

DRAFT
STANDARD
POWER PURCHASE AGREEMENT
FOR
PROCUREMENT OF MW SOLAR POWER
ON LONG TERM BASIS
UNDER VGF SCHEME FOR DEFENCE
ESTABLISHMENTS UNDER JNNSM

Between

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

And

Ordnance Factory Kanpur

..... [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 New Delhi.

Between

[Insert Name of the SPD], a company incorporated under the Companies Act 1956 or the Companies Act 2013 as applicable, having its registered office at [Insert Registered Office Address] (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 assignees) as a Party of the **First Part;**

And

Ordinance Factory Kanpur, A unit of ordinance factory board, Ministry of Defence, kalpi road, Kanpur - 208009 (hereinafter referred to as “OFC, KANPUR”, 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 OFC, KANPUR are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

Whereas:

- A. SECI has been designated by the Government of India as the nodal agency for implementation of MNRE scheme for setting up of over 300 MW of Grid-connected & Off-Grid Solar PV Power Projects by Defence Establishments with VGF funding under Jawaharlal Nehru National Solar Mission (JNNSM) of Government of India (GoI).
- B. **[Insert Name of the SPD]**, has been declared as a successful bidder against RfS No. [Insert RfS No.] dated [XX.XX.XXXX] issued by SECI for selection of SPD for development of capacity of 5 MW in OFC, KANPUR and have been issued Letter of Intent (LOI) [Insert LOI No.] dated for development of a Solar Power Project, generation and sale of solar power under the above Mission.
- C. Pursuant to the issuance of LOI by SECI to the SPD, the SPD has agreed to set up the Solar Power Project based on Photo Voltaic technology of [Insert Project Capacity] MW capacity in **OFC, KANPUR**.
- D. The SPD has agreed to execute Viability Gap Funding (VGF) Securitization Agreement, (if applicable) with SECI for creating a charge on the Project Assets based on which the SPD would be eligible to receive VGF support amounting to maximum of Rs. **[Insert Sanctioned VGF Amount in Figures] (Rupees in words)** as per terms and conditions of the VGF Securitization Agreement.
[Applicable only in case of positive VGF Amount].

- E. The SPD has agreed to sign this Power Purchase Agreement with OFC, KANPUR to sell Solar Power to OFC, KANPUR as per the terms and conditions of this Agreement.
- F. OFC, KANPUR has agreed to purchase such Solar Power from SPD as a buyer as per the provisions of the JNNSM.
- G. The SPD has submitted the Performance Bank Guarantee to SECI as per the format provided as per the RfS document.
- H. OFC, KANPUR agrees to procure power from the SPD up to the Contracted Capacity (as defined herein) at a pre-determined Tariff as per Article 9 of this Agreement and as per the terms of this Agreement.
- I. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by SPD to OFC, KANPUR.

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 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;
“Bulk Consumer”	:	shall have the same meaning as provided in CERC (Indian Electricity Grid Code) Regulations, 2010 as amended from time to time;
“Business Day”	:	shall mean with respect to SPD and OFC, KANPUR, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Delhi;
“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;
“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;
“Change in Law”	:	shall have the meaning ascribed thereto in Article 12 of this Agreement;
“Commissioning”	:	shall have the meaning ascribed thereto in Article 5 of this Agreement;
“Commercial Operation Date (COD)”	:	shall be the actual date of commissioning of full capacity (i.e. the full capacity of the Power Project has been commissioned and the SPD starts scheduling and injecting power from the Power Project to the Delivery Point) of the Project as declared by the SNA/SECI

“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 sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a SPD Preliminary Default Notice or OFC, KANPUR 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 COD would occur, the Contract Year shall end on the date immediately before the COD and a new Contract Year shall commence once again from the COD 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 Project Capacity] MW (AC) contracted with OFC, KANPUR for supply by the SPD to OFC, KANPUR at the Delivery Point from the Solar Power Project;
“Day”	:	shall mean a day, if not a Business Day, the immediately succeeding Business Day;
“Delivery / Inter-connection / Metering Point”	:	shall mean the point at 11 kV switchgear of the load centre of OFC, KANPUR where the power from the solar power project is injected (including the dedicated transmission line connecting the power project with the interconnection point). Metering shall be done at this interconnection point where the power is injected i.e. the Delivery Point. For interconnection with grid and metering, the SPDs shall abide by the relevant CERC/SERC Regulations, Grid Code, and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised 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 etc.) as notified by the competent authority / regulator up to the Delivery Point shall be borne by the SPD and beyond the Delivery Point all charges and losses (including but not limited to Demand and Usage Charges, open access, transmission, wheeling, etc.) as notified by the competent authority / regulator from time to time shall be borne by the Buying Utilities.;
“Discoms”	:	shall mean the distribution utility or the distribution utilities;
“Dispute”	:	shall mean any dispute or difference of any kind between OFC, KANPUR and the SPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
“Due Date”	:	shall mean the thirtieth (30 th) day after a Monthly Bill or a Supplementary Bill is received and duly accepted by OFC, KANPUR , 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 OFC, KANPUR;
“Effective Date”	:	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
“Electricity Laws”	:	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
“Energy Accounts”	:	shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof;
“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 Commercial Operation Date of the Project subject to that the supply of power shall be limited for a period of 25 years from the Unit Commercial Operation Date of respective Unit(s) unless extended by the Parties as per this Agreement;
“Financing Agreements”	:	shall mean the agreements pursuant to which the SPD has got financing for the Power Project including the loan agreements, VGF Securitization Agreement, 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 OFC, KANPUR;
“Force Majeure” or “Force Majeure Event”	:	shall have the meaning ascribed thereto in Article 11 of this Agreement;

“Guidelines”	:	shall mean the “JNNSM Guidelines for a scheme for setting up of over 300 MW of Grid-connected & Off-Grid Solar PV Power Projects by Defence Establishments with VGF funding under JNNSM” notified vide No. 30/69/2013-14/NSM dated 07 th January 2015 including its subsequent amendments and clarifications ;
"Grid Code" / “IEGC” or “State Grid Code”	:	shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
“Incremental Receivables”	:	shall have the same meaning as provided in Article 10.4.9 of this PPA;
“Indian Governmental Instrumentality”	:	shall mean the Government of India, Governments of state(s) of [Insert the state] and NCT of Delhi 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 subdivision 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;
“Invoice” or “Bill”	:	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
“Late Payment Surcharge”	:	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
“Law”	:	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and

		shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
“Letter of Credit” or “L/C”	:	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Month"	:	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
“National Solar Mission or JNNSM”	:	shall mean the Jawaharlal Nehru National Solar Mission launched by the Government of India vide resolution No.5/14/2008-P&C dated 11th January 2010, as amended from time to time;
“Operating Period”	:	shall mean the period commencing from the Commercial Operation Date, until the last day of the Term of this Agreement or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
“Open Access Charges”	:	shall mean the charges levied by the CTU/ RLDC / STU/ SLDC of the State wherein the Solar Power Project is located for the grant of Open Access as defined in Electricity Act 2003 and amended 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 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;
“Power Project” or “Project”	:	shall mean the solar power generation facility of Contracted Capacity of [Insert Contracted Capacity] MW, located at [Insert Village, Thesil, District & State] having a separate boundary, control system, metering and separate points of injection into the grid at Delivery/Interconnection/ metering point at STU/CTU 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;
“Preliminary Default Notice”	:	shall have the meaning ascribed thereto in Article 13 of this Agreement;

“Project Financing / Arrangements Financial Closure”	:	shall mean arrangement of necessary funds by the Project Developer either by way of commitment of funds by the company from its internal resources and/or tie up of funds through a bank / financial institution by way of sanction of a loan or letter agreeing to finance;
“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;
“RLDC”	:	shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;
“Rupees”, “Rs.”, “₹”	:	shall mean Indian rupees, the lawful currency of India;
“Scheduled Commissioning Date”	:	shall mean [Insert a date 4 months from the date of signing of this Agreement];
“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” or “Solar PV”	:	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 OFC, KANPUR as per the terms and conditions of this Agreement;
“Solar Power”	:	shall mean power generated from the Solar Photovoltaic Power Project;
“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;
“Trading Margin”	:	shall mean the margin as fixed by MNRE under this scheme on sale of solar power to State Utilities/Discoms/other Bulk Consumers;
“Unit”	:	shall mean the Solar PV Capacity (AC MW) commissioned as per provisions of the Part Commissioning as per the RfS document and this Agreement;
“Unit Commercial Operation Date (UCOD)”	:	shall mean the actual commercial operation date (i.e. the date of commissioning) of respective Unit(s) of the Power Project where upon the SPD starts injecting 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;
“Viability Gap Funding (VGF) Securitization Agreement”	:	VGF Securitization Agreement shall mean the “VGF Securitization Agreement” including all schedules and all amendments and documents supplemental or incidental to the “VGF Securitization Agreement” entered by SECI with the SPD for creation of charges, perfection and enforcement (if any) on the assets of the Power Project of the SPD; For avoidance of any doubt, this shall be applicable only in case of positive VGF and
“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 rupee symbol “₹” shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

2 ARTICLE 2: TERM OF AGREEMENT

2.1 Effective Date

- 2.1.1 This Agreement shall come into effect from [Insert the Date of Execution of this Agreement] 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 at least one hundred eighty (180) days prior to the Expiry Date on agreed terms and conditions between the Solar Power Developer (SPD) and OFC, KANPUR.
- 2.2.2 The SPD is free to operate their plants beyond the Expiry Date if other conditions like land lease, permits, approvals and clearances etc., allow.

2.3 Early Termination

- 2.3.1 This Agreement shall terminate before the Expiry Date if either OFC, KANPUR or SPD terminates the Agreement, pursuant to Article 13 of this Agreement.

2.4 Survival

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

3 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 within three (3) months from the Effective Date, 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 obtain or apply (as applicable) for all Consents, Clearances and Permits required for construction of the Project as per the terms of this Agreement. *The SPD shall also obtain all Consents, Clearances and Permits required for operation and supply of power to OFC, KANPUR before Commissioning of the Project;*
- b) The SPD shall execute VGF Securitization Agreement (if applicable) with SECI as per format provided in Schedule-4 of this Agreement;
- c) The SPD shall make Project financing arrangements and provide necessary certificates to SECI in this regard;
- d) The SPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at the Delivery Point;
- e) The SPD shall sign a Transmission Agreement with CTU/STU/ Transmission Utilities confirming the evacuation and connectivity of the CTU/STU / Transmission Utilities system up to the delivery point of SPD by the Scheduled Commissioning Date; -
- f) The SPD shall produce the documentary evidence of the possession of the designated land in the name of SPD;
- g) The SPD shall fulfil the technical requirements according to criteria mentioned under Annexure-B of the RfS document and produce the documentary evidence of the same. The SPD shall also specify their plan for meeting the requirement for Modules.

The SPD shall submit to SECI the relevant documents as stated above, complying with the Conditions Subsequent, within three (3) months from the Effective Date.

3.2 Consequences of non-fulfilment of conditions subsequent

- 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 is on account of delay by Government or Force Majeure. The termination of the Agreement shall take effect upon the expiry of the 7th day of the above notice.
- 3.2.2
- 3.2.3 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 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 mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Commissioning Date.

3.3 Performance Bank Guarantee

- 3.3.1 The Performance Bank Guarantee having validity of twelve (12) months from the date of signing this Agreement and of Rs. 30 Lakh/MW to be furnished under this Agreement shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement as per format provided in Schedule1.
- 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 CoD of the Project after taking into account any liquidated damages / penalties due to delays in commissioning as per provisions stipulated in this Agreement.
- 3.4.2 The return / release of the Performance Bank Guarantee shall be without prejudice to other rights of SECI under this Agreement.

4 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 other than those obtained under Article 3.1 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 Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices; and
- c) the commencement of supply of power up to the Contracted Capacity to OFC, KANPUR 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; and
- e) owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;
- f) maintaining its controlling shareholding (controlling shareholding shall mean not less than 51% of the voting rights and paid-up share capital) prevalent at the time of signing of PPA in the Company/Consortium developing the project up to a period of one (1) year after Commercial Operation Date. However transfer of controlling shareholding within the same Group Companies will be allowed with the permission of SECI even before one year period from COD subject to the condition that the management control remains within the same Group Companies; and
- g) fulfilling all obligations undertaken by the SPD under this Agreement.

4.2 Information regarding Interconnection Facilities

4.2.1 The SPD shall be required to obtain all information from STU/ CTU / concerned authority with regard to the Interconnection Facilities necessary to enable it to design, install and operate Plant and all interconnecting apparatus/ equipment on the SPD's side of the Delivery Point to enable delivery of electricity at the Delivery Point.

4.2.2 The responsibility of getting connectivity with the transmission system owned by the STU / CTU or any other transmission utility, as may be required, 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 inter-connection point shall be the responsibility of the SPD.

4.2.3 The arrangement of connectivity can be made by the SPD through a dedicated transmission line which the SPD may construct itself or get constructed by STU or any other agency. 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. Subject to the acceptance of concerned STU / CTU / Authority / Agency (as applicable), this connectivity can also be achieved through a shared line with any agency or any existing line of STU/CTU, provided the energy accounts are bifurcated and clearly demarcated for the power generated at solar project and are issued by the STU/ SLDC concerned and all the connected Projects have been selected under this RfS document. The SPD shall not be entitled to any deemed generation in case of any delay in connectivity to the Project.

4.2.4 Not Used.

4.2.5 The all costs and charges including but not limited to the wheeling charges and losses up to the interconnect point associated with this arrangement will also be borne by the SPD. Not Used.

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 OFC, KANPUR and OFC, KANPUR 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 OFC, KANPUR, at any time during a Contract Year, 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 COD 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 SPD liable to pay the compensation and shall duly pay such compensation to OFC, KANPUR. This will, however be relaxable by OFC, KANPUR to the extent of grid non-availability for evacuation, which is beyond the control of the developer. This compensation shall be applied to the amount of shortfall in generation during the Contract Year.. However, this compensation shall not be applicable in events of Force Majeure identified under PPA with OFC, KANPUR affecting supply of solar power by SPD. .

- 4.4.2 Notwithstanding Article 4.4.1, any excess generation over and above 10% of declared annual CUF may be purchased by OFC, KANPUR or by the Discom(s) unless refused by OFC, KANPUR. While the SPD would be free to install 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 OFC, KANPUR (unless refused by OFC, KANPUR). 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 CoD shall not be at the cost of OFC, KANPUR under this scheme.

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 OFC, KANPUR Event of Default; or
- b) Force Majeure Events affecting OFC, KANPUR, or
- c) Force Majeure Events affecting the SPD,

the Scheduled Commissioning Date and the Expiry Date shall be deferred for a reasonable period but not less than 'day for day' basis, to permit the SPD or OFC, KANPUR through the use of due diligence, to overcome the effects of the Force Majeure

Events affecting the SPD or OFC, KANPUR, or till such time such Event of Default is rectified by OFC, KANPUR.

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 Scheduled Commissioning Date and the Expiry Date newly determined 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 determined pursuant to Article 4.6.3.

4.6 Liquidated Damages for delay in commencement of supply of power to OFC, KANPUR

4.6.1 If the SPD is unable to commence supply of power to OFC, KANPUR by the Scheduled Commissioning Date other than for the reasons specified in Article 4.5.1, the SPD shall pay to SECI, damages for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:

- a) Delay up to one (1) months – 1st part of the PBG amounting to Rs. 30 Lakhs shall be encashed by SECI, proportionally calculated on per day basis for delay upto 1 month from the Scheduled Commissioning Date.
- b) Delay of more than one (1) month and upto three (3) months: SECI shall encash the remaining PBG, proportionally calculated on per day basis for delay upto another two months.

- c) In case the commissioning of the Project is delayed by more than 3 months after scheduled commissioning date, i.e. beyond 9 months from signing of PPA, OFC, KANPUR reserves the right to terminate the PPA and cancel the Project.
- d) For the purpose of calculations for penalty, the month shall be considered consisting of 30 days

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 OFC, KANPUR and a third Party nominated by SECI/MNRE 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/operation of the Power Project being carried out by the SPD and if it is found that the construction works/operation of the Power Project is not as per the Prudent Utility Practices, it may seek clarifications from SPD or require the works to be stopped or to comply with the instructions of such third party.

5 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, SECI and OFC, KANPUR (if applicable) at least twenty (20) days advanced preliminary written notice and at least ten (1) 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 and all other concerned authorities 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.
- 5.1.5 The SPD shall commission the Project as detailed in “**Schedule 6: Commissioning Procedure**” within four (4) Months of the date of signing of PPA

6 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.

7 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 OFC, KANPUR 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 with common CT, PT and one standby meter with separate CT, PT (different from the CT, PT for main and check meter but having identical specification) at the Delivery Point. All the meters must be ABT compliant.
- 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 with common CT, PT and one standby meter 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 solar power developer at its own cost for submission of above data regularly for the entire period of this Power Purchase Agreement to the SLDC, SECI and the concerned Ministry or concerned agency as per applicable regulation / directions.

- 7.2.3 Reports on above parameters on monthly basis (or as required by regulation / guidelines) shall be submitted by the solar power developer to MNRE through SECI for entire period of PPA.

8 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, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements and VGF Securitization Agreement and under applicable laws.

8.2 Application of Insurance Proceeds

8.2.1 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.

8.2.2 If a Force Majeure Event renders the Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, SECI shall have claim on such proceeds of such Insurance as per provisions of VGF Securitization Agreement up to the extent of disbursed VGF amount.

8.3 Effect on liability of OFC, KANPUR

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 OFC, KANPUR.

9 ARTICLE 9: APPLICABLE TARIFF

- 9.1 The SPD shall be entitled to receive the Tariff of Rs. [Insert applicable tariff]/ kWh, fixed for the entire Term of the PPA with effect from the COD.
- 9.2 Any energy produced and flowing into the grid before CoD shall not be at the cost of OFC, KANPUR under this scheme and in case of excess generation over and above 10% of declared CUF, the first right of refusal for purchase of such power shall be with OFC, KANPUR. The SPD will be free to make short-term sale to any organisation or individual, if and only if refused by OFC, KANPUR.
- 9.3 The Selected Project Developer will be required to submit all information and documents as desired by SECI from time to time. However, during Term of this Agreement if, it is found that the SPD has claimed benefits which is not permitted under the Scheme, the SPD shall be required to return the disbursed VGF amount (if any) at an interest rate of 1.25% per month. The interest shall be calculated for the duration from the date of disbursement of VGF till the date amount has been returned back to SECI.

10 ARTICLE 10: BILLING AND PAYMENT

10.1 General

10.1.1

10.1.1 From the commencement of supply of power, OFC, KANPUR 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 this Article and Article 9. All Tariff Payments by OFC, KANPUR shall be in Indian Rupees.

10.2 Delivery and Content of Monthly Bills/Supplementary Bills

10.2.1 The SPD shall issue to OFC, KANPUR a signed Monthly Bill/Supplementary Bill for the immediately preceding Month. 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 RLDC/SLDC 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 the Energy Account and the applicable Tariff.

10.3 Payment of Monthly Bills

10.3.1 OFC, KANPUR 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) amounts claimed by OFC, KANPUR, if any, from the SPD, through an invoice to be payable by the SPD, and not disputed by the SPD within fifteen (15) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that OFC, KANPUR shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.
- iii) The SPD shall open a bank account at *[Insert name of place]* (the "SPD's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by OFC, KANPUR to the SPD, and notify OFC,

KANPUR of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. OFC, KANPUR shall also designate a bank account at(insert place) for payments to be made by the SPD to OFC, KANPUR, if any, and notify the SPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. OFC, KANPUR and the SPD shall instruct their respective bankers to make all payments under this Agreement to the SPD' Designated Account or OFC, KANPUR'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 OFC, KANPUR 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. The Late Payment Surcharge shall be claimed by the SPD through the Supplementary Bill.

10.3.4 In the event of early Commissioning of the Project the payment for the power fed to the grid will be accounted from the date of COD, but SPD would be allowed to raise Bills against such power only from the date not earlier than two months prior to Scheduled Commissioning Date.

10.4 Payment Security Mechanism

Letter of Credit (LC):

10.4.1 OFC, KANPUR shall extend 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"), 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, OFC, KANPUR through a scheduled bank shall extend 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, OFC, KANPUR shall restore such shortfall within seven (7) days.

10.4.5 OFC, KANPUR 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 OFC, KANPUR shall ensure that the Letter of Credit shall be renewed not later than ten (10) days prior to its expiry.

10.4.7 All costs relating to opening and maintenance of the Letter of Credit shall be borne by OFC, KANPUR.

10.4.8 If OFC, KANPUR fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 10.4.6, the SPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from OFC, KANPUR, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, if applicable, in accordance with Article 10.3.3 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 Party does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.

10.5.2 If the OFC, KANPUR disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 50% of the disputed 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 OFC, KANPUR 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 OFC, KANPUR under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the OFC, KANPUR 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 that despite a Dispute regarding an Invoice, OFC, KANPUR shall, without prejudice to its right to Dispute, be under an obligation to make payment of 50% of the Disputed 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, 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 OFC, KANPUR 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) [Void]or
- iii) Change in Law as provided in Article 12, or and such Supplementary Bill shall be paid by the other Party.

10.7.2 OFC, KANPUR shall remit all amounts due under a Supplementary Bill raised by the SPD to the SPD's Designated Account by the Due Date. If any claim is being raised by the Buying Utilities pursuant to the Article 4.4.1, OFC, KANPUR shall make adjustment in the payment made to the SPD.

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.

11 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 OFC, KANPUR or the SPD whose performance has been affected by an event of Force Majeure.

11.3 Force Majeure

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

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

11.4 Force Majeure Exclusions

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

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

11.5 Notification of Force Majeure Event

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

12 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 Effective Date 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 change in tax or introduction of any tax made applicable for supply of power by the SPD 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 Central Commission for seeking approval of Change in Law.

12.2.2 The decision of the Central 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.

13 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 events subject to Article 4.1 of the “VGF Securitization Agreement (if applicable)” or / and following events, unless any such event occurs as a result of a Force Majeure Event or a breach by OFC, KANPUR of its obligations under this Agreement, shall constitute a SPD Event of Default:

- (i) the failure to commence supply of power to OFC, KANPUR up to the Contracted Capacity, by the end of the period specified in Article 4, 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 / and VGF Securitization 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 or / and VGF Securitization 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 / and VGF Securitization 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 OFC, KANPUR in this regard; or
- (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.

13.2 OFC, KANPUR 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 OFC, KANPUR:

- (i) OFC, KANPUR 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/ Default Escrow Account,
 - (ii) OFC, KANPUR repudiates this Agreement and does not rectify such breach even within a period of thirty (30) 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, OFC, KANPUR is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by OFC, KANPUR within thirty (30) days of receipt of notice in this regard from the SPD to OFC, KANPUR;
- or

if

- OFC, KANPUR 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
 - any winding up or bankruptcy or insolvency order is passed against OFC, KANPUR,
- or

- OFC, KANPUR 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 OFC, KANPUR Event of Default, where such dissolution or liquidation of OFC, KANPUR or OFC, KANPUR 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 OFC, KANPUR and expressly assumes all obligations of OFC, KANPUR and is in a position to perform them; or;
- (iv) Occurrence of any other event which is specified in this Agreement to be a material breach or default of OFC, KANPUR.

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, OFC, KANPUR/SECI 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 (OFC, KANPUR Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 13.3.2 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, OFC, KANPUR may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the SPD.
- 13.3.3 Subject to the terms of this Agreement, upon occurrence of a SPD Event of Default under this Agreement, the lenders in consultation with OFC, KANPUR 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.

Provided that any substitution under this Agreement can only be made with the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued

by SECI and accepts the terms of VGF Securitization Agreement (if applicable) signed between SPD and SECI.

13.3.4 The lenders in consultation with 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 the 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.

13.3.5 In case the lending institution exercises the right to step in or take over the Project SECI will also have right to step in along with the lending institution.

13.4 Procedure for cases of OFC, KANPUR Event of Default

13.4.1 Upon the occurrence and continuation of any OFC, KANPUR Event of Default specified in Article 13.2 the SPD shall have the right to deliver to OFC, 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 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 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 seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or OFC, KANPUR Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the SPD shall be free to sell the Contracted Capacity to any third party of the SPD's choice.

Provided further that at the end of two (2) months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the SPD.

13.5 Termination due to Force Majeure

- 13.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.5.3, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

14 ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1 Indemnity

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

- a) any and all third party claims against OFC, KANPUR 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 OFC, KANPUR from third party claims arising by reason of a breach by the SPD of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the SPD, for which specific remedies have been provided for under this Agreement)

14.2 Procedure for claiming Indemnity

14.2.1 Third party claims

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) 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, 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 Buying Utilities 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 the SPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.
- 14.4.2 OFC, KANPUR 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 OFC, KANPUR, or any affiliate of OFC, KANPUR or any of its officers, directors or shareholders for such claims excluded under this Article.

14.5 Duty to Mitigate

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

15 ARTICLE 15: ASSIGNMENTS AND CHARGES

15.1 Assignments

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing. Provided that, OFC, KANPUR shall permit assignment of any of SPDs 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 by the SPD if OFC, KANPUR seeks to transfer to any affiliate all of its rights and obligations 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.

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, the Guidelines and the VGF Securitization Agreement (if applicable).

16 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) Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 16.2.1(i) Both Parties shall endeavour and make all efforts to amicably settle the Dispute.
- (iii) If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 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 Central Commission.
- (ii) OFC, KANPUR shall be entitled to co-opt the lenders (if any) as a supporting party in such proceedings before the Central Commission.

16.3.2 Dispute Resolution through Arbitration

If the Dispute arises out of or in connection with any claims not covered in Article 16.3.1(i), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as under provided not settled amicably as per Article

16.2.1:

- i) The Arbitration Tribunal shall consist of three (3) Arbitrators. Each party shall appoint one Arbitrator within 30 days of the receipt of request for settlement of dispute by Arbitration. The two appointed Arbitrators shall within 30 days of their appointment, appoint a third Arbitrator who shall act as presiding Arbitrator. In case the party fails to appoint an Arbitrator within 30 days from the date of receipt of request or the two appointed Arbitrator fails to agree on third Arbitrator within 30 days of their appointment, the appointment of Arbitrator, as the case may be, shall be made in accordance with the Indian Arbitration and Conciliation Act, 1996.
- ii) The place of arbitration shall be Delhi. The language of the arbitration shall be English.
- iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- iv) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.
- v) The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.
- vi) OFC, KANPUR shall be entitled to co-opt 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 Central 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.

17 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. Subject to the provisions of Clause 3.7.1 of the RfS Document and Article 3.1 (e) of this Agreement and keep this Agreement as principle Agreement, both Parties may execute further Agreement on similar terms and conditions.

17.2 Third Party Beneficiaries

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

17.3 Waiver

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

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

17.4 Confidentiality

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

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

17.5 Severability

17.5.1 The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

17.6 Notices

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

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

Address :

Attention :
Email :
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.

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

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

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.

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
[Ordnance Factory 208009]

For and on behalf of
[Insert the Name of the SPD]

Name, Designation and Address

Name, Designation and Address

(Signature with Seal)

(Signature with Seal)

Witness:

1.

Witness:

1.

2.

2.

SCHEDULE 1: FORMAT OF THE PERFORMANCE BANK GUARANTEE

(Note: - Total Performance Guarantee is to be submitted in 2 Nos. of Bank Guarantee in the ratio of 20% & 80% Value.)

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

In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected 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] under the scheme for setting up of over 300 MW of Grid-connected & Off-Grid Solar PV Power Projects by Defence Establishments with VGF funding under JNNSM ,for supply of power there from on long term basis, in response to the RfS dated..... issued by Solar Energy Corporation of India (hereinafter referred to as SECI) and SECI considering such response to the RfS of[insert the name of the selected Solar Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Solar 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 upto 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 Rs. _____ (Rs. _____) only

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

Guarantee till

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

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

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 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] _____

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

1. SCHEDULED COMMERCIAL BANKS	2. OTHER PUBLIC SECTOR BANKS
SBI AND ASSOCIATES	1. IDBI Bank Ltd.
1. State Bank of India	3. FOREIGN BANKS
2. State Bank of Bikaner & Jaipur	1. Bank of America NA
3. State Bank of Hyderabad	2. Bank of Tokyo Mitsubishi UFJ Ltd.
4. State Bank of Indore	3. BNP Paribas
5. State Bank of Mysore	4. Calyon Bank
6. State Bank of Patiala	5. Citi Bank N.A.
7. State Bank of Travancore	6. Deutsche Bank A.G
NATIONALISED BANKS	7. The HongKong and Shanghai Banking Corpn. Ltd.
1. Allahabad Bank	8. Standard Chartered Bank
2. Andhra Bank	9. SocieteGenerale
3. Bank of India	10. Barclays Bank
4. Bank of Maharashtra	11. Royal Bank of Scotland
5. Canara Bank	12. Bank of Nova Scotia
6. Central Bank of India	13. Development Bank of Singapore (DBS Bank Ltd.)
7. Corporation Bank	14. CréditAgriculture Corporate and Investment Bank
8. Dena Bank	15. MIZUHO BANK, Ltd.
9. Indian Bank	4. SCHEDULED PRIVATE BANKS
10. Indian Overseas Bank	1. Federal Bank Ltd.
11. Oriental Bank of Commerce	2. ING Vysya Bank Ltd.
12. Punjab National Bank	3. Axis Bank Ltd.
13. Punjab & Sind Bank	4. ICICI Bank Ltd.
14. Syndicate Bank	5. HDFC Bank Ltd.
15. Union Bank of India	6. Yes Bank Ltd.
16. United Bank of India	7. Kotak Mahindra Bank
17. UCO Bank	8. IndusInd Bank Ltd.
18. Vijaya Bank	9. Karur Vysya Bank
19. Bank of Baroda	
20. Bhartiya Mahila Bank	

5. SCHEDULED COMMERCIAL BANKS	6. FOREIGN BANKS
SBI AND ASSOCIATES	10. HSBC Bank Oman S.A.O.G
1. State Bank of India	11. Sonali Bank Ltd.
2. State Bank of Bikaner & Jaipur	12. J. P. Morgan Chase Bank, National Association
3. State Bank of Hyderabad	13. State Bank of Mauritius Ltd.
4. State Bank of Indore	14. BANK of CEYLON
5. State Bank of Mysore	15. BANK INTERNASIONAL INDONESIA
6. State Bank of Patiala	16. A B BANK
7. State Bank of Travancore	17. SHINHAN BANK
NATIONALISED BANKS	18. CTBC BANK Co. Ltd.
1. Allahabad Bank	19. MIZUHO BANK, Ltd.
2. Andhra Bank	20. Krung Thai Bank Public Company Ltd.
3. Bank of India	21. Antwerp Diamond Bank N.V
4. Bank of Maharashtra	22. Australia And Newzealand Banking Group Limited
5. Canara Bank	23. Sumitomo Mitsui Banking Corporation
6. Central Bank of India	24. American Express Banking Corporation
7. Corporation Bank	25. Commonwealth Bank of Australia
8. Dena Bank	26. Credit Suisse A.G
9. Indian Bank	27. FirstRand Bank Ltd.
10. Indian Overseas Bank	28. Industrial And Commercial Bank of China Ltd.
11. Oriental Bank of Commerce	29. JSC VTB Bank
12. Punjab National Bank	30. National Australia Bank
13. Punjab & Sind Bank	31. Rabobank International
14. Syndicate Bank	32. Sberbank
15. Union Bank of India	33. USB AG
16. United Bank of India	34. United Overseas Bank Ltd.
17. UCO Bank	35. Westpac Banking Corporation
18. Vijaya Bank	36. Woori Bank
19. Bank of Baroda	37. Doha Bank Qsc
20. Bhartiya Mahila Bank	4. SCHEDULED PRIVATE BANKS
2. OTHER PUBLIC SECTOR BANKS	1. Federal Bank Ltd.
1. IDBI Bank Ltd.	2. ING Vysya Bank Ltd.
3. FOREIGN BANKS	3. Axis Bank Ltd.

16. Bank of America NA	4. ICICI Bank Ltd.
17. Bank of Tokyo Mitsubishi UFJ Ltd.	5. HDFC Bank Ltd.
18. BNP Paribas	6. Yes Bank Ltd.
19. Calyon Bank	7. Kotak Mahindra Bank
20. Citi Bank N.A.	8. IndusInd Bank Ltd.
21. Deutsche Bank A.G	9. KarurVysya Bank
22. The HongKong and Shanghai Banking Corp. Ltd.	10. Catholic Syrian Bank
23. Standard Chartered Bank	11. City Union Bank
24. SocieteGenerale	12. Dhanlaxmi Bank. Ltd
25. Barclays Bank	13. Jammu & Kashmir Bank Ltd
26. Royal Bank of Scotland	14. Karnataka Bank Ltd
27. Bank of Nova Scotia	15. Laxmi Vilas Bank Ltd
28. Development Bank of Singapore (DBS Bank Ltd.)	16. Nainital Bank Ltd
29. CréditAgricole Corporate and Investment Bank	1. Ratnakar Bank Ltd
30. Abu Dhabi Commercial Bank Ltd	2. South Indian bank Ltd
31. Bank of Bahrain & Kuwait B.S.C	3. Tamilnadu Mercantile Bank Ltd
32. Mashreq Bank p.s.c	4. DCB Bank Ltd

SCHEDULE 3: Not Applicable

SCHEDULE 4: VGF SECURITIZATION AGREEMENT

[To be annexed]

SCHEDULE 5: Not Applicable

SCHEDULE 6: COMMISSIONING PROCEDURE:**❖ Capacity of Solar PV Projects:**

i) maximum AC Capacity at the delivery point as described below:

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	5 MW	5 MW	5 MW	5 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) Higher DC capacity arrays so as to achieve AC capacity limit as mentioned above for scheduling at the delivery point in compliance to Article 4.4 “Right to Contracted Capacity & Energy” of the PPA is allowed.
- iii) For commissioning of the Project, capacity of DC arrays installed shall be considered. In case of part commissioning of the Project, it shall be required to have the DC Arrays Capacity be installed not less than the proposed part commissioning capacity.
- iv) Provisions of Article 4.6.1 of the PPA with SPD shall apply for the capacity not commissioned by the scheduled commissioning date.
- v) If generation at any time exceeds the maximum permissible AC capacity at delivery point, the excess generation during that period shall not be considered under PPA.

Appendix-A-1**Commissioning Procedure**

- i) At the time of commissioning, the Commissioning Committee shall verify compliance of technical parameter of the Project as per Annexure A of the RFS document.
- ii) SPDs shall give to the concerned RLDC/SLDC, State Nodal Agency (SNA) and SECI at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final 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.
- iii) A Solar PV Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into the grid.
- iv) SPD shall ensure that the equipment up to the rated Capacity has been installed and completed in all respects and STU/ CTU/ Discoms has provided inter-connection with the Grid before the Schedule Commissioning Date. The same shall be verified by the Committee during their visit to the Project and documented as per prescribed format.

Documents to be submitted to SECI/uploaded on SECI CPM portal:

The SPD will have to submit/upload the scanned copy of following documents (duly signed and stamped by authorized signatory) on SECI CPM portal well in advance prior to the scheduled commissioning date. The SPD shall also have to submit the hardcopies to SECI if asked by SECI for verification/cross check.

1. Covering Letter
 2. Board resolution for authorized signatory.
 3. Invoice of the major equipment (including but not limited to modules, Inverters/PCUs, Weather Monitoring Stations/ DC Cables and for all the equipment as available on SECI CPM portal).
 4. All supporting documents towards meeting the technical compliance along with datasheet/ warranty certificates/ contract agreement etc. as mentioned in Annexure-A (if some documents already verified by MNRE appointed committee prior to Financial Closure, may not be required which shall be updated on CPM portal)
 5. Installation report duly signed by the authorized signatory as per Appendix-A-2.
 6. Plant Layout clearly mentioning the details of rows and number of modules in each row.
 7. Electrical inspector report along with all annexures/attachments. It would be the responsibility of the SPD to collect the certificate. .
 8. SPD shall ensure Connectivity to the grid from concerned CTU/STU/Transmission Utility/DISCOM. Connectivity report as per the Appendix-A-3.
 9. Synchronization Certificate as per prescribed format issued by respective CTU/STU/Transmission Utility/DISCOM for ascertaining injection of power into grid as per Appendix-A-4.
 10. Consent to Operate
 11. Snap shots of the plant from various angles shall be taken for covering installation of important components of the solar power plant and made part of Installation Report.
 12. Reading of all the inverters (instantaneous and total generation) along with its serial number of a particular date.
 13. Relevant document from SLDC/ RLDC acknowledging successful data communication between plant end and SLDC/RLDC.
- v) 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/uploaded by the SPD.
- vi) Only after all the required documents are verified by SECI, the SPD shall have to submit/update on the portal the proposed commissioning date along with commissioning order issued by MEDA, State Nodal Agency or SECI.

- vii) After the proposed commissioning date along with commissioning order is submitted/updated on the portal, the commissioning committee formed as per MNRE guidelines shall visit the site within 07 working days to verify the technical compliance on site as per the information submitted by the bidder. In case the committee finds discrepancy/deviation from the information submitted by the SPD during on site verification, the committee shall schedule its next visit only on the next available date as per the availability of all the committee members.
- viii) SPD shall have to submit/upload the as-built drawing after the commissioning prior to the COD.
- ix) SPD shall have to provide the login details/ SCADA login to SECI for online real time data prior to COD.
- x) Early Commissioning of a Solar Project prior to the scheduled commissioning date 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 the date on which it intends to synchronize the Power Project to the Grid System. The SPD shall be required to give an advance notice of at least 90 days prior to the proposed commissioning date.
- xi) Joint Meter Reading (JMR) shall be taken at Delivery Point and Pooling Substation (if applicable)/plant premise at the time of connectivity of the Project with Grid. This shall include information of respective meters installed at delivery/ interconnection point and pooling substation/plant premises.
- xii) SPD is permitted to schedule the Commissioning of the Project in full or part as per the commissioning procedure elaborated in clause.

Solar power developers would be required to plan commissioning/synchronization with grid at least ten days ahead of the last permissible date for commissioning. If not done so, whole responsibility for not meeting the deadline for commissioning on account of inability of the Committee to visit the project site for commissioning rests solely on the developer.

Appendix-A-2**Installation Report**

(To be provided by SPD and to be submitted at least 10 days prior to 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.	Rating of the each module (Wp)	
III.	Angle from horizontal at which array is installed	
IV.	Number of modules installed of each type	
V.	Source(s) of the cells installed of each type	
VI.	Source(s) of the Modules installed of each type	
VII.	Number of PCUs / Inverters installed	
VIII.	Source of the PCUs / Inverters (Name of supplier with address)	
IX.	Rating of PCUs / Inverters	
X.	Date of installation of full capacity (as per capacity proposed to be commissioned)	-----
	PV arrays	
	PCUs / Inverters	
	Transformers	

Appendix-A-3**Sample Connectivity Report***(To be provided by concerned CTU/STU/Transmission Utility/Discom)*

This is in compliance to the office order of the -----,----- Discom, <Place> issued vide office order <No.><dated>, the committee constituted vide said order has completed the work for commissioning of <kV> Bay & Metering Equipment to interconnect the <MW> Solar Power Generation Plant (having <technology>) with Grid under JNNSM Phase-II Batch-III, Tranche-I scheme installed at <Village>, <Tehsil>, <District> in the <State> on <date>.

The details of Solar Power Plant are as under:-

S. No	Name of Solar Power Developer & Location	Capacity Mentioned in PPA	Connectivity	Details of Solar Power Plant (Transformer, Inverter, Modules, Switchgear)
.				
1	<M/s> <Village> <Tehsil> <District.	<> MW	Metering Detail at Delivery Point (<Village>) S.No. of <kV> CT i) <R-Phase> ii) <Y-Phase> iii) <B-Phase> S.No. of < kV> PT i) <R-Phase> ii) <Y-Phase> iii) <B-Phase>	Transformer <Make/Type:> <Sr. No.> Inverters <Make/Type:> <Sr. No.> Modules <Make: > <W>, < W > <Total: Nos.> Switchgear Panels <Make/Type:> <Sr. No.> Protection Provided: Under/Over voltage, Over current & Earth fault.

			S.No. of Main<ABT> Meter> S.No. of Check <ABT Meter> Metering Equipment installed at Receiving end on dated: <> _____ kV GSS, <>, <>, (<Distt.>)	
--	--	--	--	--

The Commissioning date of various equipment is as under:

<kV> line from --- to -----, completed on date -----.

Line Bay at < kV > GSS, ----- charged for ---- on -----.

<kV> line charged from -----to----- on date-----.

Main & check metering commissioned on (initial record of main/Check meters at the time of Commissioning is to be taken and enclosed)

Complete system commissioned on date-----

The Joint Inspection Report of metering arrangement & copy of permission of Electrical Inspector is enclosed herewith.

Appendix-A-4

Sample Synchronization Certificate

It is certified that ----- MW (Capacity) Solar Photovoltaic Power Project of M/s. -----, Village -
----- Tehsil/Taluka -----, District ----- was Grid connected on (Date) at-----
--- Hrs.

It is further certified that the Project was synchronized and supply of power into the grid from the Project connected on (Date) at ----- Hrs.

The above certificate is issued on the basis of MRI record.

NB:

- (i) The above certificate shall be issued by concerned CTU/ STU/ Transmission Utility/Discoms
- (ii) Copy of duly signed MRI is to be enclosed.

Appendix-A-5

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

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) Connectivity Report
- (iv) Synchronization Certificate including MRI record

NB: To be issued by as mentioned in the RfS.