto extension by 15 (fifteen) Minutes from the scheduled/ extended closing time if any Bidder becomes eligible to the win a project capacity from the total capacity being auctioned, in last eight minutes of auction period or extended auction period. If no such valid bid is received during last 15 minutes of auction period or extended auction period, then the reverse auction process will get closed.

**Page No. 101, Section-VII, Sample Forms and Formats for Bid Submission (Sr. No. 07 of Amendment-II)**

### Format 7.12

## **FORMAT FOR CONTRACT AGREEMENT FOR SETTING UP OF SOLAR MANUFACTURING PLANT**

**(To be executed separately for each Solar Manufacturing Plant of 600MW Capacity)**

(To be stamped in accordance with Stamp Act, the Non-Judicial Stamp Paper of Appropriate Value)

CONTRACT AGREEMENT BETWEEN SOLAR ENERGY CORPORATION OF INDIA LIMITED AND  
XX [JV OF M/s  
XX (THE LEAD PARTNER OF THE JV)  
AND M/s XXX (THE PARTNER OF THE JV)  
TOWARDS SETTING UP OF XXXX MW OF SOLAR PV MANUFACTURING PLANT UNDER RfS  
NO. SEC1/C&P/RfS/5GW MANUFACTURING/P-1/052018 DATED 25.05.2018

THIS CONTRACT AGREEMENT No. .... (also referred to as 'Manufacturing Contract')  
is made on the .... day of ..... 20....

BETWEEN

(1) **Solar Energy Corporation of India Limited** a company incorporated under the laws of Companies Act 2013 and having its Registered and Corporate Office at **D - 3, 1<sup>st</sup> Floor, Wing - A, Prius Platinum Building, District Centre, Saket, New Delhi - 110 017** (hereinafter called "**the Employer**" and also referred to as "SECI")

and

(2) ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~, a company incorporated under the laws of Companies Act 1956 and having its Registered Office at ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~, represented through ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~, its authorized signatory (hereinafter called "**the Successful Bidder**" and also referred to as the "Solar Power Developer"/ the "SPD")

WHEREAS the Successful Bidder is desirous of setting up a \_\_\_\_\_ GW (\_\_\_\_\_ MW) Solar Manufacturing Plant located at \_\_\_\_\_ in \_\_\_\_\_ (Insert Village, Tehsil, District) in the state of \_\_\_\_\_ and the Employer has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

## Article 1. Contract Documents

### 1.1 Contract Documents

The following documents shall constitute the Contract between the Employer and the Successful Bidder, and each shall be read and construed as an integral part of the Contract:

PART - A

1. "Bidding Documents" (RfS No.: SECI/C&P/RfS/5GW MANUFACTURING/P-1/052018 dated 25.05.2018), read in conjunction with Amendments I to II to the Bidding Documents

Selection of Solar Power Developers for Setting up of 10GW ISTS Connected Solar PV Power Plant linked with 3GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding (Phase - I)

PART - B

2. This Contract Agreement and the Appendices thereto.
3. Letter of Award (LoA) Ref. No. XXXXXXXXXXXXXXXXXXXXXXXXXXXX dated XX.XX.XXXX

PART - C

4. Bid Submitted by the Successful Bidder. (XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX dated XX.XX.XXXX and XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX dated XX.XX.XXXX)

1.2 Order of Precedence

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

1.3 Definitions

1.3.1 Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the Bidding Documents listed in Part-B of Article 1.1.

Article 2. Details of Successful Bidder and Parties to Agreement

2.1 Details of Successful Bidder

The Employer had issued Letter of Award (LoA) (XXXXXXXXXXXXXXXXXXXXXXXXX dated XX.XX.XXXX) to SPD for setting up of the Facilities as detailed in the Contract Document.

The SPD (i.e. M/s XXXXXXXXXXXXXXXXXXXXXXXXXXXX) desires to set up the Solar PV Manufacturing Plant of \_\_\_\_ MW Capacity at \_\_\_\_\_ through a Special Purpose Vehicle (SPV) namely M/s XXXXXXXXXXXXXXXXXXXXXXXXXXXX. The SPV is a company incorporated under the laws of Companies Act 1956/ 2013/ 2018 and having its Corporate Office at XXXXXXXXXXXXXXXXXXXXXXXXXXXX, represented through XXXXXXXXXXXXXXXXXXXXXXXXXXXX

M/s XXXXXXXXXXXXXXXXXXXXXXXXXXXX i.e. \_\_\_\_ SPV of M/s XXXXXXXXXXXXXXXXXXXXXXXXXXXX is a JV Company and comprises of M/s XXXXXXXXXXXXXXXXXXXXXXXXXXXX (the **Lead Partner of JV**), a company incorporated under the laws of Companies Act 1956/ 2013/ 2018 and having its Registered Office at XXXXXXXXXXXXXXXXXXXXXXXXXXXX, represented through XXXXXXXXXXXXXXXXXXXXXXXXXXXX, its authorized signatory and M/s XXXXXXXXXXXXXXXXXXXXXXXXXXXX (the **Partner of JV**), a company incorporated under the laws of Companies Act 1956/ 2013/ 2018 and having its Registered Office at XXXXXXXXXXXXXXXXXXXXXXXXXXXX, represented through XXXXXXXXXXXXXXXXXXXXXXXXXXXX (hereinafter collectively called "**the SPV**" and also referred to as the "Manufacturer"/ "JV"/ the "JV").

2.2 Parties to Agreement

- (a) **Solar Energy Corporation of India Limited** a company incorporated under the laws of Companies Act 2013 (hereinafter called "**the Employer**" and also referred to as "SECI")
- (b) XXXXXXXXXXXXXXXXXXXXXXXXXXXX a company incorporated under the laws of Companies Act 1956/ 2013/ 2018 (hereinafter called "**the Successful Bidder**" and also referred to as the "Solar Power Developer"/ the "SPD")

Selection of Solar Power Developers for Setting up of 10GW ISTS Connected Solar PV Power Plant linked with 3GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding (Phase - I)

(c) ~~XX~~ i.e. SPV of ~~XX~~, a JV Company and comprises of ~~XX~~ (the **Lead Partner of JV**) and ~~XX~~ (the **Partner of JV**) (hereinafter called "**the SPV**") and also referred to as the "Manufacturer"/ "JV"/ the "JV")

Each of the parties mentioned above, are hereinafter, collectively, referred to as the “**Parties**” and individually as a “**Party**”.

Both the partners are allowed to hold equity in the JV. The shareholding pattern is as mentioned below: -

The above finalized Shareholding Pattern of the JV will not be changed till 01 (One) year from the MCOD of the Solar Manufacturing Plant, except with the prior approval of SECI.

### Article 3. Effective Date, Time for Completion and Liquidated Damages for Delay

### 3.1 Effective Date

The effective date for commencement of work shall be the date of issuance of Letter of Award (LoA) i.e., w.e.f. XX.XX.XXXX.

### 3.2 Time for Completion

The Time of Completion of Facilities shall be determined in Months from the date of the Letter of Award (LoA) i.e., w.e.f. XX.XX.XXXX.

S.N.	Milestone	Details	Duration (Months) from LoA
1	I	Land Acquisition, EPC Order for Plant and Equipments, Permits and Clearance, Detailed Project Report (DPR) including Detailed Layout for Proposed Solar Manufacturing Plant	09
2	II	Readiness of Major Civil and Infrastructure	18
3	III	Receipt of Material (Machinery etc.)	21
4	IV.a	Establishment of Manufacturing Facilities for Cells and Modules of the entire Obligated Capacity as per the prescribed Qualitative Criteria	24
5	IV.b	Manufacturing Plant Commercial Operation Date (MCOD) of entire obligated Manufacturing Capacity for all the Facilities for Ingots, Wafers, Cells and Modules as per the prescribed Qualitative Criteria	36
6	IV.c	Commissioning of entire obligated Manufacturing Capacity for all the Facilities for Ingots, Wafers, Cells and Modules as per the prescribed Qualitative Criteria (With Tariff Reduction beyond MCOB)	48

3.2.1 SECI shall constitute a committee or may authorize any individual or committee or organization to witness and validate the achievement of above mentioned Milestones. The committee/ individual/ organization shall submit its report after each visit by duly assessing the progress of the activity(ies). The reports submitted by the committee/ individual/ organization will form a basis for deciding any future course of actions in regard of achieving the MCOD.

## Selection of Solar Power Developers for Setting up of 10GW ISTS Connected Solar PV Power Plant linked with 3GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding (Phase - I)

- 3.2.2 The milestone IV.b indicated in the table above shall be considered as completed with a condition that, all the technologies involved in the manufacturing facility corresponding to entire allocated capacity are ready for commercial operation, failing which all obligations including but not limited to Liquidated Damages shall apply as per the provisions of RfS documents including its amendments.
- 3.2.3 The Successful Bidder has to establish the Solar Manufacturing Plant so as to ensure the annual production of entire allocated capacity of Modules (in the multiple of 600MW per Project) is achieved. The production capacities of balance technologies shall be such that it corresponds to production of 600MW per Annum of Solar PV Modules per Project.
- 3.2.4 The milestone IV.a indicated in the table above is applicable for Silicon based manufacturing technology only. For Thin Film technology, the production should commence w.e.f. 36<sup>th</sup> month from the date of issuance of LoA.
- 3.2.5 The obligations of the parties in the event of delay in commissioning of the Solar Manufacturing Plant upto the MCOD as contained in the RfS documents shall be in addition to the obligations provided herein below: -

### 3.3 Liquidated Damages against Delay from the MCOD:

In case the MCOD of the Project is delayed upto 12 (Twelve) months beyond the scheduled MCOD, the PPA tariff discovered after reverse auction for setting up of Solar PV Power Plant shall be reduced at the rate of INR 0.0005/ kWh per day of delay after MCOD until 12 (Twelve) months beyond scheduled MCOD. The revised reduced tariff shall be applicable w.e.f. the scheduled commissioning date of individual PPAs. Such penalty will be levied on the complete Project capacity (2000 MW Solar PV Power Plant Capacity) wherein the delay is under consideration for respective manufacturing capacity (600 MW). Any recovery applicable for already commissioned capacity under the Project shall be done by SECI applicable from the COD on the individual Project basis along with interest equivalent to the applicable SBI 1 Year MCLR rate on per day basis.

In case, the MCOD of the Project is delayed beyond 48 months from the date of issuance of LoA, the PBG submitted for the Manufacturing plant will be forfeited (amounting INR 66 Crore cumulatively). Further, a duly constituted committee by SECI shall assess the status of the manufacturing facility and submit its report/ recommendations for further course of action. The committee may consider the following course of actions including but not limited to:

- (i) Forfeiture of the PBG (amounting INR 400 Crore) submitted against setting up of Solar PV Power Plant
- (ii) Further reduction in tariff or termination of whole PPA of Project under consideration. In case it is decided by the committee for the termination of PPA, then this termination clause will supersede any other clause in the tender documents & its amendments thereof, which may survive the PPA.

In addition to the MCOD, the manufacturing plant developed shall achieve the specified efficiency levels & annual production targets for initial 02 years from the MCOD. The Performance Bank Guarantees against manufacturing shall also be linked towards faithful performance of this contractual obligations. In case of any default or failure in achieving so, the constituted committee may examine & recommend the further course of action including forfeiture of the Performance Bank Guarantees linked to the manufacturing facility.

The decision of the committee constituted by SECI shall be final and binding on the parties.

## Selection of Solar Power Developers for Setting up of 10GW ISTS Connected Solar PV Power Plant linked with 3GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding (Phase - I)

### Article 4. Performance Bank Guarantee (PBG)

The SPD shall submit 02 (Two) separate Performance Bank Guarantees (per 600MW of Solar Manufacturing Plant) for (i) INR 60 Crore (Indian Rupees Sixty Crores) and (ii) INR 6 Crore (Indian Rupees Six Crores). Both the PBGs shall be submitted within 90 days of issuance of Letter of Award (LoA) or before signing of PPA for Solar PV Power Plant, whichever is earlier.

The SPD shall submit the Performance Bank Guarantees according to the Format 7.3 B. The validities of both the PBGs amounting INR 60 Crore and INR 6 Crore have to be until 51 (Fifty One) months from the Effective Date of the Package-I PPAs.

The PBG amounting INR 60 Crore submitted against Solar Manufacturing Plant shall be released within 03 (Three) Months upon MCOD (i.e. commencement of commercial operation as per the prescribed qualitative criteria as mentioned under Clause no. 47 of Amendment-I) of the entire obligated Solar Manufacturing Plant. The PBG amounting INR 6 Crore submitted against Solar Manufacturing Plant shall be released within 03 (Three) Months upon successful demonstration of production obligation as defined under Clause No. 47 of Amendment-I.

Incase the MCOD of the entire obligated manufacturing capacity is achieved on or before the scheduled MCOD (i.e. 36 months from the date of issuance of LoA), the PBG amounting INR 400 Crore submitted against Solar PV Power Plant shall be released on pro rata basis within 03 (Three) Months upon Commissioning of Solar PV Projects within maximum time allowed for commissioning with tariff and PPA term reduction in line with the provisions of RfS documents including its amendments and clarifications.

Successful Bidders/ Developers shall extend the validity of PBGs as and when desired by SECI without any additional commercial implication to SECI.

### Article 5.

The Power Purchase Agreements (PPAs) are also being executed between the Employer and the SPD/ separate SPVs set up by the SPD for **“Setting up of 10GW ISTS Connected Solar PV Power Plants”** (hereinafter referred to as the **“Power Plant Contracts”**).

Notwithstanding the execution of facilities under two/ multiple separate contracts in the aforesaid manner, the SPD shall be overall responsible to ensure the execution of both the facilities to achieve successful completion as per the requirements stipulated in the Contract. It is expressly understood and agreed by the SPD that any default or breach of the obligations under any of the Bidding Documents, the present contract and/ or the Power Plant Contracts shall automatically be deemed as a default or breach of the obligations of the SPD under the present Contract and the Bidding Documents and vice-versa and any such breach or occurrence or default giving the Employer a right to terminate the Power Plant Contracts either in full or in part, and/or recover damages under that Contract, shall give the Employer an absolute right to terminate this Contract at the SPD's risk, cost and responsibility, either in full or in part and/ or recover damages as well. However, such breach or default or occurrence in the Power Plant Contracts shall not automatically relieve the SPD of any of its responsibility/ obligations under this Contract or the Bidding Documents. It is also expressly understood and agreed by the SPD that all the SPVs set up by the SPD shall give satisfactory performance in accordance with the provisions of the Contract. Further, the SPD expressly understands and agrees that in case of any delay/ default on behalf of any of the SPVs under the Present



Selection of Solar Power Developers for Setting up of 10GW ISTS Connected Solar PV Power Plant linked with 3GW (Per Annum) Solar Manufacturing Plant under Global Competitive Bidding (Phase - I)

Contract and/ or the Power Plant Contracts, the relevant provisions of the RfS/ relevant articles of the PPA pertaining to PBGs, shall apply to the PBGs submitted by the SPD.

IN WITNESS WHEREOF the Employer, the SPD and the SPV have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by for and  
on behalf of the Employer

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Signature

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Title

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Signature

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Title

Signed by for and  
on behalf of the SPD

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Signature

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Signature

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Signed by for and  
on behalf of the SPV

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in the presence of

Signed by for and  
on behalf of the SPV

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Signature

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Title

in the presence of



**STANDARD**  
**POWER PURCHASE AGREEMENT FOR**  
**PROCUREMENT OF ..... MW SOLAR POWER**  
**ON LONG TERM BASIS**  
**Between**  
  
**..... [Insert Name of Solar Power Developer]**

**And**  
**Solar Energy Corporation of India Limited**

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

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

Between

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

And

**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**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the **Second Part**;

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

Whereas:

A As part of the Government of India’s target to achieve a cumulative installed capacity of 100 GW by the year 2022, SECI has been instrumental in developing grid connected solar power capacity in India and plays the role of Intermediary Procurer in line with the provisions of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects, issued by Ministry of Power, vide Resolution dated 03.08.2017 including its amendment, vide Resolution dated 15.06.2018 and Guidelines issued by MNRE for "Setting up of Solar Manufacturing Plant linked with PPAs for Solar PV Power Plant" vide OM No. 336/39/2017-NSM-Part (2) dated 20.04.2018 including its Amendments vide OM No. 336/39/2017-NSM-Part (2)/Pt dated 23.08.2018, OM No. 336/39/2017-NSM-Part (2)/Pt dated 17.09.2018 and OM No. 336/39/2017-NSM-Part (2)/Pt dated 28.09.2018 .

B **[Insert Name of the SPD]** has been declared as a successful bidder against Request for Selection (RfS) issued by SECI vide RfS No. SECI/C&P/RfS/5GW MANUFACTURING/P-1/052018 dated 25.05.2018 issued by SECI for selection of SPDs

for setting up of 10 GW ISTS Connected Solar PV Power Plant linked with 3 GW (Per Annum) Solar manufacturing Plant and have been issued Letter of Award (LoA) (LoA No.....dated.....) for development of ISTS-connected Solar Power Project(s), generation and sale of Solar power under the above RfS.

- C. The SPD, is established in ..... [insert name of the Place] with an objective, inter-alia, to develop and manage Solar power plants in India.
- D. The SPD is engaged in the business of generation of power and is desirous of setting up a .....GW ([.] MW) Solar Manufacturing Plant located at [.] in ..... (Insert Village, Tehsil, District) in the state of..... and .....GW ([.] MW) Solar Power Project located at [.] in .....(Insert Village, Tehsil, District) in the state of..... (Hereinafter referred to as the “**Project**”).
- E. The SPD has agreed to sign this Power Purchase Agreement with Buyer to sell [.....] MW of Solar Power to Buyer as per the terms and conditions of this Agreement.
- F SECI has agreed to purchase such Solar Power from SPD as an Intermediary Procurer and sell it to Buying Utilities on back-to-back basis as per the provisions of above stated scheme, accordingly SECI has agreed to sign/has signed a Power Sale Agreement with the Buying Entity(ies) to sell such power as per the provisions of the above said scheme.
- G. Pursuant to the aforesaid objective, the Parties are desirous of entering into a Power Purchase Agreement (“**PPA**”) i.e. a definitive agreement, regarding purchase of power from the Project. Pending execution of the necessary agreements and other relevant documents in relation to the transaction contemplated herein, the Parties wish to execute this PPA setting out the respective obligations of the Parties and the steps necessary to complete the transactions contemplated herein.
- H. To establish the commitment of SPD to sell and Buyer to purchase power from the Project, the Parties have entered into this Agreement.
- I. The SPD has submitted the Performance Bank Guarantee to SECI as per the format provided in Schedule 1 of this Agreement
- J. The Parties have accordingly agreed to enter into this PPA to record their understanding and agreement with regard to the purchase of power to be generated from the Project and in respect to the matters incidental or ancillary thereto, upon the terms and conditions set out herein below.

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

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

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

“Act” or “Electricity Act, 2003”	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
“Agreement” or “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”	shall mean the Central Electricity Regulatory Commission referred to in sub- section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
“Bill Dispute Notice”	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
“Block”	shall mean a minimum capacity of Solar PV Project to be installed at a single location, which shall be not less than 50 MW and shall be only in multiples of 50 MW. A Project may be divided into any number of Blocks by the SPD and shall be configured in line with Sr. No. 17 of Amendment-I;
“Business Day”	shall mean with respect to SPD and Buyer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Delhi;
“Buying Entity”	Shall Mean DISCOM/ State Entity/ Bulk consumer who have signed the agreement with SECI.
“Capacity Utilisation 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, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) \times 100\%$ ;
“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;
“Commercial Operation Date (COD)” for Solar PV Power Plant	shall mean the date on which the commissioning certificate is issued upon successful commissioning (as per provisions of this Agreement) of the full capacity of this PPA or the last part capacity of this PPA as the case may be;
“Competent Court of Law”	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
“Consents, Clearances and Permits”	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;
“Consultation Period”	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a SPD Preliminary Default Notice or Buyer 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 Buyer for supply by the SPD to Buyer at the Delivery Point from the Solar Power Project;
“Day”	shall mean a calendar day;
“Delivery/ Interconnection Point”	“Delivery Point” shall mean the point at 220kV or above where the power from the Solar power project(s) will be injected into the ISTS. Metering shall be done at this interconnection point where the power will be injected into the ISTS i.e. the Delivery point. For interconnection with grid and metering, the developers shall abide by the relevant CERC/ SERC Regulations, Grid Code, and Central

	Electricity Authority Regulations as amended from time to time. 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 charges etc.) as notified by the competent authority/ regulator shall be borne by the SPD and beyond the Delivery Point all charges and losses as notified by the competent authority/ regulator from time to time shall be borne by the Buying Utilities. In case it is paid by SECI on behalf of Buying Utilities / SPD, the same shall be recovered from the Buying Utilities / SPD (as applicable);
“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 Buyer and the SPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
"Due Date"	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 Buyer 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 Buyer.
“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 (REA)/ State Energy Accounts (SEA) 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 REA/ SEA 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 SPD 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 Buyer;
"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 Solar PV Power Projects” issued by the Ministry of Power vide Resolution dated 03.08.2017 including its amendment dated 15.06.2018 and "Guidelines for Setting up of Solar Manufacturing Plant linked with PPAs for Solar PV Power Plant" issued by Ministry of New and Renewable Energy vide OM No. 336/39/2017-NSM-Part(2) dated 20.04.2018 including its Amendments vide OM No. 336/39/2017-NSM-Part (2)/Pt dated 23.08.2018, 17.09.2018 and 28.09.2018;
"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) of ..... [Insert the name(s) of the state(s) in India, where the Power Project, Buyer and SPD are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of 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 SPD in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on SPD’s side of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;
“Intermediary Procurer”	shall mean Solar Energy Corporation of India Limited (SECI);

“Invoice” or “Bill”	shall mean either a Monthly Bill/ Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
“Joint Control”	shall 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 SPD, 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;
“Manufacturing Commercial Operation Date” or “MCOB”	shall mean the date on which all the Manufacturing Facilities (Ingots, Wafers, Cells, Modules) shall commence the Commercial Operation for the complete obligated manufacturing capacity based on the individual project, in line with the project definitions. For Thin Film facility, integrated manufacturing of modules shall start commercial production, for the complete obligated manufacturing capacity based on the individual project, in line with the project definitions;
“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;
“Package”	shall mean the cumulative capacity of Solar PV Project awarded to a successful Bidder, for which PPAs shall be executed in line with Sr. No. 24 of Amendment-I;
"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 SPD to SECI from a bank mentioned in Schedule 2 of this Agreement in the form attached hereto as Schedule 1;
“Pooling Substation/ Pooling Point”	means a point where more than one Solar power projects 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 SPD(s) to get connected to the ISTS substation. The voltage level for such common

	line shall be 220kV 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 33kV 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 SPD to obtain and furnish the meter reading jointly by the SPD and any competent authority (State Government or Central Government) (if applicable).
“Power Project” or “Solar Power Project”	shall mean the Solar 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 Buyer (Buyer- Buying Entity(ies) PSA) for selling the Solar power as per the provisions of Guidelines;
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 13 of this Agreement;
“Project”	shall mean the cumulative capacity comprising of 600MW of Solar Manufacturing Plant and 2GW (2000MW) of Solar PV Power Plant
“Project Capacity”	shall mean combination of (i) cumulative Solar Manufacturing Plant Capacity and (ii) the maximum AC capacity of the Project at the point of injection on which the Power Purchase Agreement has been signed.
“Project Commissioning”	shall mean combination of (i) MCOD of the Solar Manufacturing Plant of the allocated capacity as defined in the RfS documents including its Amendment and (ii) COD of Solar PV Power Plant;
"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;
“RfS Documents”	shall mean the bidding document issued by SECI including all attachments, clarifications and amendments thereof vide RfS no. SECI/C&P/RfS/5GW MANUFACTURING/P-1/052018 dated 25.05.2018;
“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” for Solar PV Power Plant	shall mean ..... [Insert Date that is twenty four (24) months/ thirty six (36) months from the effective date of PPA/ 31 <sup>st</sup> March’2022 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 Sub-section (1) of Section 83 of the Electricity Act 2003;
“SLDC”	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
“SLDC Charges”	shall mean the charges levied by the SLDC of the state wherein the Solar Power Project is located;
“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 SPD 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;
“Solar	shall mean integrated Solar Manufacturing Facility comprising of

Manufacturing Plant”	manufacturing of ingots, wafers, cells and modules;
“Solar PV Power Project” or “Solar PV Power Plant”	shall mean the Solar Photo Voltaic Power Project that uses sunlight for direct conversion into electricity through Photo Voltaic Technology;
“State Transmission Utility” or “STU”	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
"Tariff"	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-6 of this Agreement, Unit / Part Commissioning shall mean the Solar PV 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 Solar PV 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;

## 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 "Soaring-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, Soaring-up, reorganization, dissolution, arrangement, protection or relief of debtors;
  - 1.2.9 Words importing the singular shall include the plural and vice versa;
  - 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
  - 1.2.11 A Law shall be construed as a reference to such Law including its amendments or
- (Insert Project ID)

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 RfS documents including its Amendment and Clarifications will be integral part of PPA. PPA & RfS shall be read in harmonious manner.

1.2.19 The provisions of RfS Documents [including all clarifications and/ or amendments] shall always prevail over any other documents in case of contradiction.



## **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 days from issuance of LoA from issuance of Letter of Award to the SPD) and such date shall be referred to as the Effective Date.

### **2.2 *Term of Agreement***

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

2.2.2 The SPD is free to operate 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 Buyer or SPD terminates the Agreement, pursuant to Article 13 of this Agreement.

This agreement shall be co-terminate with manufacturing contract

### **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 SPD**

The SPD agrees and undertakes to duly perform and complete all of the following activities at SPD's own risk and cost by \_\_\_\_\_ [Enter the date as on 15 months or 27 months, as the case may be from issuance of Letter of Award (LoA) to the SPD] unless such completion is affected by any Force Majeure event, or if any of the activities is specifically waived in writing by SECI:

- a) The SPD shall make Project financing arrangements and provide necessary certificates to SECI in this regard;
- b) The SPD shall submit other requisite documents as indicated under clause no. 15.1, Page no. 3 to 5 of Annexure-I to Amendment-III of RfS documents.

The SPD shall submit to SECI the relevant documents as stated above, complying with the Conditions Subsequent, within by \_\_\_\_\_ [Enter the date as on 15 months or 27 months, as the case may be from issuance of Letter of Award to the SPD].

#### **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 SPD, terminate this Agreement and remove the Project from the list of the selected Projects by giving a notice to the SPD in writing of at least seven (7) days, unless the delay (subject to the conditions that SPD 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 SPD or caused due to a Force Majeure. Unless extended as per provisions of Article 3.2.2 of this Agreement in writing, the termination of the Agreement shall take effect upon the expiry of the 7th day of the above notice.

An extension, without any impact on the Scheduled Commissioning Date, can however be considered, on the sole request of SPD, on payment of Rs. 5000/ MW/ Day to SECI. Such extension charges are required to be paid to SECI in advance, for the period of extension required related to the capacity due for Financial Closure. In case of any delay in depositing this extension charge, SPD 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 SPD meeting the requirements of conditions subsequent and financial closure before the last date of such proposed delay period, the remaining amount deposited by the SPD 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 SPD, shall be returned to the SPD 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 SPD fails to commission the Contract Capacity by Scheduled Commissioning Date, the extension charges deposited by the SPD 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 SPD to fulfil any one or more of 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.
- 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 Guarantees**

- 3.3.1 The SPDs shall submit 03 (Three) separate Performance Bank Guarantees per Project (i.e. 600MW of Solar Manufacturing including 2GW Solar PV Power Plant) for values (i) INR 60 Crore and INR 6 Crore for Solar Manufacturing Plant and (ii) INR 400 Crore for Solar PV Power Plant 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 Schedule1.

All the PBGs amounting INR 60 Crore and INR 6 Crore (corresponding to Solar Manufacturing Plant) and INR 400 Crore (corresponding to Solar PV Power Plant) shall be submitted within 90 days of issuance of Letter of Award (LoA) or before signing of PPA, whichever is earlier.

The validities of all the PBGs amounting INR 60 Crore, INR 6 Crore and INR 400 Crore shall be until 51 months from the Effective Date of the Package-I PPAs. SPD shall extend the validity of PBGs as and when desired by SECI without any additional commercial implication to SECI.

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

3.3.3 If the SPD 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.

### **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. The PBG amounting INR 60 Crore submitted against Solar Manufacturing Plant shall be released within 03 (Three) Months upon MCOD (i.e. commencement of commercial operation as per the prescribed qualitative criteria as mentioned under Clause no. 47 of Amendment-I) of the entire obligated Solar Manufacturing Plant. The PBG amounting INR 6 Crore submitted against Solar Manufacturing Plant shall be released within 03 (Three) Months upon successful demonstration of production obligation as defined under Clause No. 47 of Amendment-I. Incase the MCOD of the entire obligated manufacturing capacity is achieved on or before the scheduled MCOD (i.e. 36 months from the date of issuance of LoA), the PBG amounting INR 400 Crore submitted against Solar PV Power Plant shall be released on pro rata basis within 03 (Three) Months upon Commissioning of Solar PV Projects within maximum time allowed for commissioning with tariff and PPA term reduction in line with the provisions of RfS documents including its amendments and clarifications..

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 *SPD's Obligations***

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

- a) 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; and
- b) designing, constructing, erecting, commissioning, completing and testing the Solar Manufacturing Plant in accordance with the applicable Law, the latest technology, the terms and conditions of RfS Documents and Prudent Utility Practices; and
- 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.
- c) 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;
- d) connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point;
- e) owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;
- f) (Applicable only incase the SPV of SPD executing the PPA) shall ensure that its shareholding in the SPV/ Project Company executing the PPA, shall not fall below 51% at any time prior to 1 (One) year from the last COD (MCOD/ COD for Solar PV Power Plant whichever is later), except with the prior approval of SECI. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/ Project Company executing the PPA, shall not fall below 51% at any time prior to 1 (one) year from last COD (MCOD/ COD for Solar PV Power Plant whichever is later), except with the prior approval of SECI. However, in case the Project is being set up by a listed Company, SECI reserves the right to take suitable action on case to case basis due to change in Controlling Shareholding;
- g) shall ensure that its promoters shall not cede control (Control shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors), till 1 (one) year from the COD, except with the prior approval of SECI. However, in case the Project is being set

up by a listed Company, SECI reserves the right to take suitable action on case to case basis;

h) In case of companies having multiple promoters (but none of the shareholders having more than 50% of voting rights and paid up share capital), it shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 01 (one) year after last COD (MCOD/ COD for Solar PV Power Plant whichever is later);

i) Any change in the shareholding after the expiry of 1 year from COD can be undertaken under intimation to SECI. Transfer of controlling shareholding of the company developing the project within the same group of companies will however be allowed after COD with the permission of SECI, subject to the condition that, the management control remains within the same group of companies;

j) 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 INR 10 Lakh per Project per Transaction as Facilitation Fee (non-refundable) shall be deposited by the developer to SECI;

k) Any change in controlling shareholding / shareholding pattern of the Bidding Company / Bidding Consortium by the Bidder / SPD in any legal proceedings instituted or initiated by the Bidder / SPD shall be deemed to be a change in controlling shareholding / shareholding pattern voluntarily undertaken by the Bidder / SPD;

l) fulfilling all obligations undertaken by the SPD under this Agreement.

m) 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.

n) The SPD 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 Solar Power and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the SPD 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 Solar Power contracted under this Agreement.

**4.2 *Information regarding Interconnection Facilities***

- 4.2.1 The SPD shall be required to obtain all information from the STU/ CTU/ concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the SPD's side of the Delivery Point to enable delivery of electricity at the Delivery Point. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the SPD at his own cost.
- 4.2.2 Penalties, fines and charges imposed by the CTU/ STU under any statute or regulation in relation to delay in commissioning of Project shall be payable by the SPD to the extent the delay is attributable to the SPD.
- 4.2.3 The responsibility of getting connectivity with the transmission system up to the Interconnection Point, will lie with the SPD. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the SPD at his own cost. The maintenance of Transmission system up to the designated point as per the terms and conditions of CTU/ STU shall be the responsibility of the SPD. All costs and charges including but not limited to the wheeling charges and losses up to and including at the Interconnection Point associated with this arrangement will also be borne by the SPD.
- 4.2.4 In case of Pooling substation, losses in the transmission line shall be apportioned among the SPDs who share such a Pooling arrangement, based on their monthly generation.
- 4.2.5 The arrangement of connectivity shall be made by the SPD 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 SPD. In case of any delay in connectivity to the Project and non- availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the SPD, provisions of Article 4.9 shall be applicable.

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

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



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

4.4.1 SECI, in any Contract Year except for the first year of operation, shall not be obliged to purchase any additional energy from the SPD beyond ..... Million kWh (MU). If for any Contract Year, it is found that the SPD has not been able to generate minimum energy of ..... Million kWh (MU) till the end of 10 years from the SCD and ..... Million kWh (MU) for the rest of the Term of the Agreement, on account of reasons solely attributable to the SPD, the non-compliance by SPD shall make the SPD 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). 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 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 SPD (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 penalty shall be as determined by the respective State Electricity Regulatory Commission of the corresponding Buying Entity/ any such Authority, and such penalty shall ensure that the Buying Entity(ies) is/are offset for all potential costs associated with low generation and supply of power under the PPA. However, the minimum compensation payable to SECI by the SPD shall be 25% (twenty-five percent) of the cost of this shortfall in energy terms, calculated at PPA tariff. This compensation shall not be applicable in events of Force Majeure identified under PPA with SECI affecting supply of solar power by SPD.

4.4.2 Any excess generation over and above as per Article 4.4.1, may be purchased by SECI at a tariff as per Article 9.4, provided Buying Entity consents to purchase such power. While the SPD would be free to install the DC solar field as per its design of required output, including its requirement of auxiliary consumption and to 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). The SPD shall be required to intimate the Buyer about the proposed excess quantum of energy likely to be generated from the Project within any Contract Year, at least 2 months prior to the proposed date of

commencement of excess generation. The Buyer shall be required to intimate its approval/ refusal to the SPD, for buying such excess generation not later than 1 month of receiving the above offer from the SPD. In the event the offer of the SPD is not accepted by the Buyer within the said period of 1 month, such right shall cease to exist and the SPD shall, at its sole discretion, may sell such excess power to any third party.

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

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 SPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

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

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 SPD or SECI/ Buying Entity(ies) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or SECI/Buying Entity(ies), or till such time such Event of Default is rectified by Buyer.

4.5.2 Void.

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 three (3) months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.

4.5.4 If the Parties have not agreed, within thirty (30) days after the affected Party's

performance has ceased to be affected by the relevant circumstance, on the time period by which the 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, 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 4.6.3.

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

- 4.6.1 The Project (both Solar Manufacturing Plant and Solar PV Power Plant) shall be fully commissioned in line with the milestones/ timelines indicated under clause nos. 15.A.1 and 15.B.1, Section-II, Instructions to Bidders (ITB) of the RfS Documents including its Amendment thereof. In this regard, a duly constituted committee will physically inspect and certify successful commissioning of the Project.

If the SPD is unable to commission either the Solar Manufacturing Plant or the Solar PV Power Project by the Scheduled Commissioning Date other than for the reasons specified in Article 4.5.1 and 4.5.2, the SPD 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:

**4.6.1.1 For Solar Manufacturing Plant**

- (a) Delay beyond the Scheduled MCOD upto (& including) 12 months from the date of Scheduled MCOD (i.e. 36 months from issuance of LoA): The PPA tariff for setting up of Solar PV Power Plant shall be reduced at the rate of INR 0.0005/ kWh per day of delay after MCOD until 12 months from scheduled MCOD. The revised reduced tariff shall be applicable w.e.f. the scheduled commissioning date of PPA. Any recovery, applicable on such cases shall be done by SECI. Such penalty will be levied on the complete Project capacity (2000 MW Solar Plant Capacity) wherein the delay is under consideration for respective manufacturing capacity (600 MW). Any recovery applicable for already commissioned capacity under the Project shall be done by SECI applicable from

the date COD on the individual Project basis along with interest equivalent to the applicable SBI 1 year MCLR rate on per day basis.

(b) Delay beyond 12 months from the date of Scheduled MCOD: the PBG submitted for the Manufacturing plant will be forfeited (INR 66 Crore cumulatively). Further, a duly constituted committee by SECI shall assess the status of the manufacturing facility and submit its report/ recommendations for further course of action. The committee may diagnose following course of actions including but not limited to:

(i) Forfeiture of the PBG (amounting INR 400 Crore) submitted against setting up of Solar PV Power Plant (ii) Further reduction in tariff or termination of whole PPA of Project under consideration. In case it is decided by the committee for the termination of PPA, then this termination clause will supersede any other clause in the tender documents & its amendments thereof, which may survive the PPA.

In addition to the MCOD, the manufacturing plant developed shall achieve the specified efficiency levels & annual production targets for initial 02 years from the MCOD .The Performance Bank Guarantee submitted against manufacturing shall also be linked towards faithful performance of this contractual obligations. In case of any default or failure in achieving so, the constituted committee may examine & recommend the further course of action including forfeiture of the Performance Bank Guarantee linked to the manufacturing facility.

#### 4.6.1.2 For Solar PV Power Project

(a) Delay beyond the Scheduled Commissioning Date upto (& including) the maximum time allowed for Commissioning (as applicable): In case commissioning of the Solar PV Projects is delayed beyond the SCD (as indicated under Clause no. 15.B.1 of RfS documents including its Amendment thereof), then the PPA Term will be reduced for the corresponding period of delay and the PPA tariff for setting up of Solar PV Power Plant shall be reduced at the rate of INR 0.0005/ kWh per day of delay until 12 months from scheduled commissioning date for such delayed capacity only. The revised reduced tariff shall be applicable for the capacity delayed beyond COD. This tariff reduction is in addition to the tariff reduction exercised on account of delays in the commissioning of manufacturing capacity.

Both reductions in the tariff (Manufacturing Capacity and Solar Plant) are mutually exclusive of each other and will be applicable independently.

- (b) In case, the COD of the Project is delayed beyond 12 months from the scheduled COD, the PPA will be terminated for the uncommissioned capacity & the PBG submitted for the Solar Power plant will be forfeited (INR 400 Crore) on pro rata basis.

Despite connectivity being ready, in case the commissioning is delayed beyond 31.03.2022, the SPD shall be liable to bear the applicable ISTS charges levied/ leivable on the Buying Entity. In such case, ISTS charges or the tariff reduction due to the delay in Solar Plant commissioning, whichever is higher will be applicable on the SPD. Both ISTS charges and tariff reduction on account of delay will not be levied simultaneously.

The bidder has to mandatorily indicate the proposed location for connectivity in the Covering Letter and same shall be submitted at the time of submission of bids in line with the provisions of RfS documents. The same shall be treated as bid documents and Force Majeure shall be applicable only incase of non-completion of ISTS evacuation capacity at the location indicated in the bid document.

- 4.6.2 The maximum time period allowed for MCOD of the full Solar Manufacturing Capacity with reduction in the fixed tariff shall be limited to 48 months from the date of issuance of LoA.
- 4.6.3 The maximum time period allowed for commissioning of the full Project Capacity of Solar PV Power Plant with reduction in the fixed tariff shall be limited to 36 months/ 48 months (*insert as applicable*) from the effective date of Package-I PPAs. In case, the Commissioning of the Project is delayed beyond 36 months/ 48 months (*insert as applicable*) from the effective date of Package-I PPAs, it shall be considered as an SPD Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced/ amended to the Project Capacity Commissioned within 36 months/ 48 months (*insert as applicable*) of the effective date of Package-I PPAs and the PPA for the balance Capacity will stand terminated and shall be reduced from the project capacity. The PBG submitted against Solar PV Power Plant (i.e. INR 400 Crore) shall be forfeited proportionately.

#### **4.7 Acceptance/Performance Test**

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

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

- 4.8.1 The SPD 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 Buyer and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the SPD at the site of the Power Project.
- 4.8.2 The third party may verify the construction works/ manufacturing plant/ operation of the Power Project being carried out by the SPD and if it is found that the construction works/ manufacturing plant/ operation of the Power Project is not as per the Prudent Utility Practices, it may seek clarifications from SPD or require the works to be stopped or to comply with the instructions of such third party.

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

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

#### **4.10 Generation compensation for Off-take constraints**

- 4.10.1** Generation Compensation in offtake constraint due to Transmission Infrastructure not complete/ ready (Transmission constraint): After the Scheduled Commissioning Date, subject to the submission of documentary evidences from the Competent Authority, if the plant is ready but the necessary power evacuation/ transmission infrastructure is not ready, for reasons not attributable to the SPD, leading to offtake constraint, the generation compensation shall be restricted to the following and there shall be no other claim, directly or indirectly against SECI:

<b>Transmission Constraint</b>	<b>Provision for Generation Compensation</b>
If the Project is ready but the necessary power evacuation/transmission infrastructure is not ready, leading to offtake constraint	a. The normative CUF of 19% (nineteen per cent) or committed CUF, whichever is lower, for the period of grid unavailability, shall be taken for the purpose of calculation of generation loss. Corresponding to this generation loss, the excess generation by the SPD in the succeeding 3 (three) Contract Years, shall be procured by SECI at the

	<p>PPA tariff so as to offset this loss.</p> <p>b. If the transmission delay is directly attributable to the organization building the transmission network and some penalty is imposed on him, then a part of that penalty may be utilized by SECI for compensating the generation loss.</p>
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However, it is clarified that if the project is ready for commissioning prior to the Scheduled Commissioning Date, but the offtake is constrained because of inadequate/incomplete power evacuation infrastructure, no compensation shall be permissible.

**4.10.2** Generation Compensation in offtake constraints due to Grid Unavailability:

During the operation of the plant, there can be some periods where the Project can generate power but due to temporary transmission unavailability, the power is not evacuated, for reasons not attributable to the Solar Power Developer. In such cases, subject to the submission of documentary evidences from the competent authority, the generation compensation shall be restricted 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>
<p>Grid unavailability in a contract year as defined in the PPA: (only period from 8 am to 6 pm to be counted):</p> <p style="text-align: center;">T h</p> <p>T h</p>	<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 Contract Year (kWh) = Total generation in the Contract Year (kWh) ÷ Total hours of generation in the Contract Year.</p>

e excess generation by the SPD equal to this generation loss shall be procured by SECI at the PPA tariff so as to offset this loss in the succeeding 3 (three) Contract Years.

**4.10.3** Offtake constraints due to Backdown: The Solar Power Developer and SECI shall follow the forecasting and scheduling process as per the regulations in this

regard by the Appropriate Commission. In the eventuality of backdown, subject to the submission of documentary evidences from the competent authority, the SPD shall be eligible for a minimum generation compensation, from SECI, restricted to the following and there shall be no other claim, directly or indirectly against SECI:.

Duration of Backdown	Provision for Generation Compensation
<p>Hours of Backdown during a monthly billing cycle.</p> <p>The Generation Compensation as calculated above, will be limited to the extent of shortfall in annual</p>	<p><b><i>Generation Compensation = 50% of [(Average Generation per hour during the month) X (number of backdown hours during the month)] X PPA tariff</i></b></p> <p>Where, Average Generation per hour during the month (kWh) = Total generation in the month (kWh) ÷ Total hours of generation in the month</p>

The SPD shall not be eligible for any compensation in case the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions.

The Generation Compensation shall be paid as part of the energy bill for the successive month after receipt of REA/ SEA/ JMR. No Trading Margin shall be applicable on the Generation Compensation as provided in Article 4.10.3 only.

It is hereby clarified that for the purpose of Article 4.10, “generation” shall mean scheduled energy based on Regional Energy Accounts (REA).



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

**5.1 *Synchronization, Commissioning and Commercial Operation***

- 5.1.1 The SPD shall give the concerned RLDC/ SLDC and Buyer 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 SPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.1.3 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 SPD at its generation facility of the Power Project at its own cost. The SPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned sub-station/ Grid System and checking/ verification is made by the concerned authorities of the Grid System.
- 5.1.4 The SPD 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 SPD 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 SPD shall commission the Project as detailed in "Schedule 6: Commissioning Procedure" within twenty four (24) Months/ thirty six (36) Months (as applicable) of the effective date of Package-I PPAs/ 31<sup>st</sup> March'2022, as the case may be. Declaration of COD/ UCOD shall only be done subject to the demonstration of the compliances as per Schedule-6 and subsequent upon the successful visit by the Commissioning Committee.

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

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

6.1.1 The SPD 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 SPD.

6.1.2 Not Used.

6.1.3 The SPD shall be responsible for any deviation from scheduling and for any resultant liabilities on account of charges for deviation as per applicable regulations. UI charges on this account shall be directly paid by the SPD.

6.1.4 Auxiliary power consumption will be treated as per the 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 SPD and Buyer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.
- 7.1.2 The SPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at SPD's side of Delivery Point.
- 7.1.3 In addition to ensuring compliance of the applicable codes, the SPD shall install Main & Check meters at the Delivery Point, along with Stand-by meter(s) as per the applicable regulations of the State where the Project is located.
- 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 Solar PV power plants will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the Project.
- 7.2.2 Online arrangement would have to be made by the SPD for submission of above data regularly for the entire period of this Power Purchase Agreement to the SLDC, RLDC, 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 SPD to Ministry of New and Renewable Energy/ SECI/ National Institute of Solar Energy through Buyer for entire period of PPA.

## **ARTICLE 8: INSURANCES**

### **8.1 *Insurance***

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

### **8.3 *Effect on liability of Buyer***

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

## **ARTICLE 9: APPLICABLE TARIFF**

- 9.1 The SPD shall be entitled to receive the Tariff of Rs. \_\_\_\_\_ / kWh [Insert the Tariff discovered through the bidding process conducted by SECI], fixed for the entire term of this Agreement, 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 account. In case of early part-commissioning, till SCD, subject to the consent for such purchase by the Buying Utility, SECI may purchase the generation @ 75% (seventy-five per cent) of the PPA tariff. However, in case the entire Project capacity is commissioned prior to SCD, SECI may purchase energy supplied till SCD at [Insert Tariff]/kWh. In both the cases of early part or full commissioning of the Project, the Applicable Tariff for the commissioned Project shall be \_\_\_\_\_[Insert Tariff]/kWh from and including the SCD.
- 9.2 Any excess generation over and above energy specified in Article 4.4.1, will be purchased by SECI at a tariff of 75% of 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 SPD will not be allowed to sell energy generated prior to SCD or excess energy during any Contract Year to any other entity other than SECI (unless refused by SECI).
- 9.3 Tariff Reduction shall be applicable in case of any delay as mentioned under clause nos. 4.6.1.1 and 4.6.1.2 of this PPA.

## **ARTICLE 10: BILLING AND PAYMENT**

### **10.1 General**

10.1.1 NOT APPLICABLE 10.1.2 From the commencement of supply of power, SECI shall pay to the SPD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with Article 9. All Tariff Payments by Buyer shall be in Indian Rupees.

10.1.3 The SPD 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 SPD shall issue to SECI a signed Monthly Bill/ Supplementary Bill for the immediately preceding Month after issuance of REA of the Applicable Month, along with all relevant documents (payments made by SPD for drawal of power, payment of reactive energy charges, Metering charges or any other charges as per guidelines of SERC/ CERC, if applicable).

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 REA 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 open access and scheduling for transmission of the power from the Delivery Points to the receiving substation(s) of the Buying Entity(ies) if any, shall be borne by the SPD.

### **10.3 Payment of Monthly Bills**

10.3.1 Buyer shall pay the amount payable under the Monthly Bill/ Supplementary Bill by the Due Date to such account of the SPD, as shall have been previously notified by the SPD in accordance with Article 10.3.2 iii) 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 Buyer, if any, from the SPD, 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 SPD shall open a bank account (the “SPD’s Designated Account”) for all Tariff Payments (including Supplementary Bills) to be made by Buyer to the SPD, and notify Buyer of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. Buyer shall also designate a bank account at New Delhi (“Buyer’s Designated Account”) for payments to be made by the SPD to Buyer, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. Buyer and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD’s Designated Account or Buyer’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 Buyer beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable to the SPD 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 Buyer under the PSA from the Buying Entity(ies). The Late Payment Surcharge shall be claimed by the SPD 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 SPD would be allowed to raise 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 SPD to Buyer in the following manner.

- a) A Rebate of 2% shall be payable to the Buyer for the payments made within a period of 10 (ten) days of the presentation of hard copy of Bill along with required supporting documents at SECI office.
- b) Any payments made after ten (10) days of the date of presentation of hard

copy of the Bill along with the required supporting documents at SECI office 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 Subject to opening and maintenance of Letter of Credit by the Buying Entities (as per terms of Buyer-Buying Entity PSA) in favour of the Buyer, the Buyer shall provide to the SPD, 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 SPD 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, Buyer through a scheduled bank open a Letter of Credit in favour of the SPD, 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 SPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

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



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

10.4.6 Buyer 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 Buyer/ SPD.

10.4.8 If Buyer fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from Buyer, 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 SPD and;
- ii) a certificate from the SPD 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 Buyer does not dispute a Monthly Bill or a Supplementary Bill raised by the SPD within fifteen (15) days of receiving such Bill shall be taken as conclusive.

10.5.2 If the Buyer 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 SPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the SPD shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

10.5.4 If the SPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the Buyer 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 Buyer under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the Buyer and SPD shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

10.5.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.5.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

10.5.7 For the avoidance of doubt, it is clarified the despite a Dispute regarding an invoice, 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 SPD and Buyer shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the SPD shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

#### **10.7 *Payment of Supplementary Bill***

10.7.1 SPD may raise a ("Supplementary Bill") for payment on account of:

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

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

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

### **11.2 Affected Party**

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

### **11.3 Force Majeure**

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

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

- e) ISTS Charges Waiver is presently allowed for projects commissioned upto March'2022. However, if the project's commissioning go beyond March'2022 on account of non-completion at that time of already indicated ISTS evacuation capacity in the bid document, then the delay due to this would be treated as Force Majeure, and the power projects under this bid shall be eligible for extension for that period and shall also be eligible for ISTS Charges Waiver for commissioning even beyond March'2022. Incase it is established that the SPD has complied with the complete application formalities and has adhered to the applicable Procedure in this regard as notified by the CERC/ CTU within 03 months (for Package-I PPAs) and within 06 months (for Package-II PPAs) from the date of issuance of LoA, then the delay due to this will be treated as Force Majeure with a condition that the SPD shall commission the Solar PV Power Plant maximum within 15 (Fifteen) days from the date of completion of ISTS evacuation capacity. Incase of non-commissioning of the Solar PV Projects maximum within 15 (Fifteen) days from the date of completion of ISTS evacuation capacity, the penalty shall be levied as mentioned in the Rfs documents including its Amendments and clarifications.

#### **11.4 Force Majeure Exclusions**

- 11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:
- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
  - b. Delay in the performance of any contractor, sub-contractor or their agents ;
  - c. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
  - d. Strikes at the facilities of the Affected Party;
  - e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
  - f. Non-performance caused by, or connected with, the Affected Party's:
    - i. Negligent or intentional acts, errors or omissions;

- ii. Failure to comply with an Indian Law; or
  - iii. Breach of, or default under this Agreement.
- g. Change in location for connectivity of the Projects, which differ from the details provided in the Covering Letter. Further, non-commissioning of the Solar PV Projects maximum within 15 (Fifteen) days from the date of completion of ISTS evacuation capacity.

#### **11.5 *Notification of Force Majeure Event***

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

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

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

#### **11.6 *Duty to Perform and Duty to Mitigate***

11.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 11.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

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

11.7.1 Subject to this Article 11:

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

## **ARTICLE 12: CHANGE IN LAW**

### **12.1 *Definitions***

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

12.1.1 "Change in Law" means the occurrence of any of the following events after the last date of bid submission, resulting into any additional recurring/ non-recurring expenditure by the SPD or any income to the SPD:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the SPD;
- any statutory change in tax structure, i.e. change in rates of taxes, duties and cess, or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power from the Project by the SPD and has direct effect on the Project, shall be treated as per the terms of this Agreement.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the SPD, or (ii) any change on account of regulatory measures by the Appropriate Commission.

### **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 *SPD Event of Default***

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

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

if

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

b) the SPD transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer

- is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or

- is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;

(ii) if (a) the SPD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the SPD, or (c) the SPD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the SPD will not be a SPD Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the

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

- (iii) the SPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from Buyer in this regard; or
- (iv) except where due to any Buyer's failure to comply with its material obligations, the SPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPD within thirty (30) days of receipt of first notice in this regard given by Buyer.
- (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 SPD.
- (vii) except where due to any Buyer's failure to comply with its material obligations, the SPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SPD within thirty (30) days of receipt of first notice in this regard given by Buyer.

### **13.2 *Buyer Event of Default***

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

- (i) Buyer 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 SPD is unable to recover the amount outstanding to the SPD through the Letter of Credit,
- (ii) Buyer repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the SPD in this regard; or
- (iii) except where due to any SPD's failure to comply with its obligations, Buyer is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by Buyer within

sixty (60) days of receipt of notice in this regard from the SPD to Buyer;  
or

if

- Buyer 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 Buyer, or
  - Buyer 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 Buyer Event of Default, where such dissolution or liquidation of Buyer or Buyer 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 Buyer and expressly assumes all obligations of Buyer 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 Buyer.

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

13.3.1 Upon the occurrence and continuation of any SPD Event of Default under Article 13.1, Buyer shall have the right to deliver to the SPD, with a copy to the representative of the lenders to the SPD with whom the SPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (Buyer 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 Buyer Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall

apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

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

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

13.3.5 Subject to the terms of this Agreement, upon occurrence of a SPD Event of Default under this Agreement, the lenders in concurrence with the Buying Entity and SECI, may exercise their rights, if any, under Financing Agreements, to seek substitution of the SPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the SPD and performing the obligations of the SPD. However, in the event the lenders are unable to substitute the defaulting SPD within the stipulated period, 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 13.3.3 by an amendment or novation of the PPA in favour of the selectee. The SPD 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 per transaction as facilitation fee (non-refundable) shall be deposited by the SPD to SECI.

13.3.7 In the event the lenders are unable to substitute the defaulting SPD 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 Buyer Event of Default***

13.4.1 Upon the occurrence and continuation of any Buyer Event of Default specified in Article 13.2, the SPD shall have the right to deliver to Buyer, a SPD Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

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

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

13.4.4 After a period of two hundred ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or 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 SPD shall, subject to the prior consent of the SPD, novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the SPD, or if no offer of novation is made by SECI within the stipulated period, then the SPD may terminate the PPA and at its 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 150% (one hundred and fifty per cent) of the adjusted equity or, (ii) pay to the SPD, 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 SPD.

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 SPD. 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 *Termination due to Force Majeure***

13.5.1 If the Force Majeure Event or its effects continue to be present beyond a period as specified in Article 4.5.3, either Party shall have the right to cause termination of the Agreement. In such an event this Agreement shall terminate on the date of such Termination Notice without any further liability to either Party from the date of such termination.

## **ARTICLE 14: LIABILITY AND INDEMNIFICATION**

### **14.1 *Indemnity***

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

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

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

- a) any and all third party claims against the SPD, 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 SPD from third party claims arising by reason of a breach by Buying Entity(ies) of any of its obligations. Buyer shall incorporate appropriate covenants in the PSA for the above obligations of Buying Entity(ies). In so far as indemnity to SPD is concerned, Buying Entity(ies) shall be the indemnifying party and not Buyer.

### **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 before the Arbitrator 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 Arbitrator 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 non-



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

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

14.4.1 Except as expressly provided in this Agreement, neither the SPD nor Buyer 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 SPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 Buyer shall have no recourse against any officer, director or shareholder of the SPD or any Affiliate of the SPD or any of its officers, directors or shareholders for such claims excluded under this Article. The SPD shall have no recourse against any officer, director or shareholder of Buyer or 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 *Buyer's Liability***

14.5.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and accept that the Buyer is an Intermediary Company to purchase and re-sell 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 Buyer under this Agreement shall be subject to the ability of the Buyer 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 SPD under this Agreement for supply of Solar Power to the extent of the Contracted Capacity shall not be on a back to back basis. SECI shall discharge the tariff payment obligation in terms of the provision 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 SPD has any claim against the Buyer in regard to the performance of any obligation of the Buyer under this Agreement or enforcement of any right of the SPD against the Buyer under this Agreement, the same shall be subject to the ability of the Buyer 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 re-sale 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 SPD's rights and obligations under this Agreement in favour of the lenders to the SPD, if required under the Financing Agreements.

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

The enforcement of the rights and obligation between the SPD and 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. 10 Lakh per Transaction as Facilitation Fee (non-refundable) shall be deposited by the SPD to Buyer. Provided further that, such consent shall not be withheld by the SPD if Buyer 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 SPD to SECI.

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

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

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

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

16.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in 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 (a) arises from a 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, or (b) relates to any matter agreed to be referred to the Appropriate Commission, such Dispute 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) Buyer 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 Dispute Resolution through Arbitration**

- i) If the Dispute arising as per Article 16.2.1 is not amicably resolved & such dispute is not covered in Article 16.3.1(i), such Dispute shall be resolved by arbitration under the provisions of the Electricity Act, 2003 (as amended from time to time) as under:

Proceedings as well as appointment of the arbitrator(s) shall be carried out by the Appropriate Commissions under the Electricity Act 2003 as amended from time to time. As stipulated by the said Electricity Act 2003, the said arbitration will take place as per the provisions of the Arbitration and Conciliation Act 1996 as amended from time to time.

- ii) The place of arbitration shall be Delhi. The language of the arbitration shall be English.
- iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- iv) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.
- v) The award shall be of majority decision.
- vi) Buyer shall be entitled to co-opt Buying Entity(ies) and / or the lenders (if any) as a supporting party in such arbitration proceedings.

**16.4 *Parties to Perform Obligations***

16.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 16.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

## **ARTICLE 17: MISCELLANEOUS PROVISIONS**

### **17.1 *Amendment***

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

### **17.2 *Third Party Beneficiaries***

17.2.1 This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

### **17.3 *Waiver***

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

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

### **17.4 *Confidentiality***

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

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

### **17.5 *Severability***

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

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

**17.6 Notices**

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

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

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

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

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

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

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



**17.7 *Language***

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

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

**17.8 *Restriction of Shareholders / Owners' Liability***

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

**17.9 *Taxes and Duties***

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

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

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

**17.10 *Independent Entity***

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

17.10.2 Subject to the provisions of the Agreement, the SPD shall be solely responsible for the manner in which its obligations under this Agreement are to be

performed. All employees and representatives of the SPD or contractors engaged by the SPD in connection with the performance of the Agreement shall be under the complete control of the SPD and shall not be deemed to be employees, representatives, contractors of Buyer and nothing contained in the Agreement or in any agreement or contract awarded by the SPD shall be construed to create any contractual relationship between any such employees, representatives or contractors and Buyer.

**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 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. RfS issued by SECI including its Amendments and Clarifications
- ii. the terms and conditions of this Agreement including the Agreement for Setting up of Solar Manufacturing Plant;
- iii. applicable Law, rules and regulations framed thereunder; and
- iv. the Grid Code;

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  
[Buyer]

For and on behalf of  
[SPD]

Name, Designation and Address

Name, Designation and Address

\_\_\_\_\_  
Signature with seal

\_\_\_\_\_  
Signature with seal

Witness:

Witness:

1.

1.

2.

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.)

Reference: .....

Bank Guarantee No.: .....

Date: .....

In consideration of the \_\_\_\_\_ [*Insert name of the Bidder*] (hereinafter referred to as 'selected Solar 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*], for setting up of Solar Manufacturing Plant (**or**) Project of the capacity of ..... MW, at ..... [*Insert name of the place*], for supply of power there from on long term basis, in response to the RfS dated..... issued by Solar Energy Corporation of India Limited (hereinafter referred to as SECI) and SECI considering such response to the RfS of ..... [*Insert name of the Bidder*] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Solar Manufacturing Plant (**or**) Solar PV Power Project of the Solar Power Developer and issuing Letter of Intent No \_\_\_\_\_ to \_\_\_\_\_ (*Insert Name of selected Solar Power Developer*) as per terms of RfS and the same having been accepted by the selected SPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Solar Power Developer or a Project Company, M/s \_\_\_\_\_ {a Special Purpose Vehicle (SPV) formed for this purpose}, if applicable]. As per the terms of the RfS, the \_\_\_\_\_ [*Insert name & address of Bank*] hereby agrees unequivocally, irrevocably and unconditionally to pay to SECI at [*Insert Name of the Place from the address of the SECI*] forthwith on demand in writing from SECI or any Officer authorised by it in this behalf, any amount up to and not exceeding Rupees \_\_\_\_\_ [Total Value] only, on behalf of M/s \_\_\_\_\_ [*Insert name of the selected Solar Power Developer/ Project Company*].

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

Our liability under this Guarantee is restricted to INR \_\_\_\_\_ (Indian Rupees \_\_\_\_\_ Only).

Our Guarantee shall remain in force until..... SECI shall be entitled to invoke this Guarantee till .....

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

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

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by \_\_\_\_\_ [*Insert name of the selected Solar 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 Solar Power Developer/ Project Company, to make any claim against or any demand on the selected Solar Power Developer/ Project Company or to give any notice to the selected Solar 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 Solar 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  
(Insert Project ID)

in force until ..... We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if SECI serves upon us a written claim or demand.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Power of Attorney No. \_\_\_\_\_

For

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

E-mail ID of the bank:

Banker's Stamp and Full Address.

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

Witness:

1. ....

Signature

Name and Address

2. ....

Signature

Name and Address

Notes:

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

***SCHEDULE 2: List of Banks for Issuance of Performance Bank Guarantee***

<b>1. SCHEDULED COMMERCIAL BANKS</b>	<b>3. FOREIGN BANKS</b>
<b>SBI AND ASSOCIATES</b>	24. A B BANK
1. State Bank of India	25. SHINHAN BANK
2. State Bank of Indore	26. CTBC BANK Co. Ltd.
<b>NATIONALISED BANKS</b>	27. MIZUHO BANK, Ltd.
1. Allahabad Bank	28. Krung Thai Bank Public Company Ltd.
2. Andhra Bank	29. Antwerp Diamond Bank N.V
3. Bank of India	30. Australia And New Zealand Banking Group Limited
4. Bank of Maharashtra	31. Sumitomo Mitsui Banking Corporation
5. Canara Bank	32. American Express Banking Corporation
6. Central Bank of India	33. Commonwealth Bank of Australia
7. Corporation Bank	34. Credit Suisse A.G
8. Dena Bank	35. FirstRand Bank Ltd.
9. Indian Bank	36. Industrial And Commercial Bank of China Ltd.
10. Indian Overseas Bank	37. JSC VTB Bank
11. Oriental Bank of Commerce	38. National Australia Bank
12. Punjab National Bank	39. Rabobank International
13. Punjab & Sind Bank	40. Sberbank
14. Syndicate Bank	41. USB AG
15. Union Bank of India	42. United Overseas Bank Ltd.
16. United Bank of India	43. Westpac Banking Corporation
17. UCO Bank	44. Woori Bank
18. Vijaya Bank	45. Doha Bank Qsc

19. Bank of Baroda	
20. EXIM Bank	<b>4. SCHEDULED PRIVATE BANKS</b>
<b>2. OTHER PUBLIC SECTOR BANKS</b>	1. Federal Bank Ltd.
1. IDBI Bank Ltd.	2. ING Vysya Bank Ltd.
<b>3. FOREIGN BANKS</b>	3. Axis Bank Ltd.
1. Bank of America NA	4. ICICI Bank Ltd.
2. Bank of Tokyo Mitsubishi UFJ Ltd.	5. HDFC Bank Ltd.
3. BNP Paribas	6. Yes Bank Ltd.
4. Calyon Bank	7. Kotak Mahindra Bank
5. Citi Bank N.A.	8. IndusInd Bank Ltd.
6. Deutsche Bank A.G	9. Karur Vysya Bank
7. The HongKong and Shanghai Banking Corpn. Ltd.	10. Catholic Syrian Bank
8. Standard Chartered Bank	11. City Union Bank
9. SocieteGenerale	12. Dhanlaxmi Bank. Ltd
10. Barclays Bank	13. Jammu & Kashmir Bank Ltd
11. Royal Bank of Scotland	14. Karnataka Bank Ltd
12. Bank of Nova Scotia	15. Laxmi Vilas Bank Ltd
13. Development Bank of Singapore (DBS Bank Ltd.)	16. Nainital Bank Ltd
14. Crédit Agricole Corporate and Investment Bank	17. Ratnakar Bank Ltd
15. Abu Dhabi Commercial Bank Ltd	18. South Indian bank Ltd
16. Bank of Bahrain & Kuwait B.S.C	19. Tamilnadu Mercantile Bank Ltd
17. Mashreq Bank p.s.c	20. DCB Bank Ltd
18. HSBC Bank Oman S.A.O.G	21. IDFC Bank
19. Sonali Bank Ltd.	

20. J. P. Morgan Chase Bank, National Association	
21. State Bank of Mauritius Ltd.	
22. BANK of CEYLON	
23. BANK INTERNASIONAL INDONESIA	

**Note:** In addition to the banks listed above, the bidder can furnish the Bank Guarantees towards EMD/ PBG issued by any Scheduled Commercial Bank as per RBI.



**SCHEDULE 3: COMMISSIONING PROCEDURE:****❖ Capacity of Solar PV Projects:**

i) The Project configuration shall be allowed as per the following matrix:

Sr. No.	Solar PV Project Capacity Bid	Minimum DC Arrays Capacity to be installed	Minimum Rated Inverter Capacity*	Maximum AC Capacity Limit at Delivery point
1	50 MW	50 MW	50 MW	50 MW
2	100 MW	100 MW	100 MW	100 MW
3	150 MW	150 MW	150 MW	150 MW
4	200 MW	200 MW	200 MW	200 MW
5	250 MW	250 MW	250 MW	250 MW

\*In case the rated inverter capacity is mentioned in kVA, the IEC test certificate declaring the power factor of the Inverter/PCU at rated power has to be submitted and the power factor shall be multiplied by the kVA rating to calculate the rated capacity of the inverter in kW.

- ii) The SPD shall be required to demonstrate compliances with the “*Technical Requirements for Grid Connected Solar PV Power Plants*” as mentioned in the RfS and Guidelines.
- iii) Higher DC capacity arrays can also be allowed, subject to the condition that the AC capacity limit as mentioned in (i) above for scheduling at the Delivery Point as per Article 4.4 “Right to Contracted Capacity & Energy” of the PPA is complied with.
- iv) For commissioning of the Project, cumulative capacity of DC arrays and cumulative capacity of the inverters installed shall be considered. In case of part commissioning of the Project, it shall be required to have the DC Arrays Capacity and inverters capacity be installed not less than the proposed part commissioning capacity.
- v) If generation at any time exceeds the maximum permissible AC capacity at delivery point, the excess generation during that period may not be considered under PPA.

**Commissioning Procedure**

The Solar PV Project will be declared as commissioned when all equipment as per rated project capacity has been installed and energy from the Project has flown into the grid, which will be verified by a committee/ agency identified by SECI/ MNRE to witness the Commissioning of the Project.

Following is the chronology of the procedure to be followed for commissioning of the Project.

- i) SPDs shall give to the concerned RLDC/ SLDC, State Nodal Agency (SNA) and SECI at least thirty (30) days advance written notice, of the date on which it intends to synchronize the Power Project to the Grid System. The SPD shall be solely responsible for any delay or non-receipt of the notice by the concerned agencies, which may in turn affect the Commissioning Schedule of the Project. Early Commissioning of a Solar Project prior to the SCD is permitted on acceptance of power by SECI. In order to facilitate this, SPDs shall inform the concerned RLDC/ SLDC and SECI well in advance, which is not less than 90 days prior to the date on which it intends to synchronize the Power Project to the Grid System.
- ii) Not more than 7 days prior to the proposed commissioning date, the SPD shall give the final written notice to SECI, SNA and CTU requiring the commissioning committee/ agency to visit the site to witness commissioning of the project. Following documents are required to be submitted by the SPD, physically in the office of SECI along with the above notice, duly stamped and signed by the Authorized Signatory (scanned copies may also be allowed):
  1. Covering Letter
  2. Board resolution for authorized signatory for signing the documents related to commissioning of the Project and witnessing the commissioning.
  3. Installation report duly signed by the authorized signatory as per Appendix-2. The SPD is advised to take due care in furnishing such Installation Report. Discrepancy (if any) and observed by SECI, may be construed as misrepresentation of information by the SPD and SECI may take appropriate action as per this Agreement.
  4. Plant Layout, Plant (AC & DC) SLD, along with Inverter-wise module details.
  5. CEI/ CEIG (as applicable) report containing approval for all the components, including modules, inverters, transformers and protection system, along with all annexures/ attachments. It would be the responsibility of the SPD to obtain the certificate.
  6. Connectivity and Long Term Access, along with Transmission Agreement.
  7. Synchronization Certificate issued by CTU for ascertaining injection of power into grid.

8. Certificate from the SPPD confirming 100% payment towards Upfront Development Charges (UDC) to the SPPD and NOC for the same (if applicable)
- iii) After the submission/ upload of the documents by SPD, SECI shall verify the documents and intimate/ reply with remarks. In case any additional supporting/ revised documents are asked by SECI, the same have to be submitted by the SPD.
- iv) Based on the submission of the above documents by the SPD, SECI shall intimate to the SPD about its readiness to visit the project site to witness the commissioning and shall notify the Commissioning Committee/ Agency which shall visit the Project site to witness the commissioning of the Project. In case of a multi-agency Committee, the SPD shall ensure the presence of all the members of the Committee constituted to witness the commissioning, on the said date.
- v) The Commissioning Committee/ Agency shall visit the Project site to verify the technical compliance on site as per the information submitted by the SPD and to witness the commissioning. In case the committee finds discrepancy/ deviation from the information submitted by the SPD during on site verification, the same shall be recorded in the minutes of meeting of the Committee/ Agency. SECI shall decide the next date of visit of the Committee/ Agency upon rectification of the discrepancies by the SPD.
- vi) On the date of site-visit, the SPD shall be required to demonstrate that equipment of rated capacity as per table given at S.No. (i) has been installed, all the inverters of rated capacity are operating and energy from the project has flown into the grid.
- vii) Joint Meter Reading (JMR) shall be taken at Delivery Point and Pooling Substation (if applicable)/ plant premise on the date of site visit by the commissioning committee. This shall include information of respective meters installed at delivery/ interconnection point and pooling substation/plant premises.
- viii) In case the Project meets the requirements as per the provisions of the RfS as verified by the Commissioning Committee/ Agency witnessing the commissioning, the Project shall be declared as having been commissioned as on the date of synchronization with the grid, as indicated in the Synchronization Certificate. The date of Commissioning of the Project may be indicated in the Minutes of Meeting of the Committee/ recommendation of the Agency visiting the Project. Any other observation contrary to the above, shall be clearly indicated in the Minutes/ recommendations and further decision on commissioning of the Project shall be taken by SECI in this regard.
- ix) Subsequent to the visit of the Commissioning Committee/ Agency to the Project site, the SPD shall submit the following documents in hard copy/ scanned form, in order to fulfil the requirements for issuance of Commissioning Certificate:
- a. Minutes of Meeting of the Commissioning Committee/ recommendations of the Agency which has witnessed the commissioning of the Project.

- b. Relevant documents from SLDC/ RLDC acknowledging successful data communication between plant end and SLDC/ RLDC.
  - c. Invoices against purchase of the solar modules, Inverters/ PCUs and DC cables along with the summary sheet containing the list of all the invoices, including details and number of items.
  - d. All supporting documents towards meeting the technical compliance along with datasheet/ warranty certificates/ contract agreement etc. as mentioned in Annexure-A of the RfS).
  - e. Snap shots of the plant, including but not limited to, solar PV modules, all central inverters (showing instantaneous and total generation of a particular date), switchyards\switchgears, Power Transformers, metering (as per applicable regulations) at delivery point etc. along with the Installation Report.
- x) In case of any deviations recorded by the Commissioning Committee/ Agency which had prevented the declaration of commissioning of the Project as on the date of synchronization of the Project, the SPD shall be required to submit to SECI, the necessary documents towards rectification of the deviations observed. Upon successful verification of the required documents, the fresh date of visit of the Commissioning Committee/Agency to the Project, shall be notified by SECI. If the Commissioning Committee/Agency visiting the Project finds the deviations earlier noted having been suitably rectified by the SPD, the date of Commissioning of the Project in this case, shall be the actual date of visit of the Commissioning Committee/ Agency, else, the entire process shall be repeated until the observed deviations are rectified by the SPD to the satisfaction of the Commissioning Committee/ Agency visiting the Project.
- xi) Based on the documents as per (ix) above and in line with the Minutes of Meeting of the Commissioning Committee/ recommendations of the Agency, SECI shall issue the recommendation to the respective State Nodal Agency (SNA) for issuance of Commissioning Certificate of the Project as per Appendix-3. The Commissioning Certificate shall declare the Project commissioned as on the date as intimated by SECI to the SNA.
- xii) Subsequent to commissioning, the SPD shall provide the SCADA login details to SECI for online real time data monitoring of the Project. The SPD may be required to push the required plant related data to SECI designated server in xml/ json formats.

**Installation Report**

*(To be provided by SPD and to be submitted at most 7 days prior to proposed commissioning date, which shall be verified by Commissioning Committee)*

Sr. No.	Capacity of the Project (MW)	
	Capacity already commissioned (MW)	
	Capacity proposed to be commissioned (MW)	
I.	Technology used (Mono/ Multi Crystalline/ thin film/ Others; please specify along with capacity of each type)	
II.	Type of Tilt (Fixed Tilt/ Seasonal Tilt/ Tracking)	
III.	Rating of the each module (Wp)	
IV.	Number of modules installed of each type (along with Serial Nos. of all the modules installed)	
V.	Make of Module(s) installed of each type (including name of the Supplier and country of origin)	
VI.	Number of PCUs/ Inverters installed (along with Serial Nos. of all the PCUs/ Inverters installed)	
VII.	Make of the PCUs/ Inverters (including name of supplier and country of origin)	
IX.	Rating of PCUs/ Inverters	
X.	Date of installation of full capacity (as per capacity proposed to be commissioned)	
	PV arrays	
	PCUs/ Inverters	
	Transformers	

**Sample Part Commissioning/ Full Commissioning Certificate**  
**of Solar PV Power Project**

*(To be issued by the State Nodal Agency)*

This is to certify that <M/s> having its registered office at ----- has successfully commissioned Capacity < MW > out of total <MW> installed Capacity on (Date) of their Solar PV Power Generation Project at Village -----, Tehsil/Taluka ----- & Dist. -----

The Commissioning Certificate has been issued on the basis of the following documents enclosed:

- (i) Installation Report including Snap shots of the Project from various angles
- (ii) Electrical Inspector Report
- (iii) Synchronization Certificate

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

Between

**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”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assignees) as a Party of the first part.

And

**[Insert name of the Buying Utility]**, a company incorporated under the Companies Act 1956 or the Companies Act 2013 as applicable, having its registered office at [insert the place] (hereinafter referred to as “**[insert buying utility name]**”, or “Buying Utility” or “End Procurer”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assignees) as a Party of the second part.

SECI and Buying Utility are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

Whereas:

- A. As part of the Government of India’s target to achieve a cumulative installed capacity of 100 GW by the year 2022, SECI has been instrumental in developing grid connected solar power capacity in India and plays the role of the Intermediary Procurer under the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects issued by Ministry of Power vide Resolution dated 03.08.2017 including its amendment, vide Resolution dated 15.06.2018 and Guidelines issued by MNRE for "Setting up of Solar Manufacturing Plant linked with PPAs for Solar PV Power Plant" vide OM No. 336/39/2017-NSM-Part (2) dated 20.04.2018 including its Amendments vide OM No. 336/39/2017-NSM-Part (2)/Pt dated 23.08.2018, OM No. 336/39/2017-NSM-Part (2)/Pt dated 17.09.2018 and OM No. 336/39/2017-NSM-Part (2)/Pt dated 28.09.2018.
- B. SECI has signed/ will sign Power Purchase Agreements (PPAs) with the Solar Power Developers selected under the RfS mentioned herein below (hereinafter referred to as “SPDs”) for procurement of \_\_\_\_\_ MW Solar Power or the total capacity of projects selected under the provisions of Request for Selection (RfS)(**SECI/C&P/RfS/5GW MANUFACTURING/P-1/052018 dated 25.05.2018**) based on the above Guidelines, if it is less than 2000 MW, on a long term basis, as indicated at Schedule-1 and Schedule-2 respectively.
- C. Buying Utility has agreed to purchase Solar power from the SECI under the above RfS and accordingly, SECI has agreed to sign Power Purchase Agreements (PPAs) with Solar Power developers (hereinafter referred to as “SPDs”) for procurement of .....[Insert capacity] Solar Power on a long term basis, as indicated at Schedule-1 & 2.
- D. Copy of the PPA(s) shall be submitted to Buying Utility within thirty (30) days of the signing of the PPA(s) and such PPA(s) shall become integral part of this Agreement (SECI-Buying Utility PSA).
- E. Pursuant to the aforesaid objective, the Parties are desirous of entering into a Power Sale Agreement (“PSA”) i.e. a definitive agreement, regarding purchase of Power from the Project. Pending execution of the necessary agreements and other relevant documents in relation to the transaction contemplated herein, the Parties wish to execute this PSA



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setting out the respective obligations of the Parties and the steps necessary to complete the transactions contemplated herein.

- F. To establish the commitment of Buying Entity to purchase and SECI to sell power from the Project, the Parties have entered into this Agreement.
- G. A Bidder which has been selected as successful Bidder based on this RfS can also execute the Project through a Special Purpose Vehicle (SPV) i.e. a Project Company especially incorporated to execute the project. SECI shall enter into PPA with Project Company as per the terms and condition of RfS.
- H. The Parties have accordingly agreed to enter into this PSA to record their understanding and agreement with regard to the purchase of power to be generated from the Project and in respect to the matters incidental or ancillary thereto, upon the terms and conditions set out herein below.

**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:**

**1 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, Indian Electricity Grid Code 2010 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"	Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
"Agreement" or "Power Sale Agreement" or "PSA"	shall mean this Power Sale Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	shall mean the Central Electricity Regulatory Commission referred to in sub- section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to SECI and (insert name of the Buying Utility), a day other than Sunday or a statutory holiday, on which the PSU banks remain open for business in the state of Delhi and (insert State of the Buying Utility);
"Buying Utilities"	Shall Mean DISCOM/ State Utilities/ Bulk consumer who have signed the agreement with SECI for purchase of Power;
"Capacity Utilisation 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;

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“Central Transmission Utility” or “CTU”	Shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;
“Change in Law”	shall have the meaning ascribed thereto in Article 8 of this Agreement;
“Commercial Operation Date”	shall mean the date of issuance of Commissioning certificate for the Solar Power Project. In case of part commissioning, COD will be declared only for that part of project capacity (if applicable);
“Commissioning” or “Project 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 Guidelines/PPA;
“Competent Court of Law”	shall mean any court or tribunal or any similar judicial or quasi- judicial body in Delhi that has jurisdiction to adjudicate upon issues relating to this Agreement;
“Consultation Period”	shall mean the period of sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a SECI Preliminary Default Notice or Buying Utility Preliminary Default Notice as provided in Article 9 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 commencement of supply of power 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 first Contract Year shall start from Commercial Operation Date of the Project and 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] of Solar Power contracted with Buying Entity for sale of such power by SECI to Buying Utility at the Delivery Point from the Solar Power Project;
"Delivery/ Interconnection Point"	shall mean the point at 220kV or above where the power from the Solar power project(s) will be injected into the ISTS. Metering shall be done at this interconnection point where the power will be injected into the ISTS i.e. the Delivery point. For

	interconnection with grid and metering, the developers shall abide by the relevant CERC/ SERC Regulations, Grid Code, and Central Electricity Authority Regulations as amended from time to time. 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 charges etc.) as notified by the competent authority/ regulator shall be borne by the SPD and beyond the Delivery Point all charges and losses as notified by the competent authority/ regulator from time to time shall be borne by the Buying Utilities. In case it is paid by SECI on behalf of Buying Utilities/ SPD, the same shall be recovered from the Buying Utilities/ SPD (as applicable);
"Dispute"	shall mean any dispute or difference of any kind between SECI and the Buying Utility 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 12 of this Agreement;
"Due Date"	shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by Buying Entity 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 Buying Entity;
"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 thereunder 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;
"Event of Default"	shall mean the events as defined in Article 9 of this Agreement;
"Expiry Date"	Unless mutually extended by the Parties, it shall mean the date

	occurring as on twenty five (25 years from the Scheduled Commissioning Date (i.e. _____) as identified in the SECI-SPD PPA ;
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 7 of this Agreement;
"Grid Code" / "IEGC" or "State Grid Code"	shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act 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;
"Guidelines: "Scheme"	or shall mean the "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" issued by the Ministry of Power vide Resolution dated 03.08.2017 including its amendment dated 15.06.2018 and "Guidelines for Setting up of Solar Manufacturing Plant linked with PPAs for Solar PV Power Plant" issued by Ministry of New and Renewable Energy vide OM No. 336/39/2017-NSM-Part(2) dated 20.04.2018 including its Amendments vide OM No. 336/39/2017-NSM-Part (2)/Pt dated 23.08.2018, 17.09.2018 and 28.09.2018;
"Incremental Receivables"	shall mean the amount of receivables, in excess of the amounts which have already been charged or agreed to be charged in favour of the parties by way of a legally binding agreement, executed prior to the Effective Date;
"Indian Governmental Instrumentality"	shall mean the Government of India, Governments of State(s), where the Power Projects, SECI and Buying Utility are located and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of 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;
"Interconnection Facilities"	shall mean the facilities on SPD's side of the Delivery Point for sending and metering the electrical output in accordance with this Agreement and, subject to Article 4, the Metering System required for supply of power ;

"Intermediary Procurer"	shall mean Solar Energy Corporation of India Limited;
"Invoice" or "Bill"	shall mean either a Monthly Invoice, Monthly Bill or a Supplementary Invoice /Supplementary Bill by any of the Parties;
"Late Payment Surcharge"	shall have the meaning ascribed thereto in Article 6.3.3 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 Commission;
"Letter of Credit" or "L/C"	shall have the meaning ascribed thereto in Article 6.4 of this Agreement;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Open Access"	shall have the same meaning as provided in the Electricity Act 2003 as amended from time to time;
"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 6.4 of this Agreement;
"Pooling Substation/ Pooling Point"	means a point where more than one solar power projects 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 developer(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.
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 9 of this Agreement;
“Project” or “Power Project”	Shall mean the Solar power generation facility as per Schedule-I having separate points of injection into the grid at interconnection/ metering point at ISTS substation or in case of sharing of transmission lines, by separate injection at pooling point. Each project must also have a separate boundary, control systems and metering;
“Project Capacity”	shall mean the maximum AC capacity of the Project at the point of injection on which the Power Sale Agreement has been signed;
“RBI”	shall mean the Reserve Bank of India;
“RLDC”	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
“Rebate”	shall have the same meaning as ascribed thereto in Article 6.3.4 of this Agreement;
"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”	shall mean date as on twenty four (24)/ thirty six (36) months/ 31 <sup>st</sup> March’2022 (as applicable) from the effective date of the SECI-SPD Package-I PPAs;
"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 Sub-section (1) of Section 83 of the Electricity Act 2003;
“SLDC”	shall mean State Load Dispatch 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 any of the relevant SLDCs on the Buying Utility;

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“SECI”	shall mean Solar Energy Corporation of India Limited;
“SECI-SPD PPA”	shall mean the power purchase agreement signed between SECI and SPD for procurement of Solar Power by SECI from SPD and annexed hereto as Schedule 1& 2 of this Agreement;
“State Transmission Utility” or “STU”	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
“Solar Photovoltaic” or “Solar PV Power Project”	shall mean the solar photovoltaic project that uses sunlight for direct conversion into electricity and that is being set up by the SPD to provide Solar Power to SECI;
“Solar Power”	shall mean power generated from the Solar Photovoltaic Power Project;
"Tariff"	shall have the same meaning as provided for in Article 5 of this Agreement;
“Tariff Payments”	shall mean the payments to be made under Monthly Bills as referred to in Article 6 and the relevant Supplementary Bills;
“Termination Notice”	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 9 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
“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 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;



## 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 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 “Soaring-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, soaring-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 only if agreed to between the parties;
- 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;

**2 ARTICLE 2: TERM OF AGREEMENT**

**2.1. Effective Date**

- 2.1.1 This Agreement shall come into effect from the date of its execution by both the Parties and such date shall be referred to as the Effective Date.

**2.2. Term of Agreement**

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

**2.3. Early Termination**

- 2.3.1 This Agreement shall terminate before the Expiry Date:

I. if either SECI or Buying Utility terminates this Agreement, pursuant to Article 9 of this Agreement; or

II. If any SECI-SPD PPA gets terminated, the capacity under this Agreement shall automatically be reduced but only to the extent of that particular SECI-SPD PPA capacity.

**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 liquidated damages 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 7 (Force Majeure), Article 9 (Events of Default and Termination), Article 10 (Liability and Indemnification), Article 12 (Governing Law and Dispute Resolution), Article 13 (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.

**3 ARTICLE 3: SUPPLY OF POWER TO BUYING ENTITY**

**3.1. Obligations of Buying Utility:**

i. Buying Utility undertakes that it shall:-

- (a) Ensure off take of the available capacity from the Unit Commercial Operation Date (UCOD) or Scheduled Commissioning Date (SCD) of the Project.
- (b) Ensure availability of the interconnection facility and evacuation of power from the CTU-STU interface of Buying Entity's state periphery from the Unit Commercial Operation Date (UCOD) or Scheduled Commissioning Date (SCD) of the Project.
- (c) Be responsible for payment of the transmission related charges and applicable RLDC/ SLDC Charges, limited to the charges applicable to the Contracted Capacity of Buying Entity under this Agreement.
- d) Adoption of tariff to applicable commission
- (d) Make payment of the Monthly Bill/Supplementary Bill by the Due Date.
- (e) Open and maintain Payment Security Mechanism as per Article 6.4 for the entire Term of the Agreement.
- (f) Arrange for required consent/ NOC from STU/ SLDC/ concerned agencies for availing open access/ scheduling of the power.
- (g) Fulfil all the obligations undertaken by Buying Entity under this Agreement.

Delay or failure by the Buying Utility to fulfil the obligations as required under this Article 3.1 shall not relieve Buying Utility from the Tariff payment obligations to SECI which shall commence from the date of supply of power by SPD..

**3.2. Charges**

- 3.2.1 As per applicable regulation(s) of the Appropriate Commission(s), all charges pertaining to open access, CTU charges, scheduling charges (if any) and any other charges from injection/ delivery point to the receiving substations(s) of Buying Utility if any, shall be directly paid or reimbursed by the Buying Utility. Invoicing for all transmission related charges shall be done through Supplementary Bills.
- 3.2.2 SECI shall neither be liable for obtaining the open access nor for any payments to be made for such open access to the concerned STU/ CTU/ any other Transmission Utility by the Buying Utility.

**3.3. Not Used Losses**

- 3.3.1 The Buying Utility shall be liable to bear all the losses including transmission losses in respect of the power evacuated from the Delivery Points to its receiving substation(s).

#### **4      *ARTICLE 4: METERING***

##### **4.1. Metering**

- 4.1.1 The metering arrangements for metering the electrical energy supplied at the SPD Delivery Point shall be as per the provisions identified in the concerned SECI-SPD PPA. The metering arrangement shall comply with the norms of SERC/ CERC/ CEA as applicable.
- 4.1.2 The energy details obtained from Energy Accounts shall be provided to the Buying Utility by SECI along with Monthly Bill validating the total energy for which the Monthly Bill is generated.
- 4.1.3 Energy Accounts shall be binding on both the Parties for billing and payment purposes.

##### **4.2. Energy Accounting & Scheduling**

- 4.2.1 The scheduling and energy accounting of solar power shall be as per the provisions of the SECI-SPD PPA and Grid Code.
- 4.2.2 The SPD shall be responsible for deviations made by it from the dispatch schedule and for any resultant liabilities on the account of charges for deviation as per applicable regulations
- 4.2.3 SPD shall be responsible for any deviation related to scheduling and actual generation.

**5 ARTICLE 5: APPLICABLE TARIFF**

- 5.1.1 From SCD and subject to the provision of the Article 6.7, the Buying Entity shall pay the fixed tariff of Rs. ....../kWh (insert the highest Tariff as per SECI-SPD PPA) plus trading margin of Rs. 0.07/ kWh fixed up to commissioning of the cumulative awarded capacity/ accepted cumulative capacity by SECI under the RfS. However, in case of any reduction in tariff in line with the terms of the PPA, same shall be passed on to the Buying Entity.
- 5.1.2 Weighted average tariff as per schedule-I plus trading margin trading margin of Rs 0.07 per kWh (Rupees Seven Paisa per kWh) shall be applicable upon Commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI under the RfS for balance term of this Agreement for the energy supplied as per provisions of this Agreement.
- 5.1.3 Subject to the Article 6.4.10, any damages/ dues recovered by the SECI by encashing the Performance Bank Guarantee, upon default of the SPD under the SECI-SPD PPA, shall be passed on by SECI to the Payment Security Fund maintained by the Buying Entity.
- 5.1.4 As per provisions of PPA, the SPDs are permitted for full commissioning as well as part commissioning of the Project even prior to the SCD (as per the provisions of the RfS). In cases of early part-commissioning, till SCD, whichever is earlier, the Buying Entity shall purchase the generation till SCD, at 75% (seventy-five per cent) of the Tariff as per Article 5.1.1 plus trading margin of **Rs.0.07/kWh, (Rupees Seven Paisa per kWh)**. However, in case the entire Project capacity is commissioned prior to SCD, the Buying Entity shall purchase at tariff as per Article 5.1.1.
- 5.1.5 Any excess generation over and above energy specified in Article 6.8.3, may be purchased at a 75% of the tariff as mentioned in Article 5.1.1 and/ or 5.1.2.

**6 ARTICLE 6: BILLING AND PAYMENT**

**6.1. General**

- 6.1.1 From the UCOD/ COD of the Project, the Buying Utility shall pay to SECI the monthly Tariff Payments, on or before the Due Date, in accordance with Tariff as specified in Article 5. All Tariff Payments by the Buying Utility shall be in Indian Rupees.

**6.2. Delivery and Content of Monthly Bills**

- 6.2.1 SECI shall issue to the Buying Utility a signed Monthly Bill on the 1<sup>st</sup> Business Day of the next Month.
- 6.2.2 The Monthly Bill prepared as detailed in Schedule-3 of the PSA, shall include the following;
- i) Provisional Bill for Solar Power Supplied based on energy details of Article no. 6.8.3;
  - ii) Adjustments against the Provisional Bill(s) based on Energy Accounts for the Solar Power Supplied in the Month(s) preceding to the previous month(s);
  - iii) Any other adjustments to cover open access related charges and any other prior-period adjustments;
  - iv) Late Payment Surcharge, if any; and
  - v) Taxes, Duties, Levies etc. as applicable.

**6.3. Payment of Monthly Bills**

- 6.3.1 The Buying Utility shall pay the amount payable under the Monthly Bill on the Due Date to such account of SECI, as shall have been previously notified to the Buying Utility in accordance with Article 6.3.2 below.
- 6.3.2 SECI shall open a bank account at **New Delhi** (“SECI’s Designated Account”) for all Tariff Payments to be made by the Buying Utility to SECI, and notify the Buying Utility of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Buying Utility shall also designate a bank account at **[insert the place]** (the “Buying Utility’s Designated Account”) for payments to be made by SECI to the Buying Utility, if any, and notify SECI of the details of such account ninety (90) Days before the dispatch of the first Monthly Bill. SECI and the Buying Utility shall instruct their respective bankers to make all payments under this Agreement to the Buying Utility’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.
- 6.3.3 **Late Payment Surcharge**  
In the event of delay in payment of a Monthly Bill by the Buying Utility, within 30 days beyond its Due Date, a Late Payment Surcharge shall be payable by the Buying Utility to SECI at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by SECI through the next Monthly Bill.
- 6.3.4 **Rebate**  
For payment of any Bill on or before Due Date, the Rebate shall be paid by SECI in the following manner.
- a. A rebate of 2% shall be payable to the Buying Utility for the payments made within a period of three (3) days of the presentation of Bill through e-mail.
  - b. Any payments made beyond a period of three (3) days of the date of presentation of Bill through e-mail up to the due date shall be allowed a rebate of 1%.
  - c. No rebate shall be payable on the Bills raised on account of taxes, duties, cess etc.

#### **6.4. Payment Security Mechanism**

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

- 6.4.1 The Buying Utility shall provide to SECI, in respect of payment of its Monthly Bills, an unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Buying Utility, which may be drawn upon by SECI in accordance with this Article. The Buying Utility shall provide SECI draft of the Letter of Credit proposed to be provided to SECI two (2) months before the Scheduled Commissioning Date.
- 6.4.2 Not later than one (1) Month before the Start of Supply, the Buying Utility shall through a scheduled bank at **[insert the place]** open a Letter of Credit in favour of SECI, to be made operative at least 15 days 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 reviewed for every six (6) months, and revised w.e.f. April and Sept for an amount equal to:
- i) for the first Contract Year, equal to 3 months of the estimated average monthly billing;
  - ii) for each subsequent Contract Year, equal to 3 months of the average of the monthly Tariff Payments of the previous Contract Year.
- 6.4.3 Provided that SECI shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawal in a Month.
- 6.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 6.4.2 due to any reason whatsoever, the Buying Utility shall restore such shortfall within seven (7) days from the occurrence of such shortfall.
- 6.4.5 The Buying Utility shall cause the scheduled bank issuing the Letter of Credit to intimate SECI, in writing regarding establishing of such irrevocable Letter of Credit and of any changes therein.
- 6.4.6 The Buying Utility shall ensure that the Letter of Credit shall be renewed not later than thirty (30) days prior to its expiry.
- 6.4.7 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Buying Utility.
- 6.4.8 If the Buying Utility fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 6.6.1 and 6.6.2, SECI may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Buying Utility, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
- i) a copy of the Monthly Bill which has remained unpaid by the Buying Utility;



- ii) a certificate from SECI 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;

#### **6.4.9 State Government Guarantee**

The Buying Utility shall extend the State Government Guarantee, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation if any. [for the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges]. SECI shall ensure that upon invoking this guarantee, it shall at once, pass on the same to the SPD(s), to the extent the payments to the SPD(s) in terms of the PPA are due.

#### **6.4.10 Payment Security Fund**

In addition to provisions contained in Article 6.4 (a) and 6.4.9 above, the Buying Utility may also choose to provide Payment Security Fund, which shall be suitable to support payment of at least 3 (three) months' billing of all the Projects tied up with such fund.

It is hereby clarified that the State Government guarantee shall be invoked only after the SECI has been unable to recover its dues under the PSA by means of the Letter of Credit and the Payment Security Fund.

### **6.5. Third Party Sales by SECI**

- 6.4 6.5.1 Notwithstanding anything to the contrary contained in this Agreement, SECI shall be entitled to but not obligated to regulate supply of Solar Power of the Buying Utility in case of Default in making payment by the 15<sup>th</sup> day after the Due Date of the Buying Utility. SECI shall issue the Notice for Regulation of Power Supply on the date above and shall give a notice of 15 days to start the regulation on the 16<sup>th</sup> day thereafter.
- 6.5.3 Regulation of power supply would be on pro rata basis i.e., in the ratio of amount due and unpaid to total amount due against the relevant Monthly Bill.
- 6.5.4 In order to avoid any doubts, it is illustrated that:
- 6.5.5 In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, SECI would have a right to regulate and sell Buying Utility's allocation of the solar power to third parties to the extent of 40% (i.e.  $10/25 \times 100$ ). SECI/SPD shall have the right to divert the Solar Power or part thereof and sell it to any third party namely;
  - i) Any consumer, subject to applicable Law; or
  - ii) Any licensee under the Act;SECI shall request the concerned SLDC/ RLDC to divert such power to third party as it may consider appropriate.
- 6.5.6 Provided that such sale of power to third party shall not absolve the Buying Utility from its obligation to pay in full to SECI for the solar power as per Schedule 3 of this Agreement and any other outstanding payment liability of the Buying Utility as per this Agreement.

- 6.5.7 The amount realized from the diversion and sale of power to third party over and above the Applicable Tariff, any charges including open access charges and other costs shall be adjusted first against the pending liability of the Buying Utility. Deficit if any shall be made good by the Buying Utility.
- 6.5.8 Sales to any third party shall cease and regular supply of electricity to the Buying Utility shall commence and be restored within thirty (30) days from the date of clearing all outstanding dues payable to SECI for the Solar Power under this Agreement.
- 6.5.9 Further, the liability of the Buying Utility to make the Tariff Payments to SECI as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available by SPD for usage by the Buying Utility.

#### **6.6. Disputed Bill**

- 6.6.1 If the Buying Utility does not dispute a Monthly Bill raised by the other Party within fifteen (15) days of receiving, such Bill shall be taken as conclusive.
- 6.6.2 If the Buying Utility disputes the amount payable under a Monthly Bill it shall pay 95% 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 against disputed amount 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.
- 6.6.3 If SECI agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.6.2, SECI shall make appropriate adjustment in 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 Buying Utility and up to and including the date on which such payment has been received as refund.
- 6.6.4 If SECI does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice ("Bill Disagreement Notice") to the disputing Party 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.
- 6.6.5 Upon receipt of the Bill Disagreement Notice by the Buying Utility under Article 6.6.4, authorized representative(s) or a director of the board of directors/ member of board of the Buying Utility and SECI shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- 6.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 6.6.4, the matter shall be referred to Dispute resolution in accordance with Article 12.
- 6.6.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Buying Utility shall, without prejudice to its right to Dispute, be under an obligation to make payment, of 95% of the invoice amount in the Monthly Bill

### **6.7. Quarterly and Annual Reconciliation**

- 6.7.1 The Parties acknowledge that all payments made against Monthly Bills shall be subject to quarterly reconciliation and adjustment, if any, within thirty (30) days of the end of the quarter of each Contract Year and annual reconciliation and adjustment, if any, at the end of each Contract Year within thirty (30) days thereof to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement. Late Payment Surcharge shall not be applicable on SECI from commencement of supply to commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI.
- 6.7.2 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 Buying Utility and SECI shall jointly sign such reconciliation statement. After signing of a reconciliation statement, the SECI shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Except for the Tariff adjustment made during the period from commencement of supply to commissioning of the cumulative awarded capacity/accepted cumulative capacity by SECI, 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 12.

### **6.8. Renewable purchase obligation**

- 6.8.1 The Buying Utility may identify the energy procured from the SPD Delivery Point to meet its renewable purchase obligations (as mandated by the Appropriate Commission). Provided that the renewable purchase obligation of the Buying Utility shall be considered to be met by the Buying Utility only if there is no payment default for such energy procured by the Buying Utility and a certificate to such effect shall be provided by SECI to the Buying Utility.
- 6.8.2 SECI shall provide such certificate identifying the quantum of solar energy supplied by SECI and being met by the Buying Utility for each year within thirty (30) days after the end of such year.
- 6.8.3 Buying Utility, in any Contract Year, shall not be obliged to purchase any additional energy from the SECI/ SPDs beyond ..... Million kWh (MUs). If for any Contract Year, it is found that the SPDs have not been able to generate minimum energy of ..... Million kWh (MUs) till the end of 10 years from SCD and \_\_\_\_\_ Million kWh (MU) for the rest of the term of the Agreement, as per the PPA signed with SECI, on account of reasons solely attributable to the SPD, the noncompliance by the SPD shall make the SPD liable to pay the compensation and shall duly pay such compensation to the SECI to enable the SECI to remit the amount to the Buying Utility. The lower limit will, however be relaxable by SECI to the extent of grid non-availability for evacuation which is beyond the control of the SPD (as certified by the SLDC/ RLDC). The amount of such compensation shall be as determined by the Appropriate Commission/ Authority, and such compensation shall ensure that the Buying Utility is offset for all potential costs associated with low generation and supply of power under the PSA. However, the minimum compensation payable to SECI by the SPD

- shall be 25% (twenty-five percent) of the cost of this shortfall in energy terms, calculated at the PPA tariff, which shall in turn, be remitted to the Buying Utility.
- 6.8.4 Notwithstanding Article 6.8.3, the SECI/ SPD is free to sell such power to any third party which is in excess of the quantum of power as per Article 6.8.3 of this Agreement from SCD. Any power which is in excess of the quantum of power agreed to be supplied under this Agreement shall be offered to the Buying Utility at the tariff as per Article 5.1.5, and in case the Buying Utility does not accept the same, SECI shall take appropriate action as per PPA.
- 6.8.5 The compensation as per Article 6.8.3 shall be applied to the amount of shortfall in generation during the year. However, this compensation shall not be applicable in events of Force Majeure identified under this Agreement affecting supply of solar power by SECI/SPD.

## **6.9 Payment of Supplementary Bill**

6.9.1 SECI may raise a "Supplementary Bill" for payment on account of:

- i) Change in Law as provided in Article 8, or
- ii) Other charges, if any.

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

6.9.2 Buying Entity shall remit all amounts due under a Supplementary Bill raised by the SECI to the SECI's Designated Account by the Due Date.

6.9.3 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 6.3.3.

## **6.10 Offtake constraints due to Transmission Infrastructure /Grid Unavailability & Backdown**

6.10.1 Generation Compensation in offtake constraint due to Transmission Infrastructure not complete/ ready (Transmission constraint): After the Scheduled Commissioning Date, if the plant is ready but the necessary power evacuation/ transmission infrastructure is not ready, for reasons not attributable to the SPD, leading to offtake constraint, the provision for generation compensation is as follows:

<b>Transmission Constraint</b>	<b>Provision for Generation Compensation</b>
If the Project is ready but the necessary power evacuation/transmission infrastructure is not ready, leading to offtake constraint	a. The normative CUF of 19% (nineteen per cent) or committed CUF, whichever is lower, for the period of grid unavailability, shall be taken for the purpose of calculation of generation loss. Corresponding to this generation loss, the excess generation by the SPD in the succeeding 3 (three) Contract Years, shall be procured by the Buying Entity at the PSA tariff so as to offset this loss.

However, it is clarified that if the project is ready for commissioning prior to the Scheduled Commissioning Date, but the offtake is constrained because of inadequate/incomplete power evacuation infrastructure, no compensation shall be permissible.

- 6.10.2 Generation Compensation in offtake constraints due to Grid Unavailability: During the operation of the Project, 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 SPD. In such cases the generation compensation shall be addressed in following manner:

<b>Duration of Grid unavailability</b>	<b>Provision for Generation Compensation</b>
Grid unavailability in a contract year as defined in the PPA: (only period from 8 am to 6 pm to be counted):	<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 Contract Year (kWh) = Total generation in the Contract Year (kWh) ÷ Total hours of generation in the Contract Year.</p> <p>The excess generation by the SPD equal to this generation loss shall be procured by the Buying Utility at the PSA tariff so as to offset this loss in the succeeding 3 (three) Contract Years.</p>

- 6.10.3 Offtake constraints due to Backdown: The SPD and SECI shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. In the eventuality of a backdown, except for the cases where the backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions, the Solar Power Developers shall be eligible for a minimum generation compensation, from SECI, in the manner detailed below.

<b>Duration of Backdown</b>	<b>Provision for Generation Compensation</b>
Hours of Backdown during a monthly billing cycle.	<p><b><i>Minimum Generation Compensation = 50% of [(Average Generation per hour during the month) × (number of backdown hours during the month)] X PPA Tariff</i></b></p>

	Where, Average Generation per hour during the month (kWh) = Total generation in the month (kWh) ÷ Total hours of generation in the month.
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. No trading margin shall be applicable on the Generation Compensation provided as per Article 6.10.3 only. The Generation Compensation is to be paid as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA).

## **7     *ARTICLE 7: FORCE MAJEURE***

### **7.1. Definitions**

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

### **7.2. Affected Party**

7.2.1 An affected Party means SECI or the Buying Utility whose performance has been adversely affected by an event of Force Majeure.

### **7.3. Force Majeure**

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

- a) Act of God, including, but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, resulting in evacuation of power being disrupted from the Delivery Points; or
- b) Explosion, accident or breakage of transmission facilities to deliver power from the Delivery Points to the receiving substation(s); or
- c) 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 making the performance of obligations as specified herein as impossible; or
- d) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.
- e) An event of force majeure identified under SECI-SPD PPA thereby affecting supply of power by SPD.
- f) An event of force majeure affecting the concerned STU/CTU/ any other transmission utility, as the case may be, thereby affecting the evacuation of power from the Delivery Points by the Buying Utility.
- g) ISTS Charges Waiver is presently allowed for projects commissioned upto March'2022. However, if the project's commissioning go beyond March'2022 on account of non-completion at that time of already indicated ISTS evacuation capacity in the bid document, then the delay due to this would be treated as Force Majeure, and the power projects under this bid shall be eligible for extension for that period and shall also be eligible for ISTS Charges Waiver for commissioning even beyond March'2022. Incase it is established that the SPD has complied with the complete application formalities and has adhered to the applicable Procedure in this regard as notified by the CERC/ CTU within 03 months (for Package-I PPAs) and within 06 months (for Package-II PPAs) from the date of issuance of LoA, then the delay due to this will be treated as Force Majeure with a condition that the SPD shall commission the Solar PV Power Plant maximum within 15 (Fifteen) days from the date of completion of ISTS evacuation capacity. Incase of non-commissioning of the Solar PV Projects maximum within 15 (Fifteen) days from the date of completion of

ISTS evacuation capacity, the penalty shall be levied as mentioned in the RfS issued by SECI.

#### **7.4. Force Majeure Exclusions**

- 7.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:
- a. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
  - b. Strikes at the facilities of the Affected Party;
  - c. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
  - d. Non-performance caused by, or connected with, the Affected Party's:
    - i. Negligent or intentional acts, errors or omissions; or
    - ii. Failure to comply with an Indian Law; or
    - iii. Breach of, or default under this Agreement.
  - e. Change in location of the Projects which will differ from the details provided in the Covering Letter. Further, non-commissioning of the Solar PV Projects maximum within 15 (Fifteen) days from the date of completion of ISTS evacuation capacity.

#### **7.5. Notification of Force Majeure Event**

- 7.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than 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 restoration of communications, but not later than one (1) day after such reinstatement.

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

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

#### **7.6. Duty to Perform and Duty to Mitigate**

- 7.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 7.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

#### **7.7. Available Relief for a Force Majeure Event**



7.7.1 Subject to this Article 7:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement 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 as specified under this Agreement;
- (c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable for the period 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.

## **8      *ARTICLE 8: CHANGE IN LAW***

### **8.1. Definitions**

In this Article 8, the following terms shall have the following meanings:

8.1.1 “Change in Law” means the occurrence of any of the following events after the last date of bid submission resulting into any additional recurring/ non-recurring expenditure by SECI/SPD or any income to SECI/SPD:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Buying Utility;
- any statutory change in tax structure, i.e. change in rates of taxes, duties and cess, or introduction of any new tax made applicable for setting up of Solar Power Project and supply of power from the Project by the SPD and has direct effect on the Project, shall be treated as per the terms of this Agreement;

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of SECI/SPD (if applicable), or (ii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.

### **8.2. Relief for Change in Law**

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

8.2.2 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.

## **9      *ARTICLE 9: EVENTS OF DEFAULT AND TERMINATION***

### **9.1. Buying Utility Event of Default**

9.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a Buying Utility Event of Default:

- (i) Any amount, subject to Article 6.6 remains outstanding beyond a period of ninety (90) days after the Due Date and SECI is unable to recover the amount outstanding from the Buying Utility through the Letter of Credit; or
- (ii) Buying Utility fails to off-take power from the Delivery Point for a continuous period of one year..
- (iii) if (a) the Buying Utility 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 Buying Utility, or (c) the Buying Utility 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 Buying Utility will not be a Buying Utility Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the Buying Utility and expressly assumes all obligations of the Buying Utility under this Agreement and is in a position to perform them; or
- (iv) the Buying Utility 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
- (v) except where due to any SECI's failure to comply with its material obligations, the Buying Utility is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the Buying Utility within thirty (30) days of receipt of first notice in this regard given by SECI.
- (vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Buying Utility.

### **9.2. SECI Event of Default**

9.2.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event, shall constitute a SECI's Event of Default:

- (i) SECI fails to supply power to the Delivery Points for a continuous period of one year.
- (ii) if (a) the 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 thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the SECI, or (c) the SECI 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 SECI will not be a SECI's Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the SECI and expressly assumes all obligations of the SECI under this Agreement and is in a position to perform them; or

- (iii) the SECI 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 SECI is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the SECI within thirty (30) days of receipt of first notice in this regard given by the Buying Utility.
- (v) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the SECI

### **9.3. Procedure for Event of Default**

- 9.3.1 Upon the occurrence and continuation of any Event of Default under Article 9.1 & 9.2, the Party affected by such occurrence shall have the right to deliver the notice to the other Party, stating its intention to terminate this Agreement (Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 9.3.2 Following the issue of Preliminary Default Notice, the Consultation Period of sixty (60) 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 have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 9.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 9.3.4 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 Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Party may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the other Party.
- 9.3.5 Subject to the occurrence and continuation of default by as contained under Article 9.1.1 or Article 9.2.1 and expiry of time period as per Article 9.3.4,
  - a) Subject to the prior consent of the SECI, the Buying Utility shall novate its part of the PSA to any third party, including its Affiliates within the period of 210 days beyond the period as per Article 9.3.4,
  - b) In the event the aforesaid novation is not acceptable to the SECI, or if no offer of novation is made by the defaulting Buying Utility within the stipulated period as per Article 9.3.5.1, then the SECI may terminate the PSA and at its discretion require the defaulting Buying Utility to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 150% (one hundred and fifty per cent) of the adjusted equity as

detailed in the SECI-SPD PPA or, (ii) pay to the SPD/SECI(as applicable), 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 SPD.

#### **9.4. Termination due to Force Majeure**

- 9.4.1 If the Force Majeure Event or its effects continue to be present beyond a period of twelve (12) months; either Party shall have the right to cause termination of the Agreement. In such an event this Agreement shall terminate on the date of such Termination Notice without any further liability to either Party from the date of such termination.

#### **9.5. Termination of back to back agreements**

In case of termination of SECI- SPD PPA, this Agreement shall automatically be of reduced capacity but only to the extent of that particular SECI-SPD PPA capacity. Provided that in case of such termination, any pending monetary liabilities of either Party shall survive the termination of this Agreement. In the event of termination of PPA/PSA due to default of Buying Utility, any damages or charges payable to the STU/ CTU, for the connectivity of the plant, shall be borne by the Buying Utility.

#### **9.6 Specific Performance of the Agreement**

- 9.6.1 The Parties acknowledge that a breach of the obligations contained herein would result in injuries. The parties hereby also agree that this PPA is specifically enforceable at the instance of either Party.
- 9.6.2 Subject to Applicable Law and as granted by the court of appropriate jurisdiction, Parties acknowledge that either party shall be entitled to seek specific performance of this Agreement in the event of a breach of the obligations or the terms and conditions contained herein.
- 9.6.3 Further, Parties hereby agree that nothing mentioned herein under this Agreement shall be taken to mean or construe that any penalty or damages shall be adequate compensation for the breach of the obligations or the terms & conditions contained herein.

## **10     *ARTICLE 10: LIABILITY AND INDEMNIFICATION***

### **10.1. Indemnity**

10.1.1 The Buying Utility shall indemnify, defend and hold SECI/ SPD harmless against:

- a) any and all third party claims against SECI/ SPD 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 Buying Utility 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/ SPD from third party claims arising by reason of breach by the Buying Utility of any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by SECI/ SPD, for which specific remedies have been provided for under this Agreement)

10.1.2 SECI shall cause the SPD to indemnify, defend and hold Buying Entity harmless against:

- a) any and all third party claims against Buying Entity, 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 SPD 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 Buying Entity from third party claims arising by reason of a breach by SPD of any of its obligations. SECI shall incorporate appropriate covenants in the PPA for the above obligations of SPD. In so far as indemnity to Buying Entity is concerned, WPD shall be the indemnifying party and not SECI.

### **10.2. Procedure for claiming Indemnity**

#### **10.2.1 Third party claims**

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 10.1.1(a) or 10.1.2.(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 10.1.1(a) or 10.1.2 (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 before the Arbitrator in accordance with Article 12.3.2; 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 Arbitrator for which it is entitled to be Indemnified under Article 10.1.1(a) or 10.1.2(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.

### **10.3. Indemnifiable Losses**

- 10.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 10.1.1(b) or 10.1.2 (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 non-payment of such losses after a valid notice under this Article 10.3, such event shall constitute a payment default under Article 9.

### **10.4 Limitation on Liability**

- 10.4.1 Except as expressly provided in this Agreement, neither Buying Entity nor SECI/SPD 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 SPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.
- 10.4.2 SECI/ SPD shall have no recourse against any officer, director or shareholder of Buying Entity or any Affiliate of Buying Entity or any of its officers, directors or shareholders for such claims excluded under this Article. Buying Entity shall have no recourse against any officer, director or shareholder of SECI or SPD, or any affiliate of SECI or any of its officers, directors or shareholders for such claims excluded under this Article.

### **10.5 Duty to Mitigate**

- 10.5.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 10.

## **11     *ARTICLE 11: ASSIGNMENTS AND CHARGES***

### **11.1.   Assignments**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assignees. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

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

Provided further that any successor(s) or permitted assignee(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.

### **11.2.   Permitted Charges**

- 11.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.



## **12     *ARTICLE 12: GOVERNING LAW AND DISPUTE RESOLUTION***

### **12.1. Governing Law**

- 12.1.1 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 arising out of or in connection with this Agreement shall be under the jurisdiction of appropriate courts in Delhi

### **12.2. Amicable Settlement and Dispute Resolution**

#### **12.2.1 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:
  - (i) a description of the Dispute;
  - (ii) the grounds for such Dispute; and
  - (iii) 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 12.2.1 (i), furnish:
  - (i) counter-claim and defences, if any, regarding the Dispute; and
  - (ii) 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 12.2.1 (i), if the other Party does not furnish any counter claim or defence under Article 12.2.1 (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 12.2.1 (iii), the Dispute shall be referred for dispute resolution in accordance with Article 12.3.

### **12.3. Dispute Resolution**

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

- i. Where any Dispute (i) arises from a 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, or (ii) relates to any matter agreed to be referred to the Appropriate Commission, such Dispute 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. The obligations of the Buying Utility under this Agreement towards SECI shall not be affected in any manner by reason of inter-se disputes amongst the Buying Utility.
- iii. SECI shall be entitled to co-opt the SPD as a supporting party in such proceedings before the Appropriate Commission

#### **12.3.2 Dispute Resolution through Arbitration**

- i) If the Dispute arising as per Article 12.2.1 is not amicably resolved & such dispute arises out of or in connection with any claims not covered in Article 12.3.1(i), such

Dispute shall be resolved by arbitration under provisions of the Electricity Act 2003 (as amended from time to time) as under:

Proceedings as well as appointment of the arbitrator(s) shall be carried out by the Appropriate Commissions under the Electricity Act 2003 as amended from time to time. As stipulated by the said Electricity Act 2003, the said arbitration will take place as per the provisions of the Arbitration and Conciliation Act 1996 as amended from time to time.

ii) The place of arbitration shall be Delhi. The language of the arbitration shall be English.

iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.

iv) The provisions of this Article shall survive the termination of this PSA for any reason whatsoever.

v) The award shall be of majority decision.

vi) SECI shall be entitled to co-opt SPD as a supporting party in such arbitration proceedings.

#### **12.4. Parties to Perform Obligations**

12.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 12.3 and save as the Appropriate Commission or the Arbitration Tribunal 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.

### **13     *ARTICLE 13: MISCELLANEOUS PROVISIONS***

#### **13.1. Amendment**

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

#### **13.2. Third Party Beneficiaries**

- 13.2.1 This Agreement is solely for the benefit of the Parties and their respective successors and permitted assignees and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

#### **13.3. Waiver**

- 13.3.1 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:
- 13.3.2 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.

#### **13.4. Confidentiality**

- 13.4.1 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 Parties.

#### **13.5. Severability**

- 13.5.1 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.

#### **13.6. Notices**

- 13.6.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.
- 13.6.2 If to the Buying Utility, 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:

Name                         :  
Designation               :  
Address                     :  
  
Email                       :  
Fax. No                    :  
Telephone No.            :

- 13.6.3 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:

Name:  
Designation:  
Address: Solar Energy Corporation of India Limited,  
1<sup>st</sup> Floor, A-Wing, D-3, District Centre,  
Saket,  
New Delhi-110017  
Email:  
Fax. No:  
Telephone No

- 13.6.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.
- 13.6.5 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.

### **13.7. Language**

- 13.7.1 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.
- 13.7.2 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.

### **13.8. Restriction of Shareholders / Owners' Liability**

- 13.8.1 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, 1956/2013 as applicable.

### **13.9. Taxes and Duties**

- 13.9.1 The Buying Utility shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Buying Utility, contractors or their employees that are required to be paid by the Buying Utility as per the Law in relation to the execution of the Agreement.
- 13.9.2 SECI shall be indemnified and held harmless by the Buying Utility against any claims that may be made against SECI in relation to the matters set out in Article 13.9.1.
- 13.9.3 SECI shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Buying Utility by SECI on behalf of Buying Utility or its personnel.

### **13.10. No Consequential or Indirect Losses**

13.10.1 The liability of the Buying Utility and SECI shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall SECI or the Buying Utility claim from one another any indirect or consequential losses or damages.

### **13.11. 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. RfS issued by SECI including its Amendments and Clarifications
- ii. the terms and conditions of this Agreement including the Agreement for Setting up of Solar Manufacturing Plant;
- iii. applicable Law, rules and regulations framed thereunder; and
- iv. the Grid Code;

### **13.12. Independent Entity**

13.12.1 The Buying Utility shall be an independent entity performing its obligations pursuant to the Agreement.

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

### **13.13. 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 thereunder, 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.

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  
**Solar Energy Corporation of India Limited**

For and on behalf of  
**(Insert name of the Buying Utility)**

Name :  
Designation :

Name :  
Designation :

(Signature with Seal)

(Signature with Seal)

Witness:  
1.

Witness:  
1.

2.

2.

#### 14 SCHEDULE 1: SECI-SPD PPA(S)

##### 14.1. List of SECI-SPD PPAs(To be annexed)

Sl. No.	SPD Name	Project Code	Project Capacity (MW)	Applicable Tariff as per SECI-SPD PPA	Project Location
1.	ABC		100	P	
2.	DEF		50	Q	
3.	GHI		50	R	
Weighted average tariff				$= [(100*P)+(50*Q)+(50*R)]/200$	

(\*Note:

For avoidance of any doubt, weighted tariff is being used for the convenience of monthly billing. However, same shall be subject to adjustment / reconciliation as per provisions of Article 6.7 of this Agreement against actual tariff as given in the Schedule-I and actual energy injected from the respective Projects at the Delivery Point

Thus, as per the above provisions related to the tariff clause, the Pooled Tariff may get changed depending on actual commissioned capacity achieved by the respective projects, leading to changes in applicable tariffs.

However, this pooled tariff is not linked with energy generation. With reference to article no 6.8.3 energy can be varied from Minimum range to Maximum range. Due to wide range of variation in generation, any loss or gain with respect to tariff and trading margin shall be passed on to distribution utilities in proportion to annual energy billing. This will be done based on article no 6.7 **Quarterly and Annual Reconciliation**

#### Example

Case-I

Considering Project A to F generating Min Energy and G to H generating Max Energy in a contract year

Solar Project	PV	MW	Min MUs	Max MUs	Generation in the contract year (MUs)	Rs/kWh (PPA tariff)	Developer Payment By SECI in (Cr)	Utility Payment to SECI (PSA Pooled Tariff: 2.513/kWh)
Project-A		250	699.705	932.94	699.705	2.51	1,75,62,59,550.00	15,77,59,28,805.42
Project-B		300	804.168	1072.224	804.168	2.51	2,01,84,61,680.00	
Project-C		285	721.2677	961.6903	721.2677	2.51	1,81,03,82,027.40	

Project-D	200	625.9896	834.6528	625.9896	2.51	1,57,12,33,896.00	
Project-E	100	268.056	357.408	268.056	2.51	67,28,20,560.00	
Project-F	300	851.472	1135.296	851.472	2.51	2,13,71,94,720.00	
Project-G	300	898.776	1198.368	1198.368	2.52	3,01,98,87,360.00	
Project-H	265	831.5255	1108.701	1108.701	2.52	2,79,39,26,520.00	
		<b>5700.96</b>	<b>7601.28</b>	<b>6277.727</b>		15,78,01,66,313.40	
						1,578.02	1,577.59

Loss to  
SECI(Cr) 0.42\*

#### Case-II

Considering Project A to F generating Max Energy and G to F generating Min Energy in a contract year

Solar Project	MW	Min MUs	Max MUs	Generation in the contract year (MUs)	Rs/kWh (PPA tariff)	Developer Payment By SECI in (Cr)	Utility Payment to SECI (PSA Pooled Tariff: 2.513/kWh)
Project-A	250	699.705	932.94	932.94	2.51	2,34,16,79,400.00	17,65,26,00,113.54
Project-B	300	804.168	1072.224	1072.224	2.51	2,69,12,82,240.00	
Project-C	285	721.2677	961.6903	961.6903	2.51	2,41,38,42,653.00	
Project-D	200	625.9896	834.6528	834.6528	2.51	2,09,49,78,528.00	
Project-E	100	268.056	357.408	357.408	2.51	89,70,94,080.00	
Project-F	300	851.472	1135.296	1135.296	2.51	2,84,95,92,960.00	
Project-G	300	898.776	1198.368	898.776	2.52	2,26,49,15,520.00	
Project-H	265	831.5255	1108.701	831.5255	2.52	2,09,54,44,209.60	
		<b>5700.96</b>	<b>7601.28</b>	<b>7024.513</b>		17,64,88,29,590.60	
						1,764.88	1,765.26

Excess income for  
SECI(Cr) 0.38\*

\*Note: In view of Case-I & 2 any Gain/Loss shall be passed on to utilities based on annual energy supplied to the respective utility in the corresponding year.

#### **14.2: Model SECI- SPD PPA**

[To be Annexed]



## 15 ***SCHEDULE 2: AMOUNT REALISATION FOR SALE OF SOLAR POWER***

- (i) The billing to Buying Utility shall be done by SECI for realisation of amount for Solar Power.
- (ii) The payments to be made by Buying Utility to SECI for the Solar Power in a Monthly Invoice shall comprise of amounts to be realized for Solar Power.
- (iii) The Bills shall be raised by SECI on Buying Utility as mentioned under:

### 1. ***Provisional Billing for supply of Solar Power***

#### **(a) Provisional Amount for power for the Applicable month**

$$A_p = \sum E_p(sp) * T(sp) + \sum A_{tr}$$

Where,

- $A_p$  = Provisional Billing amount (in Rs.) for Solar Power for the applicable Month;
- $E_p(sp)$  = No. of units (kWh) for the applicable Month as per article 6.8.3 [ i.e (Max MUs/12 Month\*Total allocated capacity or Commission Project capacity as applicable)]
- $T(sp)$  = Tariff (in Rs./kWh) subject to article 5 of this Agreement.
- $A_{tr}$  = Monthly Transmission Charges (Rs.) as applicable for the link between the respective STU pooling Station to STU grid station/CTU grid station for the Solar Power Stations, as the case may be; The Monthly Transmission Charges shall be based on Demand Charges and Usage Charges of the CTU;

•

- 2. Adjustment against Provisional Billing for Solar Power for the preceding previous month on the basis of Actual Energy Accounts through Credit and Debit note