



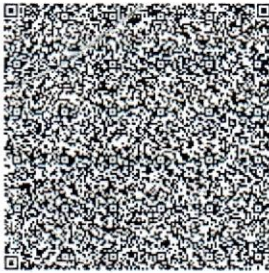
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# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

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| Certificate No.           | : IN-DL105278800019160                      |
| Certificate Issued Date   | : 18-Oct-2016 01:39 PM                      |
| Account Reference         | : IMPACC (IV)/ dl921303/ DELHI/ DL-DLH      |
| Unique Doc. Reference     | : SUBIN-DL921303210719536941410             |
| Purchased by              | : SOLAR ENERGY CORPORATION OF INDIA LIMITED |
| Description of Document   | : Article 5 General Agreement               |
| Property Description      | : Not Applicable                            |
| Consideration Price (Rs.) | : 0<br>(Zero)                               |
| First Party               | : SOLAR ENERGY CORPORATION OF INDIA LIMITED |
| Second Party              | : Not Applicable                            |
| Stamp Duty Paid By        | : SOLAR ENERGY CORPORATION OF INDIA LIMITED |
| Stamp Duty Amount(Rs.)    | : 100<br>(One Hundred only)                 |



Please write or type below this line.

POWER SALE AGREEMENT  
FOR SALE OF SOLAR POWER  
ON LONG TERM BASIS  
(UNDER JAWHARLAL NEHRU SOLAR MISSION (JNNSM) PHASE-II, BATCH III)  
BETWEEN  
SOLAR ENERGY CORPORATION OF INDIA LIMITED  
AND  
SOUTHERN POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LIMITED

This Power Sale Agreement is made on the 27<sup>th</sup> day of October of 2016 between Solar Energy Corporation of India Limited, a company incorporated under the

*Signature*

Chief General Manager



#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.



Companies Act 1956, having its registered office at 1<sup>st</sup> Floor, A-Wing, D-3, District Centre, Saket, New Delhi-110017(hereinafter referred to as "SECI", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assignees) as a Party of the first part.

And


Southern Power Distribution Company of Andhra Pradesh Limited, a company incorporated under the Companies Act 1956 or the Companies Act 2013 as applicable, having its registered office at Kesavayanagunta, Tiruchanoor Road, Tirupati, Andhra Pradesh -517501,India (hereinafter referred to as "[APSPDCL]", or "Buying Utility", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assignees) as a Party of the second part.

SECI and APDISCOMs are individually referred to as 'Party' and collectively referred to as 'Parties'.

Whereas:

- A. SECI has been identified by the Government of India as the implementing agency for purchase and sale of grid connected Solar PV power at 33 kV or above under Phase -II, Batch- III of the Jawaharlal Nehru National Solar Mission of Government of India (GoI).
- B. SECI will sign Power Purchase Agreements (PPAs) and VGF Securitization Agreements (VGFSAs) with the selected solar power developers (hereinafter referred to as "SPDs") for procurement of 500 MW Solar Power or the total capacity of projects selected under the provisions of RfS (SECI/JNNSM/P-2/B-3/AP/122015 dated 02.01.2016), if it is less than 500 MW, on a long term basis, as indicated at Schedule-1 and Schedule-2 respectively.
- C. SECI has agreed to sell Solar Power to the APDISCOMs and the APDISCOMs have agreed to purchase such Solar Power from SECI as per the terms and conditions of this Agreement.
- D. SECI has agreed to sell power to the Buying Utilities at the tariff determined from the reverse auction process mentioned in the RfS plus trading margin of Rs. 0.07/kWh i.e. Rs.4.5/Kwh fixed for entire term of this Agreement.
- E. The Parties hereby agree to execute this Power Sale Agreement setting out the terms and conditions for the sale of Solar Power up to the agreed Contracted Capacity by SECI to the Buying Utility.
- F. The agreed Contracted Capacity by SECI to the APDISCOMs shall be [500MW] or the total capacity of projects selected under the provisions of RfS (SECI/JNNSM/P-2/B-3/AP/122015 dated 02.01.2016), if it is less than 500MW, as per the allocation letter issued by SECI. The agreed contracted capacity by SECI shall be allocated to the APDISCOMs as per the directions of GoAP from time to time.

**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:**


  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi





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## 1 **ARTICLE 1: DEFINITIONS AND INTERPRETATION**

### 1.1. **Definitions**

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003, Indian Electricity Grid Code 2010 and the Rules or Regulations framed there under, including those issued / framed by the Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

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| "Act" or "Electricity Act, 2003"               | Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;   |
| "Affiliates"                                   | shall mean a company that, directly or indirectly,<br>i. controls, or<br>ii. is controlled by, or<br>iii. is under common control with, a Company developing a Project or a Member in a Consortium developing the Project and control means ownership by one company of at least 26% (twenty six percent) of the voting rights of the other company.  |
| "Agreement" or "Power Sale Agreement" or "PSA" | shall mean this Power Sale Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;   |
| "Appropriate Commission"                       | shall mean the Central Electricity Regulatory Commission referred to in sub- section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act 2003, as the case may be; For this agreement, APERC: shall mean Andhra Pradesh Electricity Regulatory Commission. |
| "Bill Dispute Notice"                          | shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;   |
| "Bulk Consumer"                                | Shall have the same meaning as provided in CERC (Indian Electricity Grid Code) Regulation, 2010 as amended from time to time.   |
| "Business Day"                                 | shall mean with respect to SECI and Buying Utility, a day other than Sunday or a statutory holiday, on which the PSU banks remain open for business in the state of Delhi and / or Andhra Pradesh;  |
| "Buying Utilities"                             | shall mean APDISCOMs / State Utilities / Bulk Consumers who have signed the PSA (s) with SECI for purchase of Power;  |
| "CERC"   | shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;   |

  
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| "Central Transmission Utility" or "CTU"  | shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;   |
| "Change in Law"                          | shall have the meaning ascribed thereto in Article 8 of this Agreement;   |
| "Competent Court of Law"                 | shall mean any court or tribunal or any similar judicial or quasi-judicial body in Delhi or Andhra Pradesh that has jurisdiction to adjudicate upon issues relating to this Agreement;  |
| "Consultation Period"                    | shall mean the period of sixty (60) days or such other longer period as the Parties may agree, commencing from the date of issuance of a SECI Preliminary Default Notice or APDISCOMs Preliminary Default Notice as provided in Article 9 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances; |
| "Contract Year"                          | shall mean the period beginning from the 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 the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;   |
| "Contracted Capacity"                    | shall mean Solar Power contracted with APDISCOMs for sale of such power by SECI to APDISCOMs as per recital F of this Agreement;  |
| "Day"                                    | shall mean a day, if such a day is not a Business Day, the immediately succeeding Business Day;   |
| "Delivery Points" / "SPD Delivery Point" | shall mean the delivery point as identified in SECI-SPD PPA for respective Projects contributing to total capacity of 500 MW;   |
| "Dispute"                                | shall mean any dispute or difference of any kind between SECI and the APDISCOMs in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 12 of this Agreement;  |
| "Due Date"                               | shall mean 60 <sup>th</sup> day from the date of submission of monthly bill by which date such monthly bill is payable by the buying utility.   |
| "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; In case of non-applicability of the Energy Accounts, for the billing purpose Joint Meter Reading   |

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|   | recorded by STU/DISCOM (as applicable) shall be referred.  |
| "Event of Default"                        | shall mean the events as defined in Article 9 of this Agreement;   |
| "Expiry Date"                             | Since multiple projects of different capacities with different COD will contribute to total capacity, expiry date for the capacity of a Project shall mean the date occurring twenty five (25) years from the date of commercial operation of the last unit of the concerned Solar Power Project;  |
| "Force Majeure" or "Force Majeure Event"  | shall have the meaning ascribed thereto in Article 7 of this Agreement;  |
| "Grid Code" / "IEGC" or "State Grid Code" | shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;  |
| "Incremental Receivables"                 | shall mean the amount of receivables, in excess of the amounts which have already been charged or agreed to be charged in favour of the parties by way of a legally binding agreement, executed prior to the Effective Date;   |
| "Indian Governmental Instrumentality"     | shall mean the Government of India, Governments of State(s), where the Power Projects, SECI and APDISCOMs are located and any Ministry, Department, Board, Authority, Agency, Corporation, Commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) in India;  |
| "Interconnection Facilities"              | shall mean the facilities on SPD's side of the SPD Delivery Point for sending and metering the electrical output in accordance with this Agreement and, subject to Article 4, the Metering System required for supply of power;  |
| "Invoice" or "Bill"                       | shall mean either a Monthly Invoice, Monthly Bill or a Supplementary Invoice /Supplementary Bill by any of the Parties;  |
| "Late Payment Surcharge"                  | shall have the meaning ascribed thereto in Article 6.3.3 of this Agreement;  |
| "Law"                                     | shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission; |
| "Letter of Credit" or "L/C"               | shall have the meaning ascribed thereto in Article 6.4 of this Agreement;  |
| "Month"                                   | shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;   |

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| "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 11 <sup>th</sup> January 2010, as amended from time to time;   |
| "JNNSM Phase-II Batch -III"           | shall mean the Phase II Batch III of the JNNSM;   |
| "SECI-SPD PPA"                        | shall mean the Power Purchase Agreement signed between SECI and SPD for procurement of Solar Power by SECI from SPD and annexed hereto as Schedule 1 of this Agreement;   |
| "SECI-SPD VGFSa"                      | shall mean the VGF Securitization Agreement signed between SECI and SPD annexed hereto as Schedule 2 of this Agreement;   |
| "Open Access"                         | shall have the same meaning as provided in the Electricity Act 2003 as amended from time to time;   |
| "Party" and "Parties"                 | shall have the meaning ascribed thereto in the recital to this Agreement;   |
| "Payment Security Mechanism"          | shall have the meaning ascribed thereto in Article 6.4 of this Agreement;   |
| "Preliminary Default Notice"          | shall have the meaning ascribed thereto in Article 9 of this Agreement;   |
| "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;   |
| "RPC"                                 | shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;                            |
| "Rupees", "Rs."                       | shall mean Indian rupees, the lawful currency of India;   |
| "SERC"                                | shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Subsection (1) of Section 83 of the Electricity Act 2003; |
| "SLDC"                                | shall mean State Load Dispatch Centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;   |
| "SLDC Charges"                        | shall mean the charges levied by any of the relevant SLDCs on the Buying Utility;   |
| "Solar Photovoltaic" or "Solar PV"    | shall mean the solar photovoltaic power project that uses sunlight for direct conversion into electricity and that is being set up by the SPD to provide Solar Power to SECI;   |
| "Solar Power"                         | shall mean power generated from the Solar Photovoltaic Power Project;   |
| "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;  |

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| "Tariff"             | shall have the same meaning as provided for in Article 5 of this Agreement;  |
| "Tariff Payments"    | shall mean the payments to be made under Monthly Bills as referred to in Article 6;  |
| "Termination Notice" | shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 9 of this Agreement;                                      |
| "Term of Agreement"  | shall have the meaning ascribed thereto in Article 2 of this Agreement;  |
| "Trading Margin"     | shall mean the margin as fixed by MNRE for SECI under this scheme on sale of Solar power to Buying Utilities, subject to CERC applicable Regulations in this regard; |
| "Unit"               | shall mean part Capacity commissioned;   |
| "Week"               | shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;   |

## 1.2. Interpretation

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

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees", "Rs." 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

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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 only if agreed to between the parties;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- 1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

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## **2 ARTICLE 2: TERM OF AGREEMENT**

### **2.1. Effective Date**

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

### **2.1.2 Delivery of power to the Buying Utilities:**

As per the Government of India guidelines, Power shall be delivered to the Buying Utilities by SECI.

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

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

### **2.3. Early Termination**

2.3.1 This Agreement shall terminate before the Expiry Date:

- i) if either SECI or APDISCOMs terminates this Agreement, pursuant to Article 9 of this Agreement; or
- ii) if any SECI-SPD PPA gets terminated, the capacity under this Agreement shall automatically be reduced but only to the extent of that particular SECI-SPD PPA capacity.

### **2.4. Survival**

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under, Article 7 (Force Majeure), Article 9 (Events of Default and Termination), Article 10 (Liability and Indemnification), Article 12 (Governing Law and Dispute Resolution), Article 13 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

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A.P.S.P.D.C.L., Tirupathi





### **3 ARTICLE 3: OPEN ACCESS & TRANSMISSION**

#### **3.1. Open Access**


- 3.1.1 The APDISCOMs shall be responsible for obtaining and maintaining long term open access, as required, from the Delivery Points to its receiving substation(s).
- 3.1.2 The APDISCOMs shall be required to apply for open access as per the applicable regulations specified by the Appropriate Commission and shall obtain open access for the Term of the Agreement well in advance so as to start evacuating the Contracted Capacity from the Delivery Points.
- 3.1.3 Delay or failure by the APDISCOMs to obtain open access as required under this Article 3.1, shall not relieve APDISCOMs from the Tariff payment obligations to SECI which shall commence from the date of supply of power by SECI and SPD.

#### **3.2. Charges**

- 3.2.1 As per applicable regulation(s) of the Appropriate Commission(s), all charges pertaining to BPTA and open access of the transmission network of the concerned STU/CTU/ any other Transmission Utility from the Delivery Points to the receiving substation(s) shall be directly paid by the Buying Utility.
- 3.2.2 SECI shall neither be liable for obtaining the open access nor for any payments to be made for such open access to the concerned STU/CTU/any other Transmission Utility by the Buying Utility.

#### **3.3. Losses**

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

  
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#### **4     *ARTICLE 4: METERING***

##### **4.1.   Metering**

- 4.1.1   The metering arrangements for metering the electrical energy supplied at the SPD delivery point shall be at 220 kV side of 400/220 kV grid Sub-Station of STU. The metering arrangements shall comply with the norms of SERC/CERC/CEA as applicable.
- 4.1.2   The energy details obtained from Energy Accounts shall be provided to the APDISCOMs by SECI along with Monthly Bill validating the total energy for which the Monthly Bill is generated.
- 4.1.3   Energy Accounts shall be binding on both the Parties for billing and payment purposes.

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

- 4.2.1.   The scheduling and energy accounting of solar power shall be as per the provisions of the SECI-SPD PPA and Grid Code.

  
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**5. ARTICLE 5: APPLICABLE TARIFF**

- 5.1. The Tariff for Solar Power of individual projects determined from the reverse auction process mentioned in the RfS plus trading margin of Rs. 0.07/kWh i.e. Rs 4.50/kWh fixed for entire term of this Agreement.
- 5.2. The applicable tariff shall be the weighted average tariff of all the commissioned project capacity as per Article-14.1, till the end of the term of the Agreement. The APDISCOMs shall make the Tariff Payments to SECI as per the provisions of this Agreement
- 5.3. Energy supplied by DISCOM  
The Solar Power Developer is entitled to draw the power for its auxiliary consumption, the limit of which is 0.1 % of its project capacity from Buying utility. The energy supplied by the Buying utility to the Solar Power Developer through a bilateral arrangement, to maintain the Auxiliaries of the power plant in situations of non-generation of power/in excess of 0.1% of project capacity, in any billing month shall be adjusted from the Delivered Energy, as indicated below:  
Net Energy = Delivered Energy by the developer at Interconnection Point - Energy draws from Buying utility for auxiliaries.  
However, in case Net Energy in the above calculation is negative, i.e. there is NO Delivered Energy by the SPD at the Interconnection Point or for the energy drawn from Buying utility in excess of 0.1% of project capacity, then the Energy Drawl from the Buying utility shall be billed at the applicable tariff of HT-1 category consumers.  
Explanation: The Solar plants during the plant shut down/non-generation periods shall draw the energy from DISCOM only for the essential loads not exceeding auxiliary consumption.

Note: The CUF of 24% shall be considered for calculation of Auxiliary Consumption.

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## **6 ARTICLE 6: BILLING AND PAYMENT**

### **6.1. General**

- 6.1.1. From the commencement of supply of power by SECI, the APDISCOMs shall pay to SECI the monthly Tariff Payments, on the Due Date, in accordance with Tariff as specified in Article 5. All Tariff Payments by the APDISCOMs shall be in Indian Rupees.

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

- 6.2.1. SECI shall issue to the APDISCOMs a signed Monthly Bill on the 1<sup>st</sup> Business Day of the next Month.
- 6.2.2. The Monthly Bill prepared as detailed in Schedule-3 of the PSA, shall include the following;
- i) Provisional Bill for Solar Power Supplied in the immediately preceding Month;
  - ii) (a) Adjustments against the Provisional Bill(s) based on Energy Accounts for the Solar Power Supplied in the Month(s) preceding to the previous month(s);
  - ii) (b) Any other adjustments to cover open access related charges and any other prior-period adjustments;
  - iii) Late Payment Surcharge, if any; and
  - iv) Taxes, Duties, Levies etc. as applicable.

### **6.3. Payment of Monthly Bills**

- 6.3.1. The APDISCOMs shall pay the amount payable under the Monthly Bill on the Due Date i.e. 60th day from the date of submission of monthly bill, to such account of SECI, as shall have been previously notified to the APDISCOMs in accordance with Article 6.3.2 below.
- 6.3.2. SECI shall open a bank account at New Delhi ("SECI's Designated Account") for all Tariff Payments to be made by the APDISCOMs to SECI, and notify the APDISCOMs of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The APDISCOMs shall also designate a bank account at Hyderabad/ Amaravati (the "Buying Utility's Designated Account") for payments to be made by SECI to the Buying Utility, if any, and notify SECI of the details of such account ninety (90) Days before the dispatch of the first Monthly Bill. SECI and the APDISCOMs shall instruct their respective bankers to make all payments under this Agreement to the Buying Utility's Designated Account or SECI's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.
- 6.3.3. **Late Payment Surcharge**  
In the event of delay in payment of a Monthly Bill by the APDISCOMs beyond its Due Date, a Late Payment Surcharge shall be payable by the APDISCOMs to SECI at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis. The Late Payment Surcharge shall be claimed by SECI through the next Monthly Bill.

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#### 6.4. Payment Security Mechanism

##### Letter of Credit (LC):

- 6.4.1 The APDISCOMs shall provide to SECI, in respect of payment of its Monthly Bills, an unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Buying Utility, which may be drawn upon by SECI in accordance with this Article. The APDISCOMs shall provide SECI draft of the Letter of Credit proposed to be provided to SECI two (2) months before the Scheduled Commissioning Date.
- 6.4.2 Not later than one (1) Month before the Start of Supply, the APDISCOMs shall through a scheduled bank at Hyderabad/ Amaravati open a Letter of Credit in favour of SECI, to be made operative at least 15 days prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be reviewed for every year in the month of January, and revised w.e.f. April for 105% of amount in the following manner:
- i) For the first contract year, equal to the estimated average monthly billing.
  - ii) For each subsequent contract year, equal to monthly average billing for the previous contract year.
- 6.4.3 Provided that SECI shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawal in a Month.
- 6.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 6.4.2 due to any reason whatsoever, the APDISCOMs shall restore such shortfall within seven (7) days from the occurrence of such shortfall.
- 6.4.5 The APDISCOMs shall cause the scheduled bank issuing the Letter of Credit to intimate SECI, in writing regarding establishing of such irrevocable Letter of Credit and of any changes therein.
- 6.4.6 APDISCOMs. The APDISCOMs shall ensure that the letter of credit shall be renewed not later than Thirty (30) days prior to its expiry.
- 6.4.7 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Buying Utility.
- 6.4.8 If the APDISCOMs fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 6.6.1 and 6.6.2, SECI may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Buying Utility, an amount equal to such Monthly Bill or part thereof, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
- i) a copy of the Monthly Bill which has remained unpaid by the Buying Utility;
  - ii) a certificate from SECI to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

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### 6.5. Third Party Sales by SECI

- 6.5.1. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of any of the following event(s), SECI shall be entitled to regulate power supply of Solar Power of the Buying Utility;
- i) Default in making payment by the 15<sup>th</sup> day after the Due Date,
  - ii) Non-recoupment of LC by the 15<sup>th</sup> day after its operation.
  - iii) Non-availability of LC for operation and for its required value by the 15<sup>th</sup> day after the Due Date.
- 6.5.2. SECI shall issue the Notice for Regulation of Power Supply on the date above and shall give a notice of 15 days to start the regulation on the 16<sup>th</sup> day thereafter.
- 6.5.3. Regulation of Power Supply would be on pro rata basis i.e., in the ratio of amount due and unpaid to total amount due against the relevant Monthly Bill. In case of shortfall in amount of LC available, the right to regulate shall be in the ratio of shortfall in LC maintained /available to the total amount of LC required.
- 6.5.4. In order to avoid any doubts, it is illustrated that:
- i) In the event of a bill amounting to Rs. 25 Crore is unpaid to the extent of Rs. 10 Crore, SECI would have a right to regulate and sell Buying Utility's allocation of the power to third parties to the extent of 40% (i.e.  $10/25 \times 100$ ).
  - ii) If LC required to be opened/ maintained by APDISCOMs is to the extent of Rs. 25 Crore and LC opened/maintained/available is to the extent of Rs. 15 Crore only i.e. LC available is short by Rs. 10 Crore, SECI would have a right to regulate and sell Buying Utility's allocation of power to third parties to the extent of 40% (i.e.  $10/25 \times 100$ ).
- 6.5.5. SECI shall have the right to divert the Solar Power or part thereof and sell it to any third party namely;
- i) Any consumer, subject to applicable Law; or
  - ii) Any licensee under the Act;
- SECI shall request the concerned SLDC/RLDC to divert such power to third party as it may consider appropriate.
- 6.5.6. Provided that such sale of power to third party shall not absolve the APDISCOMs from its obligation to pay in full to SECI for the solar power as per SECI-SPD PPA and any other outstanding payment liability of the APDISCOMs as per this Agreement.
- 6.5.7. The amount realized from the diversion and sale of power to third party over and above the trading margin, any charges including open access charges and other costs shall be adjusted first against the pending liability of the Buying Utility. Deficit if any shall be made good by the Buying Utility.
- 6.5.8. Sales to any third party shall cease and regular supply of electricity to the APDISCOMs shall commence and be restored within thirty (30) days from the date of clearing all outstanding dues payable to SECI for the Solar Power under this Agreement.
- 6.5.9. Further, the liability of the APDISCOMs to make the Tariff Payments to SECI as per Energy Accounts shall start from the day of such restoration of supply of power and shall continue for such periods wherein such power was made available by SPD for usage by the Buying Utility.

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## **6.6. Disputed Bill**

- 6.6.1. If the APDISCOMs does not dispute a Monthly Bill raised by the other Party within fifteen (15) days of receiving, such Bill shall be taken as conclusive.
- 6.6.2. If the APDISCOMs disputes the amount payable under a Monthly Bill it shall pay the un-disputed amount and it shall within sixty (60) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party against disputed amount setting out:
- i) the details of the disputed amount;
  - ii) its estimate of what the correct amount should be; and
  - iii) all written material in support of its claim.
- 6.6.3. If the SECI agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.6.2, the SECI shall make appropriate adjustment in the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the APDISCOMs and up to and including the date on which such payment has been received as refund.
- 6.6.4. If the SECI does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 6.6.2, it shall, within thirty (30) days of receiving the Bill Dispute Notice, furnish a notice ("Bill Disagreement Notice") to the disputing Party providing:
- i) reasons for its disagreement;
  - ii) its estimate of what the correct amount should be; and
  - iii) all written material in support of its counter-claim.
- 6.6.5. Upon receipt of the Bill Disagreement Notice by the APDISCOMs under Article 6.6.4, authorized representative(s) or a director of the board of directors/ member of board of the APDISCOMs and SECI shall meet and make best endeavours to amicably resolve such dispute within thirty (30) days of receipt of the Bill Disagreement Notice.
- 6.6.6. If the Parties do not amicably resolve the Dispute within thirty (30) days of receipt of Bill Disagreement Notice pursuant to Article 6.6.4, the matter shall be referred to Dispute resolution in accordance with Article 12.
- 6.6.7. For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the APDISCOMs 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.

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

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

  
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6.7.2. The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the APDISCOMs and SECI shall jointly sign such reconciliation statement. After signing of a reconciliation statement, the SECI shall make appropriate adjustments in the following Monthly Bill, with Surcharge/Interest, as applicable. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 12.

**6.8. Renewable purchase obligation**

- 6.8.1. The APDISCOMs may identify the energy procured from the SPD Delivery Point to meet its renewable purchase obligations (as mandated by the Appropriate Commission). Provided that the renewable purchase obligation of the APDISCOMs shall be considered to be met by the APDISCOMs only if there is no payment default for such energy procured by the Buying Utility. A certificate to such effect shall be provided by SECI to the Buying Utility.
- 6.8.2. SECI shall provide such certificate identifying the quantum of solar energy supplied by SECI and being met by the APDISCOMs for each year within thirty (30) days after the end of such year.
- 6.8.3. SECI, at any time during a Contract Year, shall not be obliged to purchase any additional energy from the SPDs beyond **[1106.695] Million kWh (MU)**<sup>1</sup> as per PPAs signed with SECI for solar PV Projects. If for any Contract Year, it is found that the SPDs have not been able to generate minimum energy of **[855.173] Million kWh (MU)** till the end of 10 years and **804.869] Million kWh (MU)** for the rest of the term of the Agreement, as per PPA signed with SECI for solar PV Projects, on account of reasons solely attributable to the SPD, the noncompliance by SPD shall make SPD liable to pay the compensation and shall duly pay such compensation to SECI to enable SECI to remit the amount to Buying Utilities. APDISCOMs This compensation shall be equal to the forbearance price determined by Hon'ble CERC from time to time by the APDISCOMs towards non meeting of RPPOs.. This compensation shall be subject to the adjustment made in energy generated in case of non-availability of grid for evacuation which is beyond the control of SPD and / or abnormally low annual Global Horizontal Irradiance year and /or Force Majeure identified under PPA with SECI affecting supply of solar power by SPD.
- 6.8.4. Notwithstanding Article 6.8.3, any power which is in excess of the quantum of power agreed to be supplied under this Agreement shall be offered to the APDISCOMs and in case the APDISCOMs does not accept the same, SECI shall take appropriate action as per PPA.

<sup>1</sup> Weighted annual average value of declared CUF shall be calculated by taking weighted average of CUFs as declared by all selected SPDs pursuant to Article 4.4.1 of the Schedule 1 of this Agreement (i.e. SECI-SPD PPAs).

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

### **7.1. Definitions**

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

### **7.2. Affected Party**

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

### **7.3. Force Majeure**


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

- a) Act of God, including, but not limited to lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, resulting in evacuation of power being disrupted from the Delivery Points; or
- b) Explosion, accident or breakage of transmission facilities to deliver power from the Delivery Points to the receiving substation(s); or
- c) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action making the performance of obligations as specified herein as impossible; or
- d) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.
- e) An event of force majeure identified under SECI-SPD PPA thereby affecting supply of power by SPD.
- f) An event of force majeure affecting the concerned STU/CTU/ any other transmission utility, as the case may be, thereby affecting the evacuation of power from the Delivery Points by the Buying Utility.

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

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

- a. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- b. Strikes at the facilities of the Affected Party;
- c. Insufficiency of finances or funds or the agreement becoming onerous to perform; and

  
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d. Non-performance caused by, or connected with, the Affected Party's:

- i. Negligent or intentional acts, errors or omissions; or
- ii. Failure to comply with an Indian Law; or
- iii. Breach of, or default under this Agreement.

**7.5. Notification of Force Majeure Event**

7.5.1. The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after restoration of communications, but not later than one (1) day after such reinstatement.

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

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


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

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

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

7.7.1. Subject to this Article 7:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations as specified under this Agreement;
- (c) For avoidance of doubt, neither Party's obligation to make payments of money due and payable for the period prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
- (d) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

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

### **8.1. Definitions**

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

8.1.1. "Change in Law" means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/ non-recurring expenditure by SECI or any income to SECI:

- 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 apply such Law, or any Competent Court of Law;
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Buying Utility;
- any change in tax or introduction/waival of any tax made applicable for sale of power by SECI to the APDISCOMs as per the terms of this Agreement.

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of SECI (if applicable).

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

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

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

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

### **9.1. APDISCOMs Event of Default**

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

- (i) Any amount, subject to Article 6.6 remains outstanding beyond a period of sixty (60) days after the Due Date and SECI is unable to recover the amount outstanding from the APDISCOMs through the Letter of Credit; or
- (ii) The APDISCOMs fails to evacuate power from the Delivery Points for a continuous period of one year.
- (iii) If (a) the APDISCOMs becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Buying Utility, or (c) the APDISCOMs 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 APDISCOMs will not be a APDISCOMs 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 APDISCOMs and expressly assumes all obligations of the APDISCOMs under this Agreement and is in a position to perform them; or
- (iv) The APDISCOMs repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from SECI in this regard; or
- (v) Except where due to any SECI's failure to comply with its material obligations, the APDISCOMs is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the APDISCOMs within thirty (30) days of receipt of first notice in this regard given by SECI.
- (vi) Occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Buying Utility.

### **9.2. Procedure for cases of APDISCOMs Event of Default**

9.2.1. Upon the occurrence and continuation of any APDISCOMs Event of Default under Article 9.1, SECI shall have the right to deliver to the APDISCOMs a notice, stating its intention to terminate this Agreement (SECI Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

9.2.2. Following the issue of SECI Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

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- 9.2.3. During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.
- 9.2.4. Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the APDISCOMs Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, SECI may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Buying Utility.

**9.3. Termination due to Force Majeure**

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

**9.4. Termination of back to back agreements**

In case of termination of SECI- any SPD PPA, this Agreement shall automatically be of reduced capacity but only to the extent of that particular SECI-SPD PPA capacity. Provided that in case of such reduction, any pending monetary liabilities of either Party shall survive the reduced capacity of this Agreement.

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

### **10.1. Indemnity**


10.1.1. The APDISCOMs shall indemnify, defend and hold SECI harmless against:

- a) any and all third party claims against SECI for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the APDISCOMs of any of its obligations under this Agreement, except to the extent that any such claim has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of SECI, its contractors, servants or agents; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by SECI from third party claims arising by reason of:
  - (i) breach by the APDISCOMs of any of its obligations under this Agreement, (provided that this Article 10 shall not apply to such breaches by the Buying Utility, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of SECI, its contractors, servants or agents, or
  - (ii) any of the representations or warranties of the Buying Utility, if any made under this Agreement, being found to be inaccurate or untrue.

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

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

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 10.1.1(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 10.1.1(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:
  - i) the Parties choose to refer the dispute before the Arbitrator in accordance with Article 12.3.2; and
  - ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute, the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.
- b. The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 10.1.1(a) 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.


  
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**10.3. Indemnifiable Losses**

10.3.1. Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 10.1.1(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non-payment of such losses after a valid notice under this Article 10.3, such event shall constitute a payment default under Article 9.

  
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**11 ARTICLE 11: ASSIGNMENTS AND CHARGES**

**11.1. Assignments**


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

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

Provided further that any successor(s) or permitted assignee(s) identified after mutual agreement between the Parties may be required to execute a new agreement on the same terms and conditions as are included in this Agreement.

**11.2. Permitted Charges**

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

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

### **12.1. Governing Law**

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

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

#### **12.2.1. Amicable Settlement**

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ( "Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:
  - (i) a description of the Dispute;
  - (ii) the grounds for such Dispute; and
  - (iii) all written material in support of its claim.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 6.6.2, furnish:
  - (i) counter-claim and defences, if any, regarding the Dispute; and
  - (ii) all written material in support of its defences and counter-claim.
- iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 6.6.2 if the other Party does not furnish any counter claim or defence under Article 6.6.4 or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 6.6.4, the Dispute shall be referred for dispute resolution in accordance with Article 12.3.

### **12.3. Dispute Resolution**

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

- i. Where any Dispute (i) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (ii) relates to any matter shall be referred to the APERC. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.
- ii. The obligations of the APDISCOMs under this Agreement towards SECI shall not be affected in any manner by reason of inter-se disputes amongst the Buying Utility.

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

- i. If the Dispute arises out of or in connection with any claims not covered in Article 12.3.1i), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as under:
  - i) The Arbitration Tribunal shall consist of three (3) arbitrators. Each party shall appoint one Arbitrator within thirty (30) days of the receipt of request for settlement of dispute by Arbitration. The two appointed Arbitrators shall within thirty (30) days of their appointment, appoint a third Arbitrator

Chief General Manager  
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A.P.S.P.D.C.L., Tirupathi




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 thirty (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 or Andhra Pradesh . The language of the arbitration shall be English.
- iii) The Arbitration Tribunal's award shall be pronounced in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- iv) The provisions of this Article shall survive the termination of this PSA for any reason whatsoever.
- v) The award shall be of majority decision. If there is no majority the award will be given by the presiding Arbitrator.

**12.4. Parties to Perform Obligations**

- 12.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 12.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi





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

#### **13.1. Amendment**

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

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

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

#### **13.3. Waiver**

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

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

#### **13.4. Confidentiality**

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

- a) to their professional advisors;
- b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- c) disclosures required under Law.

without the prior written consent of the other Parties.

#### **13.5. Severability**

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

#### **13.6. Notices**

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

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

Address : The Chief General Manager (P&MM,IPC),  
APSPDCL, Kesavayanagunta,  
Besides Srinivasa Kalyanamantapam,  
Tiruchanur Road, Tirupati – 517 501.

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi



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

Address : Solar Energy Corporation of India Limited,  
1<sup>st</sup> Floor, A-Wing, D-3, District Centre, Saket,  
New Delhi-110017

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

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

**13.7. Language**

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

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

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

- 13.8.1. Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement shall be restricted to the extent provided in the Indian Companies Act, 1956 or the Indian Companies Act 2013 as applicable.

**13.9. Taxes and Duties**

- 13.9.1 The Buying Utility shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Buying Utility, contractors or their employees that are required to be paid by the Buying Utility as per the Law in relation to the execution of the Agreement.

- 13.9.2 SECI shall be indemnified and held harmless by the Buying Utility against any claims that may be made against SECI in relation to the matters set out in Article 13.9.1.

- 13.9.3 SECI shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Buying Utility by SECI on behalf of Buying Utility or its personnel.

**13.10. No Consequential or Indirect Losses**

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

Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi





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

**13.11. Order of priority in application**

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

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


**13.12. Independent Entity**

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

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

**13.13. Compliance with Law**

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made 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.

  
Chief General Manager  
P&MM&IPC,  
A.P.S.R.D.C.L.



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

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

  
(Signature with Seal)


Solar Energy Corporation of India Limited  
1<sup>st</sup> Floor, A-Wing, D-3,  
District Centre, Religare Building,  
Saket,  
New Delhi-110017

Witness:

1.

2

For and on behalf of  
[Southern Power Distribution Company  
of AP Limited]

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi  
(Signature with Seal)

The Chief General Manager (P&MM,IPC),  
APSPDCL, Kesavayanagunta,  
Besides Srinivasa Kalyanamantapam,  
Tiruchanur Road, Tirupati – 517 501.

Witness:

1.

2.

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi



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

**14.1 List of SECI-SPD PPAs**

| Sl. No. | SPD Name  | Project Code              | Project Capacity (MW) | Applicable Tariff as per SECI-SPD PPA       | Plot in the Ananthapuramu Solar Park |
|---------|---|---------------------------|-----------------------|---|--------------------------------------|
| 1.      | FRV Andhra Pradesh Solar Farm-I Private Limited | P2B3T4-FRVSHXIBV-B-5AP-1V | 50                    | 4.43  | P2                                   |
| 2.      | FRV India Solar Park-II Private Limited         | P2B3T4-FRVSHXIBV-B-5AP-2V | 50                    | 4.43  | P8                                   |
| 3.      | ACME Karnal Solar Power Pvt. Ltd                | P2B3T4-ASHPL-B-5AP-1V     | 50                    | 4.43  | P1                                   |
| 4.      | ACME Hisar Solar Power Pvt. Ltd                 | P2B3T4-ASHPL-B-5AP-2V     | 50                    | 4.43  | P3                                   |
| 5.      | ACME Bhiwadi Solar Power Pvt. Ltd               | P2B3T4-ASHPL-B-5AP-3V     | 50                    | 4.43  | P6                                   |
| 6.      | Tata Power Renewable Energy Limited             | P2B3T4-TPREL-B-5AP-1V     | 50                    | 4.43  | P4                                   |
| 7.      | Tata Power Renewable Energy Limited             | P2B3T4-TPREL-B-5AP-1V     | 50                    | 4.43  | P5                                   |
| 8.      | Azure Power India Private Limited               | P2B3T4-APIPL-B-5AP-1V     | 50                    | 4.43  | P7                                   |
|         | <b>TOTAL</b>                                    |                           | 400                   |   |                                      |
| 9.      | **  |                           | 50                    | ** To be discovered (Maximum Tariff – 4.43) | P9                                   |
| 10.     | **  |                           | 50                    |   | P10                                  |

Projects at Sl. No. 1-8 are filled after selection of projects through the provisions of RfS (SECI/JNNSM/P-2/B-3/RfS/AP/122015)

\*\*Projects at Sl. No. 9-10 to be filled after selection of projects through the provisions of RfS (SECI/JNNSM/P-2/B-3/RfS/AP/072016/A)

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**15 SCHEDULE 2: SECI-SPD VGF SECURITIZATION AGREEMENT(S)**

**15.1 List of SPD VGFSAs:** Same as per Article 14.1.

**15.2 Model SECI- SPD VGFA**

[Annexed]



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A.P.S.P.D.C.L., Tirupathi





**16 SCHEDULE 3: AMOUNT REALISATION FOR SALE OF SOLAR POWER**

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

**1. Provisional Billing for Solar Power for the previous month-**

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

$$A_p = p) * T(sp) + \sum Atr$$

Where,

- A p = Provisional Billing amount (in Rs.) for Solar Power for the applicable Month;
- Ep (sp) = No. of units (kWh) for the applicable Month as per Article 6.8.3 of this Agreement;
- T(sp) = Tariff (in Rs./kWh) subject to article 5 of this Agreement. (including Trading Margin of SECI @ 7 paisa/kWh);
- Atr = Monthly Transmission Charges (Rs.) as applicable for the link between the respective STU pooling Station to STU grid station/CTU grid station for the Solar Power Stations, as the case may be; The Monthly Transmission Charges shall be based on Demand Charges and Usage Charges of the STU;

**Where, weighted average component of solar power is worked out for all Solar Power Developers with whom SECI has entered into Power Purchase Agreements and as detailed in Schedule-1 of this Agreement.**


**2. Adjustment against Provisional Billing for Solar Power for the preceding previous month on the basis of Energy Accounts-**

**(a) Tariff for Solar power for the preceding previous month**

$$T_f = p) * T(sp) + \sum Atr / \sum Ea(sp)$$

Where,

- Tf = Tariff (in Rs./kWh) as computed for Solar Power for the applicable Month (preceding previous);

  
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P&MM&IPC,  
A.P.S.P.D.C.L., Tirunelveli



- Ea(SP)Net Energy = No. of units (kWh) metered at SPD Delivery Point as per the Energy Accounts for the applicable Month(preceding previous)-Energy drawl from APDISCOMs for auxiliaries
- T(sp) = Tariff (in Rs./kWh) subject to article 5 of this Agreement. (including Trading Margin of SECI @ 7 paisa/kWh);
- Atr = Monthly Transmission Charges (Rs.) as applicable for the link between the respective STU pooling Station to STU grid station/CTU grid station for the Solar Power Stations, as the case may be; The Monthly Transmission Charges shall be based on Demand Charges and Usage Charges of the STU;

**(b) Adjustment against Provisional billing amount for preceding previous month**

$$A_f = E_d * T(f)$$

Where:

- A f = Adjustment against Provisional Billing amount(in Rs.) based on Energy Accounts for Solar Power for the applicable Month(preceding previous);
- Ed = Actual Energy metered for respective Buying Utilities from the tied power of respective Solar Power Projects during the preceding previous month ;
- T(f) = Actual Tariff (in Rs./kWh) for Solar Power for the applicable Month(preceding previous);

**(c) Adjustment against Provisional billing amount for the preceding previous month-**

Adjustment against Provisional Billing for Solar power Af for preceding previous month as computed at Serial No.2(b) less Provisional Billing amount Ap for preceding previous month as per last month bill at Serial no.1(a).

**3. Billing to be done by SECI on the Distribution Utilities on each month**

**Total Amount to be billed = {Provisional Billing as at serial 1(a) + Adjustment against Provisional Billing amount as at serial 2(c)}**

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A.P.S.P.D.C.







**VGF SECURITIZATION AGREEMENT**

NO.SECI / JNNSM / SPV / PH II B III T III/ VGFS/15-16/[Insert Project ID] \_\_\_\_\_ DATE--  
---

NAME OF SOLAR POWER DEVELOPER : -----

REGISTERED ADDRESS OF THE : -----  
SOLAR POWER DEVELOPER -----  
-----

PROJECT NAME /LOCATION : -----


PROJECT CAPACITY : -----MW

PROJECT ADDRESS : -----

VGF AMOUNT : Rs. \_\_\_\_\_ (in figures)

: (-----in words)


**Solar Energy Corporation of India Limited**  
**1<sup>st</sup> Floor, A-Wing, D-3, District Centre, Saket,**  
**New Delhi-110017**  
**Tel No. 011-71989200**  
**E-mail – nsm@seci.gov.in**

  
**Chief General Manager**  
**P&MM&IPC,**  
**A.P.S.P.D.C.L., Tirupathi**  
**Solar Energy Corporation of India Limited**



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Chief General Manager  
SECI/PC,  
Tirupathi





**VGFSECURITIZATION AGREEMENT (VGFSa)**

THIS VGF SECURITIZATION AGREEMENT is made and executed at New Delhi on \_\_\_\_\_ day of \_\_\_\_\_ 2016 between \_\_\_\_\_ Limited, a Company within the meaning of the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013, as applicable and having its Registered office at \_\_\_\_\_ in the State of \_\_\_\_\_ hereinafter called the "SPD" (which expression shall unless excluded by or repugnant to the context or meaning thereof) as the **First Part**

AND

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

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

**Whereas:**

- A. Whereas Government of India (GOI) through Ministry of New and Renewable Energy (MNRE) has notified on 04<sup>th</sup> August 2015 Guidelines to select Solar Power Developers for setting up of 2000MW of Grid connected Solar PV Power Projects under Phase-II Batch-III of the JNNSM (hereinafter referred to as Guidelines). The Guidelines inter alia provides for implementing the Projects through "Viability Gap Funding" support to the SPD in order to minimize the impact of tariff on Buying Utilities i.e. Discoms / State Utilities / Bulk Consumers who entered into the Power Sale Agreement (s) (PSA (s)) with SECI for purchase of Power;
- B. Whereas, SECI has been designated by the Government of India as the nodal agency for implementation of MNRE scheme for developing grid connected solar power capacity including Phase-II, Batch-III of the Jawaharlal Nehru National Solar Mission (JNNSM) of Government of India (GoI) through VGF mode;
- C. Whereas, [Insert Name of the SPPD] has been designated as the agency for development of Solar Park(s) in the State of [Insert the name of the State] under GOI Scheme for Development of Solar Parks and Ultra Mega Solar Power Projects;
- D. Whereas, MNRE has made allocation of [Insert Allocation made to the State] MW to the State of [Insert Name of the State] under the aforesaid Phase-II Batch-III of JNNSM;
- E. Whereas, pursuant to the above, SECI had invited project proposals from the eligible bidders for installation of Solar Power Projects on Build-Own-Operate (BOO) basis and generate power and sell to SECI as per the terms and conditions of RfS No. [Insert RfS No.] dated XX.XX.XXXX including its amendments and clarifications;

Solar Energy Corporation of India Limited

SECI / JNNSM / SPV / P II B III T IV / VGFSa/15-16/[Insert Project ID]

Chief General Manager  
P&M&IPC,  
A.P.S.P.D.C.L., New Delhi





- F. Whereas the SPD has been declared as a Successful Bidder in the bid process against the above mentioned RFS and have been issued a Letter of Intent (LOI) No[Insert LOI No.] dated[Insert date of LOI] for setting up a Solar Power Project based on Photo Voltaic technology of ..... [Insert Contracted Capacity] MW capacity at.....[Insert Location including name of the Solar Park] in the state of ..... [Insert State] (hereinafter referred to as "Project") at an estimated cost of Rs----- [Insert Project Cost in figures] (in words.....);
- G. Whereas the SPD and SECI have also signed a Power Purchase Agreement (PPA) dated [Insert date of PPA] to supply power by SPD to SECI from the Project for a period of twenty five (25) years as per terms and conditions specified in the PPA and
- H. Whereas pursuant to the issuance of LOI and signing of PPA and upon successful commissioning of the Project, the SPD would be eligible to receive VGF support amounting to maximum Rs. **[Insert VGF Amount in figures.]**(Insert VGF Amount in Words), which shall be released by SECI, provided the Project meets the generation requirements as per Article 2.2 (c) of this Agreement & the SPD fulfils other terms & conditions as indicated hereinafter and in LOI and PPA.

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

## ARTICLE 1: DEFINITION AND INTERPRETATION

### 1.1. Definitions:

In this Agreement unless the context otherwise requires:

- (a) "Commissioning" shall mean commissioning as defined in the PPA;
- (b) "Commercial Operation Date" or "COD" shall mean shall be the date 30 days subsequent to the actual date of commissioning of the project as declared by the Committee/ SNA/SECI (as applicable) ;
- (c) "Chartered Accountant" shall mean a person practicing in India or a firm whereof all the partners practicing in India as a Chartered Accountant(s) within the meaning of the Chartered Accountants Act 1949;
- (d) "Company Secretary" shall mean a person who is a member of the Institute of Company Secretaries of India either in whole time employment or in practice within the meaning of the Company Secretaries Act, 1980;
- (e) "Contracted Capacity" shall mean .....[Insert capacity] MW contracted with SECI for supply by the SPD to SECI at the Delivery Point from the Solar Power Project.;

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A.P.S.P.D. Solar Energy Corporation of India Limited

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- (f) "CUF" means Capacity Utilization Factor as defined in the PPA;
- (g) "Guidelines" shall mean the "JNNSM Guidelines for selection of 2000 MW Grid Connected Solar PV Power Projects under Phase-II Batch III" notified vide No. 32/2/2014-15/GSP dated 04th August 2015 including its subsequent amendments and clarifications;
- (h) "LOI" means Letter No. \_\_\_\_\_ dated \_\_\_\_\_ issued by SECI to the SPD for award of the Project;
- (i) "Term Loan Lender" or "Lending Institution" means banks, financial institution or any other financial institution who lends/ funds to the SPD for execution and development of the Project;
- (j) "MNRE" means the Ministry of New and Renewable Energy, Government of India, New Delhi;
- (k) "Preliminary Estimated Project Cost" means the project cost of Rs. \_\_\_\_\_ (-----in words) for the Project indicated by SPD as part of the bid submitted by SPD vide Ref No.-----;
- (l) "Project" or "Power Project" shall mean the solar power generation facility of Contracted Capacity of **[Insert Contracted Capacity]** MW, located in the Solar Park being developed by the **[Insert the Name of the SPPD]** 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 Designated 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 upto the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per the PPA;
- (m) "Power Purchase Agreement" or "PPA" shall mean the Power Purchase Agreement signed between SECI and the SPD for procurement of -----MW **[Insert Contracted Capacity]** Solar Power by SECI from the SPD and annexed hereto as Schedule 1 of this Agreement;
- (n) "Project Capacity" shall mean the maximum AC capacity at the delivery point on which the Power Purchase Agreement and this Agreement has been signed;

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P&MM&IPC  
A.P.S.P.D.C.E., Tirupathi

Solar Energy Corporation of India Limited  
SECI / JNNSM / SPV / P II B III T IV / VGFS/15-16/[Insert Project ID]



- (o) "RfS" or "Request for Selection" means the bidding document [Insert RfS No.] dated DD-MM-YYYY including its amendments and clarifications issued by the SECI to prospective bidders;
- (p) "Solar Power Park Developer" or "SPPD" shall mean Andhra Pradesh Solar Power Corporation Private Limited (include its successors and assignees) a Joint Venture Company of SECI, APGENCO and NREDCAP under the Companies Act 2013;
- (q) "VGF" means the Viability Gap Funding amount specified in Article 2.1 of this Agreement;
- (r) "Agreement" or "VGF Securitization Agreement" means this particular VGF Securitization Agreement and includes all schedules and all amendments and documents supplemental or incidental to the VGF Securitization Agreement entered by SECI with the SPD for creation, perfection and enforcement (if any) of charges on the Power Project of the SPD;
- (s) "VGF disbursement schedule" means the disbursement schedule of VGF Amount as provided in Article 2.4 of the Agreement;
- (t) "Delivery Point" means delivery point as defined in the PPA and
- (u) "Project Assets" means all immovable and movable assets (constructed and intended to be constructed) created by the SPD for the construction and operation of the Project (including supply of power under the PPA) within the Project premises and power evacuation system including transmission line and metering system till the Delivery Point on which the charge of SECI (or its authorized agent) and / or (as applicable) term loan lenders / lending institution (if any) shall be created by the SPD.

## 1.2. Interpretation:

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

- (a) All the terms and expressions in capitalized form not defined herein in this Agreement shall have meaning as provided therein in the Guidelines, RfS documents and PPA.
- (b) This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented; and shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;






- (c) An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- (d) A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- (e) An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- (f) "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (g) A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- (h) "Rupee", "Rupees", "Rs" or rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;
- (i) The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (j) Words importing singular number shall be deemed to include plural number and vice versa.
- (k) A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- (l) A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;



- (m) Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- (n) The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- (o) All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
- (p) The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- (q) The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- (r) “Contracted Capacity” and “Project Capacity” have been used interchangeably in this Agreement and carries same meaning;
- (s) In case of inconsistencies between this Agreement and said Guidelines issued by MNRE, the clause(s) given in Guidelines shall prevail; and PPA and VGFSa shall read harmoniously and
- (t) “Good title” means the SPD is rightful owner and is in peaceful possession of the Land as per the revenue record and the SPD shall also have proper authority to work on land for the term of 25 years, by way of permitted instruments by Ministry and requisite approval for the construction period.

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi





## ARTICLE 2: AGREEMENT AND TERMS OF VGF

### 2.1 Amount and Disbursement of VGF:

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

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

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

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

### 2.2 Conditions to be Fulfilled for Disbursement of VGF:

- a) First installment of 50% of VGF amount indicated in Article 2.1 above shall be released subsequent to Scheduled Commissioning Date (as per PPA) subject to fulfillment of following conditions:
- Successful commissioning of the full capacity of the Project as per the "Schedule 6 of the PPA". A duly constituted Committee will physically inspect and certify satisfactory commissioning of the Project.
  - Creation of charge in line with Article 3.0 of this Agreement, including registration of the same with the Registrar of Companies (ROC).

Chief General Manager

P&MM&IPC

Solar Energy Corporation of India Limited

A.P.S.P.D.C.L., Tirupathi



- iii) The SPD shall furnish financing documents (including financing agreements) to SECI;
  - iv) Demonstration / infusion of cumulative capital in the form of Equity for an amount of at least Rs. 1.20 Cr./MW
  - v) SPD shall also obtain all Consents, Clearances and Permits including Consent to Operate required for operation and supply of power to SECI before Commissioning of the Project
- b) Balance 50% of the VGF shall be released progressively over the next 5 years as indicated in Article 2.1 above subject to the Project meeting requirements of the Project Performance in line with Clause 2.2 (c) and provided that no event of default as per terms and conditions of the PPA, and VGF Securitization Agreement have occurred or such event of default has been unless waived by SECI or cured / remedied by the SPD in accordance with the PPA and this Agreement as the case may be.
- c) For the purpose of determination of annual CUF, the SPD will declare the annual CUF of the Project at the time of commissioning and will be allowed to revise the same only once within 1 year of Commissioning. The declared annual CUF shall in no case be less than 17% over a year. The SPD shall maintain generation so as to achieve annual CUF within minus (-)15% and plus (+)10% of the declared value till the end of 10 years subject to the annual CUF remaining over minimum of 15%. For remaining term of the PPA, the SPD shall maintain generation so as to achieve annual CUF within minus (-) 20% and plus(+) 10% of the declared annual CUF. For the purpose of release of VGF, CUF will be calculated every year from the COD up to completion of 1 year from the COD. The upper limit will not be applicable for the purpose of release of VGF. The lower limit will, however, be relaxable by SECI in case of non-availability of grid for evacuation which is beyond the control of the SPD. The lower limit shall also be relaxable in case of occurrence of force majeure events as per Article 11.2.
- d) **VGF Disbursement Procedure:**
- i) The SPD shall deliver to SECI a request for VGF Disbursement not less than (15) days from the proposed VGF disbursement date and confirming that all the conditions precedent to VGF Disbursement has been fulfilled;
  - ii) The SPD shall provide the Project commissioning certificate issued by SNA/SECI based on the report of the commissioning committee duly constituted for the purpose;
  - iii) The SPD shall provide a Chartered Accountant's Certificate along with all supporting documents and information regarding the completed Project Costs not later than at time of third tranche of VGF disbursement. The SPD shall submit the copies of the latest Annual Returns filed with ROC and Income Tax Returns filed with Income Tax department with each VGF Disbursement

Chief General Manager

P&MM&A Solar Energy Corporation of India Limited

A.P.S.P.D. CL. Thiruvananthapuram

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- request;
- iv) The SPD shall provide a Chartered Accountant's Certificate along with all supporting documents and information regarding the sources and deployment of the funds towards the Project Implementation;
  - v) The SPD shall provide all the required documents including financial statements, accounts, Balance Sheet along with all schedules and related information towards demonstration / infusion of minimum required equity contribution;
  - vi) The SPD shall provide a Chartered Accountant's Certificate along with all supporting documents and information towards equity commitment certifying that the minimum required equity contribution has been made;
  - vii) The SPD shall furnish a "No Default Certificate" from its term loan lenders / lending institution (if applicable);
  - viii) The SPD shall furnish not later than third Tranche of VGF Disbursement (i) a no objection/ Consent/ suitability/ Conversion certificate from the concerned and competent authority for land usage for development of Solar power Project.(ii) a certified English translation from an approved translator in case the certificate is in other than English and Hindi Languages;
  - ix) At the time of First and Second Tranche of VGF Disbursement, the SPD shall provide a Certificate from Company Secretary; indicating share holding pattern of the company to establish maintenance of the controlling shareholding as per terms and conditions of PPA in the Company/Consortium developing the Project. The controlling shareholding shall mean not less than 51% of the voting rights and paid-up share capital (including fully, compulsory and mandatory convertible Preference shares/Debentures) and
  - x) The SPD, at the time of all subsequent VGF Disbursements except the First VGF Disbursement, shall furnish self-declaration towards meeting of the Plant Performance as per Clause 2.2 (c) along with consolidated audited annual energy account.

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi




### ARTICLE 3: CREATION OF CHARGE TO SECURITIZE VGF

3.1 SPD shall create a charge in favour of SECI (or its authorized agent) in following manner:-

- a) Term loan Lender or Lending Institution (if any) will have first charge on the Project Assets and the SPD shall create charge according to the requirement laid down by term loan Lender or Lending Institution. The SPD shall create second charge along with the first charge of term loan Lender or Lending Institution on the same Project Assets by way of mortgage and hypothecation in favor of SECI to securitize the sanctioned VGF amount.
- b) In the absence of any charge in favor of term loan Lender or Lending Institution, SECI will have the first charge on the Project Assets of the value of 110% of the sanctioned VGF Amount. However, considering the operational aspect, the Charge in such case shall be created on the entire Project Assets.
- c) Notwithstanding as provided in 3.1 (b) herein above, SECI hereby undertake to cede its first charge and accept second charge over the Project Assets upon the SPD availing finance from term loan Lender or Lending Institution (if any). SECI shall have no-objection in creating first charge over the Project Assets in favour of term loan Lender or Lending Institution as per their requirement by the SPD and for filling requisite Form for modification of charge with the Registrar of Companies (ROC).
- d) any other security as the term Lender(s) of the Project may stipulate;

3.2 Notwithstanding, the SPD taking Loans from any Lender/Lending Institution subject to the SPD bringing minimum Rs.1.2Cr. per MW as Equity contribution as stipulated under PPA document, the mortgage and hypothecation and all other securities/charges stipulated above, shall rank the charges created/to be created in favour of SECI (or its authorized agent) subordinate (as a second charge holder) to Term Loan Lending Institutions (if any).

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

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.I., Tirunathi

Solar Energy Corporation of India Limited





## ARTICLE 4: EVENTS OF DEFAULT AND TERMINATION

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

- a) If the Project fails to generate any power continuously for 1 year any time during the term of the PPA or
- b) If the Project is dismantled and / or its major assets (the Project components such as Solar PV modules, Inverters, Power Conditioning Units, Module Mounting Structures, Grid Interconnecting Transformers, Control, Protection and Metering equipment including switchgear equipment etc.) are sold by SPD during the term of the PPA except for replacement of any equipment including the major assets of the Project during the term of the PPA without diluting the charge of SECI over such asset or
- c) If it is found at any stage that the SPD has misrepresented the facts/ information to meet the eligibility conditions stipulated in RfS document issued by SECI or
- d) If the SPD defaults any terms and conditions of Loan documents and the Lender takes any step for recovery, including for winding up of the SPD or
- e) If (i) the SPD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (ii) any winding up or bankruptcy or insolvency order is passed against the SPD, or (iii) the SPD goes into liquidation or dissolution or has a receiver or any similar officer appointed to manage its affairs pursuant to Law or
- f) If SPD fails to maintain its Controlling Shareholding represented to SECI at the time of signing of PPA up to a period of one (1) year after COD of the Project as per terms and conditions of PPA or
- g) If any attachment or distraint is levied on the mortgaged/charged property or any thereof and/or proceedings are taken or commenced for recovery of any dues from the SPD or
- h) If during subsistence of this Agreement, the SPD fails to comply with the applicable law in relation to the Project provided that such non-compliance results in revocation or reversal of any consent or approval obtained by the SPD in relation to the Project.

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

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

Solar Energy Corporation of India Limited



Chief General Manager  
P&MM&IP  
A.P.S.P.D.C.

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

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

- b) In case the lending institution exercises its right to step in or take over the Project, SECI will also have right to step in along with the lending institution to reclaim VGF in accordance with sub-clause 4.2 (a) above or handover the Project to another party for operation of the Project, provided that any substitution of the SPD under this Agreement can only be made with the condition that the substituted SPD meets the eligibility requirements of Request for Selection (RfS) issued by SECI and accepts and honor all the terms and conditions of PPA and VGFSAs signed by SPD with SECI.
- c) If at any stage after COD, it is found that the SPD is claiming Accelerated Rate of Depreciation as per the Income Tax Act 1961, and also a beneficiary of VGF then the entire VGF amount along with interest calculated at annual rate of 15% has to be repaid by the SPD to the SECI within 60 days. The interest shall be calculated from the date of disbursement of VGF. If such amount is not paid by the SPD, same






shall be adjusted from the dues of the power sale revenue to be paid by SECI to the SPD.

#### 4.3 Consequences and Procedure for cases of SPD Event of Default


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

  
 Chief General Manager  
 P&MM&IPC.  
 A.P.S.P.D.C.L., Tirupathi



## ARTICLE 5: INSPECTION OF SITE /WORKS AND PROGRESS REPORTING

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


  
Chief General Manager  
P&MM&IPO,  
A.P.S.P.D.C.L., Tirupathi





## ARTICLE 6: INSURANCE OF CHARGED PROPERTIES

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

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi



## ARTICLE 7: INSPECTION OF BOOKS OF ACCOUNTS ETC.

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



Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi





## ARTICLE 8: SPD'S WARRANTIES/GUARANTEES

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

**a) Title to the charged properties:**


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

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

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

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

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


  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi



## ARTICLE 9: WAIVER

### 9.1 Waiver not to impair the rights of SECI:

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

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi





**ARTICLE 10: MISCELLANEOUS****10.1 Governing Law and Jurisdiction**

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

**10.2 Amicable Settlement and Dispute Resolution**

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

Chief General Manager

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A.P.S.P.D.C.L. Tirunathi

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- 10.3** All monies due and payable to SECI under this Agreement shall be paid and remitted by the SPD to SECI at its Registered Office at 1<sup>st</sup> Floor, A-Wing, D-3, District Centre, Saket, New Delhi-110017 (unless otherwise directed by SECI) in proper time and the SPD shall so arrange that the amount(s) in question is/are realizable by SECI at par in New Delhi.
- 10.4** This Agreement may only be amended or supplemented by a written agreement between the Parties.
- 10.5** The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement. The Parties herein further agree that in the event any provision is so held to be invalid, illegal or unenforceable they shall substitute the same with a valid, legal and/or enforceable provision as close in intent as possible to that held. In case the provision so affected is fundamental to the Agreement, the Agreement may be terminated with mutual consent in writing of both the Parties.
- 10.6** All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.
- 10.7** If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.
- 10.8 Service of Notice:**
- i) Any notice to be served on the SPD shall for the purpose of these presents be deemed to be sufficiently served, if it is left at Registered Office or Principal Office of the SPD or the project site as mentioned in the preamble of the Agreement or at such other place where the Registered Office or Principal Office of the SPD may for the time being be, and such notice shall also be deemed to be properly and duly served if it is sent by registered post to the SPD at such address as aforesaid, and such service shall be deemed to have been made at the time at which the Registered letter would in the ordinary course be delivered even though returned un-served on account of refusal of the SPD to accept such notice or any other reason whatsoever.
  - ii) Any notice required to be served on SECI/MNRE shall for the purpose of these presents be deemed to be sufficiently served if it is delivered to SECI at its Registered Office at 1st Floor, A-Wing, D-3, District Centre, Saket, New Delhi-110017 and to MNRE at Block-14, CGO Complex, Lodi Road, New Delhi-110 003. Such notice shall also be deemed to be properly and duly served if it is sent by registered post to SECI at such address as aforesaid, and such service shall be deemed to have been made at the time at






which the Registered letter would in the ordinary course be delivered even though returned un-served on account of refusal of the SECI to accept such notice or any other reason whatsoever.

**10.9 Documentation and Other Charges / Cost:**

The Documentation charges paid by the SPD, if any at the time of submission of bid document to SECI/MNRE or this Agreement with SECI are not refundable under any circumstances. The SPD shall have to bear/ incur all the cost and charges for creation and preservation of charge / mortgage of Project Assets in favour of SECI (or its agent) including but not limited to of fees of SECI's Agent, stamp duty, registration charges, for title investigation of the charged properties. SECI shall be indemnified and held harmless by the SPD against any claims that may be made against SECI in relation to the matters set out hereinabove and also shall not be held liable for any payment of taxes, duties, levies and cess that are required to be paid by the SPD as per the Law in relation to the execution of the Agreement.

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

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi



## ARTICLE 11 - SPECIAL CONDITIONS

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

- a) This Agreement has been executed in duplicate and all executed counterparts shall be considered one and the same Agreement and each of them shall be deemed an original.
- b) The SPD shall arrange to display a notice board at a prominent place at the Project site indicating that the Project has been financially supported by MNRE /SECI.

### **11.2. Force Majeure**

**11.2.1** 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(i.e. SECI or the SPD whose performance has been affected by an event of Force Majeure)in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with prudent utility practices:

- a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado 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);
- c) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party

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

- a) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Project;
- b) Delay in the performance of any contractor, sub-contractor or their agents;
- c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;





- d) Strikes at the facilities of the Affected Party;
- e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f) Non-performance caused by, or, connected with the Affected Party's:
  - (i) Negligent or intentional acts, errors or omissions;
  - (ii) Failure to comply with an Indian Law; or
  - (iii) Breach of, or default under this Agreement

#### 11.2.3 Notification of Force Majeure Event:

- a) The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.
- b) Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.
- c) The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations

#### 11.2.4 Duty to Perform and Duty to Mitigate

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

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

- a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- b) for avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party

Chief General Manager  
P&MM&IPC  
A.P.S.P.D.C.L. Tirupathi

Solar Energy Corporation of India Limited

SECI / JNNSM / SPV / P II B III T IV / VGFS/15-16/[Insert Project ID]



- c) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Events
- d) In case the occurrence or continuation of any of Force Majeure events resulting in partial damage or total damage of the Project, SPD shall make efforts to operationalize the Project within mutually agreed timelines. The disbursement of VGF amount shall continue after revival of the Project by the SPD within the mutually agreed timelines. However, if SPD is unable to revive the Project, SECI shall have claim from the insurance settlement of the Project as per Article 4.2 (a) of this Agreement.



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## ARTICLE 12 - EFFECTIVE DATE OF AGREEMENT

### 12.1 Agreement to become effective from the Date of Execution:


The Agreement shall become binding on the SPD and SECI on and from the date of the Agreement first above written. The term of this Agreement shall be co-terminus with the PPA.

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

\_\_\_\_\_ of SECI, as hereinafter appearing.

THE COMMON SEAL OF THE M/s. \_\_\_\_\_ Limited has pursuant to the Resolutions of its Board of Directors passed in that behalf on the \_\_\_\_\_ day of \_\_\_\_\_, 2016 hereunto been affixed in the presence of Shri \_\_\_\_\_, and Shri \_\_\_\_\_, Directors and Shri \_\_\_\_\_, Authorized Person of the Borrower who have signed these presents in token thereof.

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


  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi



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,

  
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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

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

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

Whereas:

- A. SECI has been designated by the Government of India as the nodal agency for implementation of MNRE scheme for developing grid connected solar power capacity including Phase-II, Batch-III of the Jawaharlal Nehru National Solar Mission (JNNSM) of Government of India (GoI) through VGF mode..
- 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 SPDs for development of cumulative capacity of **[insert the total tendered capacity]** MW in the **[Solar Park Name]** being developed by SPIA/ SPPD in the State of **[insert the name of the state]** 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 the Solar Park in the state of **[insert the name of the state]**.
- 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

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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 SECI to sell Solar Power to SECI as per the terms and conditions of this Agreement.
- F. SECI has agreed to purchase such Solar Power from SPD as an intermediary Seller and sell it to Buying Utilities back to back basis as per the provisions of the JNNSM.
- G. SECI has agreed to sign a Power Sale Agreement with the Buying Utilities to sell such power as per the provisions of the JNNSM.
- H. The SPD has submitted the Performance Bank Guarantee to SECI as per the format provided in Schedule 1 of this Agreement and upon declaration of Commissioning but before COD, the developer shall pay to SECI, a Performance Guarantee Deposit (PGD) @Rs. 10 lakhs/MW/Project in the form as per the RfS document.
- I. SECI 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.
- J. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by SPD to SECI.

**NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL AGREEMENTS, COVENANTS AND CONDITIONS SET FORTH HEREIN; IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi





# 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.

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| "Act" or "Electricity Act, 2003"                   | : | shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;   |
| "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 SECI, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Delhi;   |
| "Buying Utilities"                                 | : | shall mean Discoms / State Utilities / Bulk Consumers who entered the PSA (s) with SECI for purchase of Power;   |
| "Capacity Utilisation Factor" or "CUF"             | : | shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time. However for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity;           |
| "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;  |

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| "Commercial Operation Date (COD)"  |   | shall be the date 30 days subsequent to 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 and the developer has paid to SECI, a Performance Guarantee Deposit (PGD) @Rs. 10 lakhs/MW for the entire Contracted Capacity and <i>the SPD not availing any VGF shall be required to demonstrate / infuse cumulative capital in the form of Equity for an amount of at least Rs. 1.20 Cr./MW before the COD.</i>  |
| "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 SECI Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;  |
| "Contract Year"                    | : | shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that:<br>(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 <b>[Insert Project Capacity] MW (AC)</b> contracted with SECI for supply by the SPD to SECI at the Delivery Point from the Solar Power Project;  |
| "Day"                              | : | shall mean a day, if not a Business Day, the immediately succeeding Business Day;   |

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| “Delivery / Inter-connection / Metering Point” | : | <p>shall mean the point at <b>[Insert the Voltage Level as specified by SPIA]</b> kV where the power from the solar power project is injected into the <b>[Insert the Pooling substation or the STU/CTU substation as specified by the SPIA]</b> (including the dedicated transmission line connecting the power project with the Designated substation). Metering shall be done at this interconnection point where the power is injected into the <b>Designated Substation</b> 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 or substituted from time to time.</p> <p>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 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. In case it is paid by SECI or SPIA on behalf of Buying Utilities / SPD same shall be recovered from the Buying Utilities / SPD (as applicable);</p> |
| “Designated Substation”                        |   | Shall mean the Grid interconnecting substation located at [Insert details of location] having [Insert input / output voltage level specified] and as designated by the SPIA for interconnection of the Project with the Grid;   |
| “Discoms”                                      | : | shall mean the distribution utility or the distribution utilities who have signed the PSA (s) with SECI for purchase of Power;  |
| “Dispute”                                      | : | shall mean any dispute or difference of any kind between SECI and the SPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;   |
| “Due Date”                                     | : | shall mean the forty fifth(45 <sup>th</sup> ) day after a Monthly Bill or a Supplementary Bill is received and duly accepted by SECI , 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 SECI;  |
| “Effective Date”                               | : | shall have the meaning ascribed thereto in Article 2.1 of this Agreement;   |

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| "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 SECI; |
| "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 selection of 2000 MW Grid Connected Solar PV Power Projects under Phase-II Batch III" notified vide No. 32/2/2014-15/GSP dated 04 <sup>th</sup> August 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 states] 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   |

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|                                   |   | 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;  |
| "JNNSM Phase-II Batch III"        | : | shall mean the Phase II Batch III of the JNNSM;   |
| "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;  |

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| "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 I;   |
| "Pooling Substation / Pooling Point" | : | shall mean a point / substation as identified by the SPIA where more than one solar PV project may connect to a common transmission system. The losses in the common transmission system up to the Delivery point shall be apportioned to the individual projects for the purpose of billing.  |
| "Power Project" or "Project"         | : | shall mean the solar power generation facility of Contracted Capacity of <b>[Insert Contracted Capacity]</b> MW, located in the Solar Park being developed by the Lucknow Solar Power Development Corporation Limited at [Insert Village, Thesil, District & State] and having a separate boundary, control system, metering and separate points of injection into the grid at Delivery/Interconnection/ metering point at Designated Substation or in case of sharing of transmission lines, by separate injection at pooling point.<br>This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, dedicated transmission line upto the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement; |
| "Power Sale Agreement" or "PSA"      | : | shall mean the Power Sale Agreement entered between the Buying Utilities and SECI (SECI- Buying Utilities PSA) for selling the power as per the provisions of Guidelines for Phase -II Batch-III of JNNM;  |
| "Preliminary Default Notice"         | : | shall have the meaning ascribed thereto in Article 13 of this Agreement;   |

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| "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:<br>a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project;<br>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 13 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 Park"   | : | shall mean concentrated zone of development of solar power generation projects being developed by the SPIA under GOI's Scheme for Solar Parks and Ultra Mega Solar Power Projects and provides an area that is well characterized, with proper infrastructure and access to amenities.   |
| "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 SECI as per the terms and conditions of this Agreement;   |
| "Solar Power"  | : | shall mean power generated from the Solar Photovoltaic Power Project;  |

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| "Solar Power Park Developer" or "SPIA" or "SPPD"       |   | Shall mean <i>Andhra Pradesh Solar Power Corporation Private Limited (include its successors and assignees) a Joint Venture Company of SECI, APGENCO and NREDCAP</i> under the Companies Act 2013;  |
| "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. 30 days subsequent to 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 regulation and the SPD has paid to SECI, a Performance Guarantee Deposit (PGD) @Rs. 10 lakhs/MW in the form as per RfS document for the Contracted Capacity to the extent of the Unit; - |
| "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;  |

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[Insert Project ID]





## 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 reenactments 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;

  
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## **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), SECI and the Buying Utilities.


2.2.2 The SPD is free to operate their plants beyond the Expiry Date if other conditions like land lease / Right to Use of Land (as applicable), permits, approvals and clearances etc. allow .

### **2.3 Early Termination**

2.3.1 This Agreement shall terminate before the Expiry Date if either SECI 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.

  
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### 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 seven (7) 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 execute Implementation and Support Agreement with the SPPD. The SPD shall also execute Land Lease / Right to Use Agreement (as applicable) with the SPPD;
- b) 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 SECI before Commissioning of the Project;*
- c) The SPD shall execute VGF Securitization Agreement (if applicable) with SECI as per format provided in Schedule-4 of this Agreement ;
- d) The SPD shall make Project financing arrangements and provide necessary certificates to SECI in this regard;
- e) The SPD shall make adequate arrangements to connect the Power Project switchyard with the Interconnection Facilities at the Delivery Point;
- f) The SPD shall also obtain a Certificate of Compliance from SPIA for the Conditions given in the Implementation and Support Agreement executed between SPIA and the SPD;
- g) [Void];
- h) The SPD shall be required to demonstrate/infuse cumulative capital in the form of Equity for an amount of at least Rs. 0.84 Cr./MW. *The SPD shall be required to demonstrate / infuse cumulative capital in the form of Equity for an amount of at least Rs. 1.20 Cr./MW before the disbursement of first tranche of VGF. For avoidance of any doubt, the SPD not availing any VGF shall be required to demonstrate / infuse cumulative capital in the form of Equity for an amount of at least Rs. 1.20 Cr./MW before the COD;*

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- i) The SPD shall fulfil the technical requirements according to criteria mentioned under Clause 2.6 (B) of JNNSM guidelines for selection of new projects and produce the documentary evidence of the same. The SPD shall also specify their plan for meeting the requirement for domestic content (if applicable).

The SPD shall submit to SECI the relevant documents as stated above, complying with the Conditions Subsequent, within seven (7) 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 (subject to the conditions that SPD has made / making all possible efforts) is on account of delay in allotment of Land or Connectivity in the Solar Park by the SPIA or by Government or Force Majeure. The termination of the Agreement shall take effect upon the expiry of the 7<sup>th</sup> day of the above notice. An extension without any impact on the Schedule Commissioning Date, can however be considered, on the sole request of SPD on payment of Rs. 10,000/- per day per MW to SECI.

- 3.2.2 [Void].

- 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 twenty one (21) months from the date of signing this Agreement and of Rs. 30 Lakh/MW to be furnished under this

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Agreement shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement as per format provided in Schedule I.

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

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

### 3.4 Return of Performance Bank Guarantee

3.4.1 Subject to Article 3.3, SECI shall return / release the Performance Bank Guarantee immediately after the successful Commissioning of the Project after taking into account any liquidated damages / penalties due to delays in commissioning as per provisions stipulated in this Agreement and subsequent to the deposit of a Performance Guarantee Deposit (PGD) @Rs. 10 lakhs/MW/Project for the entire Contracted Capacity and in case of SPDs *not availing any positive VGF, demonstration / infusion cumulative capital in the form of Equity for an amount of at least Rs1.20 Cr./MW*).

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

### 3.5 Performance Guarantee Deposit

3.5.1 At declaration of Commissioning of the Project, the SPD shall pay to SECI, a Performance Guarantee Deposit (PGD) @ Rs. 10 lakhs/MW to enable SECI to declare COD. It shall stay with SECI for 25 years. The PGD shall be refunded to the SPD without interest within three months after expiry of the term of this Agreement subject to satisfactory performance of the Project.

3.5.2 In case the SPD winds up his project or terminates the PPA in violation of this Agreement, prior to the completion of the term of this Agreement, the PGD shall be forfeited.

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## **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 SECI no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement;
- d) connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point/ Designated substation as specified by the SPIA; 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 SPIA/ 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.

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4.2.2 The responsibility of getting connectivity with the transmission system up to Designated Substation as per the SPIA terms and conditions, will lie with the SPD. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the SPD at his own cost.

The maintenance of Transmission system up to the designated point as per the terms and conditions of SPIA shall be the responsibility of the SPD.

4.2.3 The arrangement of connectivity shall be made by the SPD through a dedicated transmission line as instructed by the SPIA. 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. The SPD shall not be entitled to any deemed generation in case of any delay in connectivity to the Project and non-availability of Grid and Transmission System during Term of this Agreement.

4.2.4 [Void].

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

4.2.6 In case of Pooling substation, losses in the transmission line shall be apportioned among the SPDs who share such a Pooling arrangement, based on their monthly generation.

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

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

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

4.4.1 SECI, 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 provided in the PSA as payable to Buying Utilities and shall duly pay such compensation



to SECI to enable SECI to remit the amount to Buying Utilities. This will, however be relaxable by SECI 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. The amount of compensation shall be equal to the compensation payable (including RECs) by the Buying Utilities towards non-meeting of RPOs, if such compensation is ordered by the State Commission. However, this compensation shall not be applicable in events of Force Majeure identified under PPA with SECI affecting supply of solar power by SPD.


- 4.4.2 Notwithstanding Article 4.4.1, any excess generation over and above 10% of declared annual CUF will be purchased by SECI at a tariff as per Article 9.4, provided SECI is able to get any buyer for sale of such excess generation. 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 SECI (unless refused by SECI). 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 SECI under this scheme and the SPD will be free to make short-term sale to any organisation or individual. SECI may agree to buy this power as a trader if they find it viable outside 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 SECI Event of Default; or
- b) Force Majeure Events affecting SECI, or
- c) Force Majeure Events affecting the SPD,

  
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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 SECI through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the SPD or SECI, or till such time such Event of Default is rectified by SECI.

4.5.2 Subject to the Article 3.2.1 and 4.6.2, the SPD shall be required to intimate SECI about the possible delays in allotment of Land or Connectivity in the Solar Park by the SPIA at least 45 days before the scheduled date. SECI can extend the time for financial closure and commissioning date by up to 3 months, without any financial implications to the SPD. For any extension beyond the period of 3 months, SECI will approach MNRE, who will be authorized to decide on further extension with the approval of Secretary, MNRE.

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 SECI**

4.6.1 If the SPD is unable to commence supply of power to SECI by the Scheduled Commissioning Date other than for the reasons specified in Article 4.5.1 and 4.5.2, the SPD shall pay to SECI, damages for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:

  
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- a) Delay up to one (1) month – SECI will encash 20% of the total Performance BG on per day basis and proportionate to the Capacity not commissioned.
- b) Delay of more than one (1) month and upto three months – SECI will encash remaining Performance BG on per day basis and proportionate to the Capacity not commissioned.

In case the commissioning of the Power Project is delayed beyond three (3) months from the Scheduled Commissioning Date, the pre-fixed tariff given in the Article 9.1 shall be reduced at the rate of half paisa (0.50 paisa) per kWh per day of delay for the delay in such remaining capacity which is not commissioned.

- 4.6.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and reduction in pre-fixed tariff shall be limited to twenty five (25) months from the date of signing of this Agreement. In case, the commissioning of the Power Project is delayed beyond twenty five (25) months from the date of signing of this Agreement, it shall be considered as an SPD Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced/amended to the Project Capacity Commissioned within twenty five (25) months of signing of PPA and the PPA for the balance Capacity will stand terminated.
- 4.6.3 However, if as a consequence of delay in commissioning, the applicable tariff changes, that part of the capacity of the Project for which the commissioning has been delayed shall be paid at the tariff as per Article 9.2 of this Agreement.

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

4.7.1 Prior to synchronization of the Power Project, the SPD shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or an agency identified by the central government 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 SECI 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.

  
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- 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.



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## **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 Solar Park Implementing Agency (if applicable) at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice, of the date on which it intends to synchronize the Power Project to the Grid System.
- 5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the SPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.1.3 The synchronization equipment and all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the SPD at its generation facility of the Power Project at its own cost. The SPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned sub-station/Grid System and checking/verification is made by the concerned authorities of the Grid System.
- 5.1.4 The SPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected 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 thirteen (13) Months of the date of signing of PPA

  
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## 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.



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## **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 SECI shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time,
- 7.1.2 The 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, SPIA, SECI and the concerned Ministry or concerned agency as per applicable regulation / directions.

  
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- 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 and SPIA through SECI for entire period of PPA.



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## **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, Implementation and Support 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 SECI**


8.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the SPD can claim compensation, under any Insurance shall not be charged to or payable by SECI.

  
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P&MM&IPO  
A.P.S. SINGH, Chairman



## 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 this Agreement, with effect from the COD subject to the Article 4.6 of this Agreement.
- 9.2 Provided further that if the Commissioning of the Unit(s) is delayed beyond three (3) months from the Scheduled Commissioning Date, the Applicable Tariff given in Article 9.1, for the Unit(s) not commissioned, shall be reduced at the rate of half paisa (0.50 (half) paisa) per unit per day of such delay and for such Unit(s).
- 9.3 In the event of change in tariff due to delay in commissioning of Unit(s), the Weighted Average Tariff for the Contracted Capacity shall be applied considering Capacity of Units commissioned before and after the Scheduled Commissioning Date within twenty five (25) months but after changed tariff period, as Weights for determination of Weighted Average Tariff for the period when both the tariffs are applicable.
- 9.4 Any excess generation over and above 10% of declared CUF will be purchased by SECI at a tariff of Rs.3.00/kWh, provided SECI is able to get any buyer for sale of such excess generation. Any energy produced and flowing into the grid before CoD shall not be at the cost of SECI under this scheme and developers will be free to make short-term sale to any organisation or individual. SECI may agree to buy this power as a trader if they find it viable outside this scheme.
- 9.5 The Selected Project Developers will be required to submit a copy of the audited annual accounts along with tax audit report supplemented with calculation of Depreciation, Certification from Chartered Accountant towards claim of Accelerated Rate of Depreciation and a copy of Income Tax return for the Term of Agreement. If at any stage after COD it is found that in place of Normal Rate of Depreciation (based on which the Solar Power Project Company was selected) the Solar Power Project Company is claiming Accelerated Rate of Depreciation as per the Income Tax Act 1961, the entire VGF amount along with interest rate of 15% shall have to be repaid by the SPD to the SECI. The interest shall be calculated from the date of disbursement of VGF. If such amount is not paid by the SPD, same shall be adjusted to the power sale revenue to be paid by SECI to the SPD

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

### **10.1 General**

10.1.1 Subject to the funds being made available by MNRE, SECI shall set up a payment security mechanism in order to ensure timely payment to the developers. This fund will have a corpus to cover 3 months payment.

10.1.2 From the commencement of supply of power, SECI shall pay to the 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 SECI shall be in Indian Rupees.

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

10.2.1 The SPD shall issue to SECI a signed Monthly Bill/Supplementary Bill for the immediately preceding Month. 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 SECI 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 SECI, 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 SECI shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.

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

#### 10.3.3 Late Payment Surcharge

In the event of delay in payment of a Monthly Bill by SECI beyond thirty (30) days of its Due Date, a Late Payment Surcharge shall be payable to the SPD at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis subject to such late payment is duly received by SECI under the PSA. 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 subject to acceptance by SECI, 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 Subject to opening and maintenance of Letter of Credit by the Buying Utilities (as per terms of SECI- Buying Utilities PSA) in favour of SECI, SECI 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, SECI 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.

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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, SECI shall restore such shortfall within seven (7) days.

10.4.5 SECI 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 SECI 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 SECI.

10.4.8 If SECI 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 SECI, 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;

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## 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 SECI 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 SECI providing:

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

10.5.5 Upon receipt of the Bill Disagreement Notice by the SECI under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the SECI and 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.

  
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10.5.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, SECI shall, without prejudice to its right to Dispute, be under an obligation to make payment of 50% of the 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 SECI 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


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- iii) Change in Law as provided in Article 12, or and such Supplementary Bill shall be paid by the other Party.

10.7.2 SECI shall remit all amounts due under a Supplementary Bill raised by the 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, SECI 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.

  
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## **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 SECI or the SPD whose performance has been affected by an event of Force Majeure.

### **11.3 Force Majeure**

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

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

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## 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

  
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## **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.

  
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## 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 SECI or Buying Utilities of its obligations under this Agreement, shall constitute a SPD Event of Default:

- (i) the failure to commence supply of power to SECI up to the Contracted Capacity, by the end of the period specified in Article 4, or  
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

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- 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 SECI 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 SECI Event of Default

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

- (i) SECI fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the SPD is unable to recover the amount outstanding to the SPD through the Letter of Credit/ Default Escrow Account,
- (ii) SECI 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, SECI is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by SECI within thirty (30) days of receipt of notice in this regard from the SPD to SECI; or

if

- SECI becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
- any winding up or bankruptcy or insolvency order is passed against SECI, or
- SECI goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, Provided



that it shall not constitute a SECI Event of Default, where such dissolution or liquidation of SECI or SECI is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to SECI and expressly assumes all obligations of SECI and is in a position to perform them; or;

- (iv) If Buying Utilities are subject to any of the above defaults and SECI does not designate another or other Buying Utilities for purchase of Power.
- (v) Occurrence of any other event which is specified in this Agreement to be a material breach or default of SECI.


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

13.3.1 Upon the occurrence and continuation of any SPD Event of Default under Article 13.1, 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 (SECI 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, SECI 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 SECI and SPIA 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

  
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between SPD and SECI and Implementation and Support Agreement and Land Lease Agreement signed with the SPIA.

13.3.4 The lenders in consultation with SECI and SPIA 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 and SPIA to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized. In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a New Entity, an amount of Rs. 10 Lakh per Project per Transaction as Facilitation Fee (non-refundable) shall be deposited by the developer to SECI.

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 and SPIA will have no objection in such case.


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

13.4.1 Upon the occurrence and continuation of any SECI Event of Default specified in Article 13.2 the SPD shall have the right to deliver to SECI, 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 SECI 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.

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

### **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.



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

### **14.1 Indemnity**

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

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

14.1.2 SECI shall cause the Buying Utilities to indemnify, defend and hold the SPD harmless against:

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

### **14.2 Procedure for claiming Indemnity**

14.2.1 Third party claims

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or 14.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle

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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.

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#### **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 Buying Utilities, the SPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 SECI shall have no recourse against any officer, director or shareholder of the 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 SECI or Buying Utilities, or any affiliate of SECI 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 endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 14.

  
Chief General Manager  
P&MM&PC,  
A.P.S.P.D.C.L., Hyderabad





## **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, SECI 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 SECI 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.

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

### **15.2 Permitted charges**

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

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi



## **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 endeavor and make all efforts to amicably settle the Dispute.
- (iii) If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 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) SECI shall be entitled to co-opt the SPIA and / or Buying Utilities and / or 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) SECI shall be entitled to co-opt Buying Utilities and / or the lenders (if any) as a supporting party in such arbitration proceedings.

### 16.4 Parties to Perform Obligations

16.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 16.3 and save as the 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.

Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi

[Insert Project ID]



## **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.

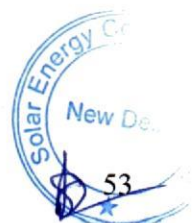
### **17.4 Confidentiality**

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.

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi

[Insert Project ID]





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

Address : 1st Floor, A-Wing, D-3, District Centre, Saket,  
New Delhi-110017

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.

Chief General Manager  
P&MM&IPC,  
A.R.S.E.D.O.I., New Delhi

[Insert Project ID]



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

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

Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi

[Insert Project ID]





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 SECI 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 SECI.

#### 17.11 Compliance with Law

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

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

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

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.

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi



[Insert Project ID]

## **SCHEDULE 1: FORMAT OF THE PERFORMANCE BANK GUARANTEE** (to be submitted separately for each Project)

(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 **under PART- A/B [Select any one]** of the capacity of ..... MW, at .....[Insert name of the place] under Jawaharlal Nehru Solar Mission Phase –II Batch III, 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 .....**

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi

[Insert Project ID]





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.

Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi

[Insert Project ID]



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.

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi





## SCHEDULE 2: List of Banks for Issuance Of Performance Bank Guarantee

| 1. SCHEDULED COMMERCIAL BANKS     | 2. OTHER PUBLIC SECTOR BANKS                      |
|-----------------------------------|---|
| <b>SBI AND ASSOCIATES</b>         | 1. IDBI Bank Ltd.                                 |
| 1. State Bank of India            | <b>3. FOREIGN BANKS</b>                           |
| 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                              |
| <b>NATIONALISED BANKS</b>         | 7. The HongKong and Shanghai Banking Corp. 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. CréditAgricole Corporate and Investment Bank  |
| 8. Dena Bank                      | 15. MIZUHO BANK, Ltd.                             |
| 9. Indian Bank                    | <b>4. SCHEDULED PRIVATE BANKS</b>                 |
| 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. KarurVysya Bank                                |
| 19. Bank of Baroda                |   |

Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi

[Insert Project ID]



### **SCHEDULE 3: POWER SALE AGREEMENT (PSA)**

[To be annexed]



Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi





**SCHEDULE 4: VGF SECURITIZATION AGREEMENT (if applicable)**

[To be annexed]

✓

Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi.



## **SCHEDULE 5: Not Applicable**

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi





## **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       | 10 MW                         | 10 MW                                      | 10 MW                            | 10 MW                                       |
| 2       | 20 MW                         | 20 MW                                      | 20 MW                            | 20 MW                                       |
| 3       | 30 MW                         | 30 MW                                      | 30 MW                            | 30 MW                                       |
| 4       | 40 MW                         | 40 MW                                      | 40 MW                            | 40 MW                                       |
| 5       | 50 MW                         | 50 MW                                      | 50 MW                            | 50 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.

Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi

[Insert Project ID]




- 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

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi

[Insert Project ID]






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 push the required plant related data to SECI designated server in xml/json formats. Additionally SPD shall also provide the login details/ SCADA login to SECI for online real time data monitoring 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.

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi



**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<br>(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  |       |

  
 P&M Manager,  
 A.P.S.P.D.C.L., Tirupathi





**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<br>(Transformer, Inverter, Modules, Switchgear)   |
|-------|--|---------------------------|--|--|
| 1     | <M/s><br><Village><br><Tehsil><br><District> | <> MW                     | Metering Detail at Delivery Point<br>(<Village>)<br>S.No. of <kV> CT<br>i) <R-Phase><br>ii) <Y-Phase><br>iii) <B-Phase><br>S.No. of <kV> PT<br>i) <R-Phase><br>ii) <Y-Phase><br>iii) <B-Phase> | Transformer<br><Make/Type:><br><Sr. No.><br>Inverters<br><Make/Type:><br><Sr. No.><br>Modules <Make: ><br><W>, <W><br><Total: Nos.><br>Switchgear<br>Panels<br><Make/Type:><br><Sr. No.><br>Protection Provided:<br>Under/Over voltage,<br>Over current & Earth fault. |

Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi

[Insert Project ID]



|  |  |  |  |  |
|--|--|--|--|--|
|  |  |  | <p>S.No. of Main&lt;ABT&gt; Meter&gt;</p> <p>S.No. of Check &lt;ABT Meter&gt;</p> <p>Metering Equipment installed at</p> <p>Receiving end on dated: &lt;&gt;</p> <p>_____ kV GSS, &lt;&gt;, &lt;&gt;, (&lt;Distt.&gt;)</p> |  |
|--|--|--|--|--|

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.

Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirupathi



[Insert Project ID]



**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.

  
Chief General Manager  
P&MM&IPC,  
A.P.S.P.D.C.L., Tirunathi

[Insert Project ID]

