

**BEFORE THE HON'BLE CENTRAL ELECTRICITY REGULATORY
COMMISSION
AT NEW DELHI**

IN

PETITION NO. ___/MP/2023

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 for approval of 'Change in Law' on account of financial/ commercial impact of the 'Change in Law' event i.e., increase in the rate of Goods and Services Tax from 5% to 12 % by way of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 issued by Ministry of Finance, Government of India, in terms of Article 12 of the Power Purchase Agreement executed with Solar Energy Corporation of India Limited

IN THE MATTER OF:

M/s. Morjar Windfarm Development Private LimitedPetitioner

Versus

Solar Energy Corporation of India Limited & OrsRespondents

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DATE: **01.04.2023**

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Petition under Section 79 of the Electricity Act, 2003 for approval of 'Change in Law' on account of financial/ commercial impact of the 'Change in Law' event i.e., increase in the rate of Goods and Services Tax from 5% to 12 % by way of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 issued by Ministry of Finance, Government of India, in terms of Article 12 of the Power Purchase Agreement executed with Solar Energy Corporation of India Limited

AND

IN THE MATTER OF:

M/s. Morjar Windfarm Development Private Limited
402 & 404, Delphi, C Wing, Hiranandani Business Park,
Orchard Avenue, Powai, Mumbai – 400076.

...PETITIONER

VERSUS

1. Solar Energy Corporation of India Limited

1st Floor, D-3, A Wing, Religare Building,
District Centre, Saket,
New Delhi, Delhi 110017

2. Government of Goa

Electricity Department, Vidyut Bhavan,

3rd Floor, Panaji, Goa.403001

3. NBPDCCL & SBPDCL

3rd Floor and 2nd Floor

Vidyut Bhawan, Bailey Road

Patna- 800001

4. BSES Rajdhani Power Limited (BRPL)

BSES Bhawan, Nehru Place

New Delhi- 110019

...RESPONDENTS

MOST RESPECTFULLY SHOWETH

1. GIST OF THE CASE:

The present Petition is being filed under Section 79 of the Electricity Act, 2003 for approval of 'Change in Law' on account of financial/ commercial impact of the 'Change in Law' event i.e., increase in the rate of Goods and Services Tax from 5% to 12 % by way of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 issued by Ministry of Finance, Government of India, in terms of Article 12 of the Power Purchase Agreement executed with Solar Energy Corporation of India Limited

2. DESCRIPTION OF PARTIES:

- i) The Petitioner is Generating Companies within the meaning of Section 2(28) of the Electricity Act, 2003 ("Act"). The Petitioner is a wind generator.
- ii) Respondent No. 1 is the Solar Energy Corporation of India Limited ("SECI"), which is a Central Public Sector Undertaking under the administrative control of Ministry of New and Renewable Energy ("MNRE"). SECI has been

designated as the nodal agency for implementation of MNRE schemes for developing grid connected wind/ solar power capacity in India and plays the role of an intermediary procurer. SECI executed Power Purchase Agreement with the Petitioner herein for procurement of wind power from the Petitioner's wind power project as an intermediary procurer for onward supply to Buying Utilities on a back-to-back basis.

- iii) The Respondent No. 2, 3 and 4 are the Buying Utilities with whom SECI (Respondent 1) has entered into back-to-back Power Supply Agreements on the basis of PPA entered between Respondent 1 and the Petitioner.
- iv) Respondent 1 entered into a PPA with the Petitioner for 150 MW (which is reduced to 148.50 MW) out of which 91.80MW capacity has been commissioned by the Petitioner. The Petitioner has started supplying power from the aforesaid commissioned capacity to SECI on proportionate basis and the remaining 56.7MW is yet to be commissioned.
- v) The Petitioner has commissioned aforesaid capacity of wind project in lot wise and supplying power on proportionate basis to Respondent 2,3 and 4. The details are as below,

| Sr. No | Buying Utility | Lot | Capacity (in MW) | Buying Utility Share in Lot Capacity (in MW) as per the SECI Certificate | Commissioning date |
|--------|-----------------------|------------|------------------|--|--------------------|
| 1 | BRPL | First Lot | 67.50 | 22.50 | 10.08.2022 |
| | Goa Electricity Board | | | 22.50 | |
| | NBPDCL Share | | | 10.35 | |
| | SBPDCL Share | | | 12.15 | |
| | | | | | |
| 2 | BRPL | Second Lot | 13.50 | 4.50 | 08.09.2022 |
| | Goa Electricity Board | | | 4.50 | |
| | NBPDCL Share | | | 2.07 | |
| | SBPDCL Share | | | 2.43 | |
| | | | | | |
| 3 | BRPL | Third Lot | 10.80 | 3.60 | 10.12.2022 |

| | | | | | |
|---|-----------------------|-------|-------|-------|--|
| | Goa Electricity Board | | | 3.60 | |
| | NBPDCL Share | | | 1.66 | |
| | SBPDCL Share | | | 1.94 | |
| | | | | | |
| 4 | BRPL | Total | 91.80 | 30.60 | |
| | Goa Electricity Board | | | 30.60 | |
| | NBPDCL Share | | | 14.08 | |
| | SBPDCL Share | | | 16.52 | |

3. **JURISDICTION:**

The Commission has the jurisdiction to entertain and decide the instant petition in terms Section 79(1)(b) and Section 79 (1) (f) of the Electricity Act, 2003 read with Article 12 of the PPA. The instant Petition involves issues relating to regulation of tariff of a generating company being the Petitioner, which has a composite scheme as it is supplying of electricity in more than one state and therefore, only this Commission has jurisdiction.

4. **FACTS:**

The facts giving rise to the instant Petition are briefly set out herein below:

- i) SECI undertook a competitive bidding process for procurement of 1200 MW wind power (“**Bid Process**”) and invited proposals for setting up ISTS-connected Wind Power Projects of aggregate capacity of 1200 MW on Build Own Operate (BOO) basis by way of Request for Selection No. SECI/C&P/WD/1200MW/T5/RfS/062018 dated 30.06.2018, prepared in line with the ‘Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects’ dated 08.12.2017 issued by Ministry of Power under Section 63 of the Act (“**Bidding Guidelines**”) (“**SECIRFS**”). The last date of bid submission as per the SECI RFS was 29.08.2018.

- ii) M/s. Srijan Energy Systems Private Limited (of which the Petitioner is a Project Company) participated in the Bid Process and emerged as successful bidders. It must be noted that M/s. Srijan Energy Systems Private Limited quoted the highly competitive tariff after taking into consideration, inter alia, the prevailing taxes, duties and exemptions. Such taxes included the amount of effective GST applicable to the M/s. Srijan Energy Systems Private Limited under the procurement contracts proposed to be executed for setting up its Project, which at that point was limited to 5% (five percent).
- iii) SECI issued Letter of Award (“**LoA**”) dated 17.06.2019 to M/s. Srijan Energy Systems Private Limited for development of ISTS-connected wind power project (“**Wind Project**”). Copy of the LoA dated 17.06.2019 is attached hereto and marked as **Annexure P1**.
- iv) M/s. Srijan Energy Systems Private Limited formed a Project Company by the name and Style of M/s. Morjar Windfarm Development Private Limited, within the provisions of RFS for development of wind project, generation and sale of wind power under the above RFS.
- v) Pursuant to the LoA dated 17.06.2019, SECI executed (i) Power Purchase Agreement on 29.10.2019 with the Petitioner for procurement of power from the Wind Project (“**PPA**”); and (ii) back-to-back Power Sale Agreement with the Buying Utilities for onward supply of power procured from the Wind Project (“**PSA**”). The relevant provisions of the PPA are reproduced and discussed herein below –

*“**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;”

The term ‘Law’ as defined in Article 1 of the PPA *inter alia* includes (a) all laws in India; (b) any statute, ordinance, regulation, notification, code, rule or any interpretation thereof by any Indian Governmental Instrumentality; and (c) all applicable rules, regulations, orders and notifications by an Indian Governmental Instrumentality pursuant to or under the afore stated rules, regulations and orders.

“Indian Governmental Instrumentality shall mean the Government of India, Governments of state(s) of Haryana, Gujarat 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 sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;”

The term ‘Indian Governmental Instrumentality’ as defined in Article 1 of the PPA includes the Government of India, any ministry, department, board, authority, agency, corporation and commission under direct or indirect control of the Government of India. Accordingly, the term ‘Indian Governmental Instrumentality’ includes the Ministry of Finance.

“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 date, which is the last date of bid submission, resulting into any additional recurring/ nonrecurring expenditure by the WPD or any income to the WPD:

- *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, Licenses or Permits which was not required earlier;*
- *a change in the terms and conditions prescribed for obtaining any Consents, Licenses or Permits or the inclusion of any new terms or conditions for obtaining such Consents, Licenses and Permits; except due to any default of the WPD;*
- *any statutory change in tax structure or introduction of any new tax made applicable for setting up of Wind Power Project and supply of power from the Project by the WPD and has direct effect on the Project, shall be treated as per the terms of this Agreement.*

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

12.2 Relief for Change in Law

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

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

A bare perusal of Article 12 of the PPA makes it abundantly clear that (a) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal of any law including rules and regulations framed thereunder; and (b) any statutory change in tax structure made applicable for setting up of wind power project, having a direct effect on the wind power project will qualify as a ‘Change in Law’ event, so long as the said event has occurred after the last date of bid submission i.e., 05.02.2019 and resulted in additional non-recurring expenditure incurred by the wind power developer.

Copy of the PPA is attached hereto and marked as **Annexure P2 (COLLY.)**.

- vi) Pursuant to the PPA, the Petitioner entered into various contracts with supplier (“**Supplier**”) for supply and services of wind turbine generators (“**WTGs**”).

Copy of the relevant portion of original Supply Contracts along with their respective amendments(after GST Notification No. 8 dated 30.09.2021) with relevant Annexuresare annexed herewith collectively and marked as **Annexure P3 (COLLY.)**.

- vii) Subsequently, the Ministry of Finance, Central Government issued Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 whereby it amended the rate of Goods and Services Tax (“**GST**”) for renewable energy devices and parts for their manufacture (“**GST Notification No. 8**”). By way of GST Notification No. 8, entry 234 and the entries related thereto (renewable energy devices and parts for their manufacture) were omitted from Schedule I (which stipulates levy of GST at the rate of 5%) and entry 201A (renewable energy devices and parts for their manufacture) was inserted in Schedule II (which stipulates levy

of GST at the rate of 12%). Consequently, renewable energy devices, specifically windmill, wind operated electricity generator etc., are now subject to a GST of 12% as against the rate of 5%, prevalent at the time of bid submission. The relevant extracts of GST Notification No. 08 are reproduced herein below:

“(b) in Schedule II – 6%, -

...

(iv) after S. No. 201 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|--------------|--------------------|---|
| <i>“201A</i> | <i>84,85 or 94</i> | <p><i>Following renewable energy devices and parts for their manufacture:-</i></p> <p><i>(a) Bio-gas plant;</i></p> <p><i>(b) Solar power based devices;</i></p> <p><i>(c) Solar power generator;</i></p> <p><i>(d) Windmills, Wind Operated Electricity Generator (WOEG);</i></p> <p><i>(e) Waste to energy plants / devices;</i></p> <p><i>(f) Solar lantern / solar lamp;</i></p> <p><i>(g) Ocean waves/tidal waves energy devices/plants; (h) Photo voltaic cells, whether or not assembled in modules or made up into panels.</i></p> <p><i>Explanation: - If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross</i></p> |
|--------------|--------------------|---|

| | | |
|--|--|--|
| | | <i>consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.”</i> |
|--|--|--|

The Petitioner submits that the increase in GST pursuant to GST Notification No. 8 has severely affected the consideration and parameters upon which Petitioner had submitted their bids. The change in GST has adversely affected the capital cost of the Wind Project as the rate of taxation on the equipment i.e., the windmills, required for setting up the Wind Project has increased substantially, thereby resulting in escalation in the capital cost of the Wind Project to the extent of impact of increase in GST on such equipment. It may be noted that such a steep increase of 7% in GST has increased the capital cost of the Petitioner significantly, making tariff discovered through Reverse Auction unviable.

Copy of the GST Notification No. 8 dated 30.09.2021 is attached hereto and marked as **Annexure P4**.

Hence, the present Petition.

5. IMPACT OF CHANGE IN LAW EVENT

The Petitioner submits that it had evaluated and considered the Applicable Laws including but not limited to the extant tax laws which provided for levy of GST at the rate of 5% on ‘specified renewable energy devices and parts’ and accordingly, arrived at the competitive tariff. However, the GST Notification No. 8 has now increased the rate of GST levied on ‘renewable energy devices and parts for their manufacture’ to 12%. This has led to a significant increase in the tax incidence and therefore, the capital cost of the Wind Turbines.

6. The Petitioner has calculated the impact of “Change in Law” as per the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 dated 22.10.2021 (“**CIL Recovery Rules**” **Annexed as Annexure P5**) issued by the

Hon'ble MoP as the PPA does not specify the formula for recovery impact due to change in law, theaforesaid calculation sheet is attached hereto and marked as **Annexure P6**

7. In view of the foregoing facts and circumstances and the significant increase in the capital cost of the Wind Project due to the GST Notification No. 8, the Petitioner is filing the instant Petition before this Commission to seek approval of Change in Law to compensate for the increase in capital cost of the Wind Project in terms of Article 12 of the PPA on the following grounds, which are being taken in the alternate and the Petitioner reserves its right to make further or other grounds with the leave of this Commission as and when the need arises:

GROUND

A. GST Notification No. 8 qualifies as 'Change in Law' under Article 12 of the PPA

FOR THAT the GST Notification No. 8 is 'Change in Law' under Article 12 of the PPA. A bare perusal of Article 12 of the PPA makes it abundantly clear that an event will qualify as 'Change in Law' if it is an event as specified in bullets 1 to 5 of Article 12.1.1, has occurred after the last date of bid submission and resulted in additional recurring/ non-recurring expenditure incurred by the wind power developer. In regard thereto, the Petitioner submits that the Central Government issued GST Notification No. 8 under Section 9 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") which empowers the Central Government to levy the central goods and services tax on all intra-State supplies of goods or services or both at such rates as may be notified by the Government. The GST Notification No. 8 which increased the rate of GST from 5% to 12% on renewable energy parts has resulted in a statutory change in tax structure applicable to wind power projects and will therefore, qualify as 'Change in Law' under the 5th bullet of Article 12.1.1 of the PPA.

Alternatively, since GST Notification No. 8

- (i) has been issued by the Ministry of Finance, which is an 'Indian Governmental Instrumentality' under the PPA;
- (ii) has the force of 'Law' as defined under Article 1 of the PPA;
- (iii) qualifies under the PPA i.e., *"any statutory change in tax structure or introduction of any new tax made applicable for setting up of Wind Power Project and supply of power from the Project by the WPD and has direct effect on the Project"*;
- (iv) qualifies under the PPA i.e., *"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 "*

therefore, its' enactment is 'Change in Law' under the PPA. Further, GST Notification No. 8 was issued after the last date of bid submission and has resulted in a significant increase in the incidence of tax liability of the Petitioner, and consequently the capital cost of the Wind Project. In view thereof, the issuance of GST Notification No. 8 clearly qualifies as 'Change in Law' under the PPA and entitles the Petitioner to relief under the PPA.

B. FOR THAT, the PPA clearly envisages relief/compensation to be granted to the Petitioner on account of additional recurring/ non-recurring expenditure that the Petitioner has to incur as a result of 'Change in Law', which shall be determined and given effect to from such date as decided by this Ld. Commission. The compensation is aimed at putting the affected party i.e., the Petitioner in the present case, in the same economic position as if the 'Change in Law' had never occurred. In other words, the SECIIs, in terms of the PPA, liable to compensate the Petitioner by way of an adjustment in tariff and/or upfront lump sum payment, to the extent of additional capital expenditure that the Petitioner is compelled to incur as a result of GST Notification No. 8.

C. FOR THAT the Petitioner is now compelled to incur additional capital

expenditure on account of issuance of GST Notification No. 8. Such additional expenditure on procurement of equipment for setting up the Wind Project will lead to an increase in capital cost of the Wind Project and if not compensated, will impact the viability of the Wind Project. The Petitioner could not have factored the impact of GST Notification No. 8 in the quoted tariff at the time of bid submission as it has been notified after the bid submission date. As such, the tariff quoted by the Petitioner and captured in the PPA is no more viable and it is incumbent on this Commission to acknowledge GST Notification No. 8 as 'Change in Law' and provide relief to the Petitioner.

- D. FOR THAT it is settled law that a generating company must be compensated by way of adjusted tariff by a power purchaser to compensate for expenditure incurred due to 'Change in Law', if provided for in the power purchase agreement. In addition, SECI are bound to compensate the Petitioner by the general law of contract and the prevalent industry practice.

- E. FOR THAT the essence of 'Change in Law' clause under the PPA is to restore the affected party to the same economic position as if the 'Change in Law' event had not occurred. Accordingly, since the additional non-recurring cost which is being incurred by the Petitioner due to increase in GST has disturbed the fundamental assumptions based upon which the bid for Petitioner's Wind Project was submitted, it is imperative that the Petitioner is restored to the same economic position as if the GST on WTGs had not increased.

- F. FOR THAT the Hon'ble MNRE has by way of letter dated 27.08.2022, while exercising its powers under Section 107 of the Act, directed this Ld. Commission to treat any change in domestic duties, levies, cesses and taxes imposed by the Central Government, State Government or Union territories or any Governmental Instrumentality which leads to corresponding changes in cost as 'Change in Law' and allow it as pass-through. The Petitioner respectfully submits that since GST Notification No. 8 has brought about a statutory change

in taxes imposed by the Central Government, the same should be treated as ‘Change in Law’ and allowed as pass-through.

Copy of the letter dated 27.08.2022 issued by the Ministry of Power is attached herewith and marked as **Annexure P7**.

G. FOR THAT the ‘Notice of Change in Law’ on behalf of the Petitioner was duly served upon SECI on occurrence of the ‘Change in Law’ event i.e., GST Notification No. 8. SECI was informed additional cost incurred by the Petitioner on account of GST Notification No. 8. Copy of the notice dated 09.11.2021 served on SECI is attached herewith as marked as **Annexure- P8**.

H. FOR THAT in terms of Section 79(4) of the Act, this Commission while discharging its functions under the Act has to be guided by the provisions of National Tariff Policy, 2016. Clause 6.2(4) of the National Tariff Policy clearly states that any change in taxes imposed by the Central Government after the award of bid has to be treated as ‘Change in Law’ unless otherwise provided for in the power purchase agreement. The relevant provisions of the National Tariff Policy, 2016 are reproduced herein below:

“6.2 Tariff structuring and associated issues

...

(4) After the award of bids, if there is any change in domestic duties, levies, cess and taxes imposed by Central Government, State Governments/Union Territories or by any Government instrumentality leading to corresponding changes in the cost, the same may be treated as “Change in Law” and may unless provided otherwise in the PPA, be allowed as pass through subject to approval of Appropriate Commission.”

I. FOR THAT the Bidding Guidelines provide that in the event a Change in Law results in any adverse financial loss/ gain to the Wind Power Generator then, in order to ensure that the Wind Power Generator is placed in the same financial

position as it would have been had it not been for the occurrence of the Change in Law, the Wind Power Generator/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the 'Appropriate Commission'. The Bidding Guidelines are binding on procurers/ intermediary procurers/ end procurers.

- J. FOR THAT it is settled law that a contract must be interpreted in an effective manner so as to give a meaningful interpretation to all relevant provisions of the contract such that no provision is rendered futile or redundant.
- K. It is further submitted that there is no dispute that the notification of the GST Amendment is a Change in Law event. In this regard, it may be noted that this Hon'ble Commission vide its Orders passed previously has already held that the Original GST Notification(s) are a Change in Law event. This Hon'ble Commission has *vide* the following orders held that the introduction of the GST regime is a Change in Law event:
- (i) Order dated 13.05.2021 passed by the Hon'ble Commission in Petition No.73/MP/2020: SB Energy One Private Limited vs. SECI and Ors.;
 - (ii) Order dated 19.11.2019 in Petition No.188/MP/2018: Azure Solar Private Limited vs. NTPC VidyutVyapar Nigam Limited;
 - (iii) Order dated 09.10.2018 in Petition No 188/MP/2017: Acme Bhiwadi Solar Power Private Limited vs. SECI; and
 - (iv) Order dated 28.01.2020 in Petition No. 67/MP/2019: Clean Sustainable Energy Private Limited vs. SECI.
- L. It may be noted that this Hon'ble Commission, while dealing with a similar claim for Change in Law due to the introduction of the GST laws, has allowed the same under a PPA executed under SECI tranche-V bid and has held as follows,

“the invoices raised up to COD pertaining to supply of goods can be claimed under Change in Law on account of the GST Laws since the liability of SECI/ Respondent Discom for payment of purchase of the power from the Petitioner starts from the Commercial Operation Date (COD).” In this regard reliance is placed on the Order dated 10.08.2021 passed in Petition No.45/MP/2019: *Talettutayi Solar Projects One Pvt. Limited vs. Solar Energy Corporation of India Limited*.

- M. It is pertinent to note that the Hon’ble Appellate Tribunal for Electricity (“Hon’ble Tribunal”) in its recent Judgment dated 20.09.2021 passed in Appeal No.215 of 2021: *Tata Power Renewable Energy Limited vs. Maharashtra Electricity Regulatory Commission and Ors.* has in fact allowed a similar revision in the GST structure notified by MoF vide Notification No.24/2018 dated 31.12.2018 as a Change in Law event. In this regard, the relevant extracts of the aforesaid Judgment are reproduced hereunder:

“15. *The appellant could not have conceived in advance as to what changes in GST regime might be brought about by the legislature (or executive) in the period after submission of the bid and execution of the PPA. The reasons set out by the Commission are nothing but hindsight...*

16. *If in terms of Article 9.2 of the PPA the Change in Law event has resulted in adverse financial loss to TPREL, on which issue the Commission has concluded in the affirmative, the relief must be granted such that TPREL ‘is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law’, the contractual provision being based on restitutionary principle. Further, in view of the settled law on the subject, TPREL is entitled to the compensation claim along with carrying cost. The issue of Carrying Cost for Change in Law compensation is no longer res integra. Hon’ble Supreme Court in UHBVNL &Anr. v. Adani Power Ltd. &Ors. (2019) 5 SCC 325 held that Carrying Cost is an integral part of the restitutionary principle and is inbuilt in Change in Law provisions of the PPA.”*

- N. It is submitted that in terms of the aforesaid orders passed by this Hon'ble Commission and the judgments passed by the Hon'ble Tribunal, it is established that the notification of GST Amendment is a Change in Law event which has resulted in a non-recurring expenditure to be borne by the Petitioner. The Petitioner is therefore, required to be compensated for the aforesaid expenditure which could have not been foreseen at the time of bid submission by the Petitioner. Pertinently, the said compensation is required to restore the Petitioner to the same economic position as it was in before the Change in Law event occurred. Therefore, the Petitioner is entitled to the compensation for the Change in Law event along with carrying cost.
- O. The Petitioner respectfully submits that in addition to compensation for the increase in capital cost due to increase in GST, it is also entitled carrying cost. The Petitioner has already incurred additional cost on account of the increase in GST. Accordingly, the Petitioner is also entitled to Carrying Cost on the additional cost incurred by it from the date of actual payment of additional GST till the approval of 'Change in Law' by this Commission to put the Petitioner in the same economic position as if 'Change in Law' had not occurred.
- P. It may be noted that the Hon'ble Tribunal in its Judgment dated 13.04.2018 in **Appeal No.210 of 2017: Adani Power Ltd. vs Central Electricity Regulatory Commission &Ors.** has allowed carrying cost on Change in Law claims by holding that the principle of carrying cost is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time. The aforesaid Judgment has further been upheld by the Hon'ble Supreme Court vide its judgment dated 25.02.2019 in **Civil Appeal No.5865 of 2018 & Civil Appeal No. 6190 of 2018: Uttar Haryana BijliVitrان Nigam Limited &Anr. vs. Adani Power Ltd. &Ors.** Accordingly, it is no longer *res integra* that the Petitioner is entitled to the payment of carrying cost along with the compensation for Change in Law.
8. The instant Petition is made *bona fide* and in the interest of justice. It is further submitted that urgent steps need to be taken by the Commission to protect the

interests of the Petitioner. Therefore, the instant Petition is being filed by the Petitioner seeking the intervention of the Commission in terms of the PPA to approve the Change in law event and resolve the issues raised in the instant Petition qua recognition of issuance of GST Notification No. 8 as 'Change in Law' in terms of the PPA.

9. It is submitted the Petitioner shall suffer irreparable loss and harm to its business that unless the relief sought herein below is granted by this Commission.
10. The Petitioner has not filed any other application/Petition before any other court, tribunal or commission in relation to the issues raised herein. The Petitioner craves leave of this Commission to supplement the instant Petition with further pleadings, should the need arise.

PRAYER

11. In light of the aforementioned facts and circumstances it is therefore, most respectfully prayed that this Ld. Commission may graciously be pleased to:
 - a. Admit the present petition;
 - b. Hold and declare that issuance of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 qualifies as 'Change in Law' in terms of the Power Purchase Agreement executed between the Petitioner and Respondent No. 1;
 - c. Direct Respondent No. 1 to compensate the Petitioner for the additional non-recurring capital cost incurred/ to be incurred by it to the tune of INR 42,49,66,160 on account of issuance of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 by way of adjustment in the quoted tariff along with the carrying cost from the date of actual payment of additional GST till the date of order of this Commission;

- d. Pursuant to grant of prayers above, approve the necessary consequential amendments to the PPA and LoA;
- e. Pass such order (s), further relief(s) in the facts and circumstances of the case as this Ld. Commission may deem just and equitable in favour of the Petitioner.

Filed by



Akshat Shrivastava

COUNSEL FOR THE PETITIONER

D- 75, GULMOHAR PARK, KHEL GAON ROAD,

NEW DELHI – 110049

EMAIL. AKSHAT.SHRIV@GMAIL.COM

M: 9958481216

DATE: **01.04.2023**

**BEFORE THE HON'BLE CENTRAL ELECTRICITY REGULATORY
COMMISSION, AT NEW DELHI**

PETITION NO. ____/MP/2023

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 for approval of 'Change in Law' on account of financial/ commercial impact of the 'Change in Law' event i.e., increase in the rate of Goods and Services Tax from 5% to 12 % by way of Notification No. 8/2021- Central Tax (Rate) dated 30.09.2021 issued by Ministry of Finance, Government of India, in terms of Article 12 of the Power Purchase Agreement executed with Solar Energy Corporation of India Limited.

IN THE MATTER OF:

M/s. Morjar Windfarm Development Private Limited

.....Petitioner

Versus

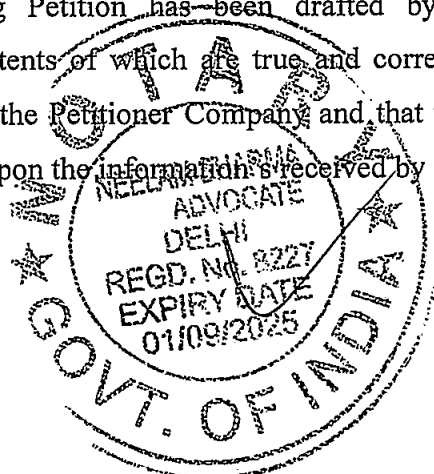
Solar Energy Corporation of India Limited & Ors

....Respondents

AFFIDAVIT

I, Vishal Saxena, S/o Anirudh Bihari Lal Saxena aged about 38 years, working as Assistant Manager of Petitioner Company having office at 402 & 403, Delphi, C Wing, Hiranandani Business Park, Orchard Avenue, Powai, Mumbai-400076, presently at New Delhi do hereby solemnly affirm and state as under : -

1. That I am the duly authorized by the Petitioner Company in the accompanying Petition to sign and verify the present affidavit and being fully aware of the facts of the circumstances of the case and therefore is competent to swear this affidavit.
2. That the accompanying Petition has been drafted by the counsel under instructions and the contents of which are true and correct to my knowledge, based on the records of the Petitioner Company and that the legal submissions made therein are based upon the information received by me and believed to be



true. The contents of said Petition may be read as part and parcel of this affidavit as the same are not being repeated herein for the sake of brevity.

3. That all the Annexures annexed herewith with the Petition are true copies of their respective original.



Ushal
DEPONENT

VERIFICATION:

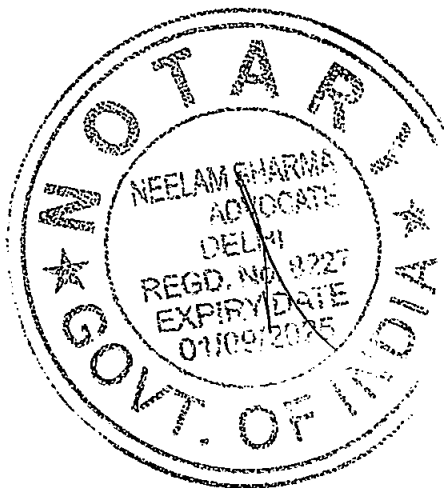
31 MAR 2023

Verified at New Delhi on this 29th day of March, 2023 that the contents of the above affidavit are true and correct to my knowledge, no part of it is false and nothing has been concealed therefrom.



Ushal
DEPONENT

I Identified the deponent who
has signed in my presence



ATTESTED

Neelam Sharma
NOTARY (Govt. of India)
Neelam Sharma
Advocate
CA No 165A, Gate No. No. 14,
Patiala House Courts,
New Delhi-110001
M/A 0000108301

31 MAR 2023

Original

Annexure - P/1

Ref.No. SECI/C&P/WPD/T6/LOA/SESPL/P1/ 3/625

Date: 17.06.2019

To

M/s Srijan Energy Systems Private Limited
102, El-Tara,
Hiranandani Gardens,
Powai, Mumbai – 400076

Kind Attn: Sh. N. V. Venkataramanan

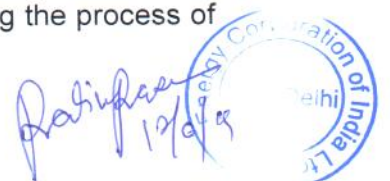
Letter of Award

Sub: Selection of Wind Power Projects under RfS for setting up of 1200 MW ISTS-connected Wind Power Projects (Tranche-VI): Letter of Award for Project of 150 MW (Project ID: WPD-ISTS-T6-SESPL-P1-150GJ) at Villages: Kotda, Tharawda, Morjar, Ranara Mota, Ranara Nana, Lakhadi, Tara, Kalyanpur, Fulra, Kanpar, Fotdi, Nagyari, Manjal, Talukas: Bhuj & Nakhtrana, Dist: Kutch, State: Gujarat

Dear Sir,

Ref: This has reference to the following:

- The "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects" vide Gazette Resolution dated 08.12.2017 including its subsequent amendments and clarifications issued by Ministry of Power (MoP) (herein referred to as "Guidelines");
- The Request for Selection (RfS) document vide RfS no. SECI/C&P/WPD/1200MW/T6/RfS/122018 dated 31.12.2018 including draft Power Purchase Agreement (PPA), draft Power Sale Agreement (PSA) and subsequent amendments/ clarifications/ revisions/ notifications issued by Solar Energy Corporation of India Limited (SECI) and uploaded during the process of RfS on TCIL portal (www.tcil-india-electronictender.com);



- C. Your response to the RfS document submitted vide Bid Acknowledgement Receipt dated 05.02.2019 and uploaded on TCIL portal vide Organization ID (ETS-IN-2017-RS0001024) against RfS for Setting up of 1200 MW ISTS-connected Wind Power Projects (Tranche-VI);
- D. Your Bank Guarantee(s) towards Earnest Money Deposit (EMD) submitted along with RfS vide (i) BG No OGT0005190028437 issued by IndusInd Bank Limited, for an amount of Rs. 9,00,00,000/- (Rupees Nine Crore Only).
- E. Your Final tariff (INR/kWh) at the end of the e-Reverse Auction conducted on TCIL portal on 15.02.2019 for the referred RfS for selection of ISTS-connected Wind Power Projects.

In reference to above and subject to the provisions of RfS, we confirm having accepted your final offer concluded as a result of e-RA and issue this letter of award as per the following details:

| Allotted Project ID | Project Capacity (MW) | Project Location | Sub-station details for connectivity | Applicable Tariff (INR/kWh) in figures | Applicable Tariff (INR/kWh) in words |
|-----------------------------|-----------------------|--|--------------------------------------|--|--------------------------------------|
| WPD-IST-S-T6-SESPL-P1-150GJ | 150 | Villages: Kotda, Tharawda, Morjar, Ranara Mota, Ranara Nana, Lakhadi, Tara, Kalyanpur, Fulra, Kanpar, Fotdi, Nagyari, Manjal, Talukas: Bhuj & Nakhtrana, Dist: Kutch, State: Gujarat | 765/400/220 KV, PGCIL Bhuj Pool S/S | ₹ 2.82/- | Rupees Two and Eighty-Two paisa only |

SECI shall purchase the power generated from the proposed ISTS-Connected Wind Power Project under the above scheme subject to the following terms and conditions as stated in various documents referred above and briefly brought out hereinafter.

- 1.0 The applicable tariff as mentioned above for power generated from the proposed Wind Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Project Company or the Wind Power

Ratiff

 Page 2 of 6

Developer (WPD) and M/s SECI, for the project, shall be firm for the entire term of the PPA.

- 1.1 The applicable tariff, as discovered through the e-bidding and e-Reverse auction, shall be fixed for 25 years in line with the RfS. The WPD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs, Excise Duties, Tax Holidays, etc. as available for such projects. No claim shall arise on SECI for any liability if the WPD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.
- 1.2 The award of the above project is subject to the Guidelines including amendments / clarifications issued by MNRE (Government of India) and terms and conditions of the RfS document including its clarifications/ amendments / elaborations / notifications issued by SECI.
- 1.3 No change in the controlling shareholding of the Bidding Company shall be permitted from the date of submission of response to RfS till the execution of the PPA. However, in case the Project is being set up by a listed Company, this condition will not be applicable. Controlling Shareholding (holding more than 50% of the voting rights and paid up share capital in the Company) of the Project Company of the WPD shall not change until One Year after the COD of the Project, except with prior approval of SECI. However, in case the Project is being set up by a listed Company, this condition will not be applicable.
- 1.4 The successful Bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the Power Purchase Agreement (PPA), shall not fall below 51% at any time prior to 1 (one) year from the COD, except with the prior approval of SECI. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 1 (one) year from COD, except with the prior approval of SECI.
- 1.5 The WPD shall pay to SECI, Success Charges of Rs. 1 lakh/MW/project + 18% GST within 30 days of issuance of this Letter of Award (LoA), in line with Clause 3.12 of the RfS. Performance Bank Guarantee(s) for a value of @ Rs 20 Lakh/ MW shall be submitted by the WPD within 30 days of issuance of



Letter of award or before signing of PPA, whichever is earlier, in line with Clause 3.11 (ii) of the RfS.

- 1.6 PPA will be executed between SECI and the WPD as per the breakup of the cumulative Project capacity awarded to the Bidder. This LoA is being issued in line with the Project breakup of the cumulative capacity quoted in the Covering Letter as part of your response to RfS and amended subsequently, as applicable. The final project configuration, adding up to the cumulative capacity awarded to the bidder may be intimated to SECI at the time of signing of PPA, which shall then remain unchanged subsequent to signing of PPA. Delays in connectivity and/or LTA for the Project(S) on account of such changes in Project locations, which differ from the details provided in the Covering letter, shall be at the risk of the Successful Bidder. The PPAs shall be valid for a period of 25 years from the scheduled commissioning date or from the date of full commissioning of the projects, whichever is earlier.
- 1.7 The WPD will have to submit the required documents as mentioned below to SECI within 70 days from date of this LoA or before signing of PPA, whichever is earlier. In case of delay in submission of documents beyond the timeline as mentioned above, SECI shall not be liable for delay in verification of documents and subsequent delay in signing of PPA:
- 1) Copy of the Certificate of Incorporation of the Wind Power Developer.
 - 2) The details of promoters and their shareholding in the WPD, duly certified by the practicing Chartered Accountant/ Company Secretary in original at least 7 (seven) days prior to date of their document submission (certificate date should be after the date of LoA) along with latest documents filed with ROC).
 - 3) Copy of the Memorandum of Association (MoA) of the WPD highlighting the object clause related to generation of Power/ Energy/ Renewable Energy/ Wind Power plant development.

Further, the PPA shall be signed only upon receipt of the Success Charges and total Performance Guarantees of requisite value. The EMD submitted shall be released only after receipt, successful verification of the total Performance Bank Guarantee in the acceptable form.



- 1.8 SECI shall have the right to verify original documents of the WPD for which copies have been submitted from the date of submission of response to RfS till date, if required. PPA as per the format given along with RfS has to be signed within 03 months from the date of issue of LoA, if not extended by SECI. In case of unavoidable delays on the part of the ^WSPD in submission of requisite documents prior to signing of PPAs or otherwise, the Effective Date of the PPA shall remain the date as on 90th day from the issuance of LOA, irrespective of the date of signing of PPA. In extraordinary cases of unavoidable delays on the part of SECI in signing the PPAs, the Effective Date of the PPA shall then be the date of signing of PPA.
- 1.9 In case, the SECI offers to execute the PPA with the WPD and the selected Bidder refuses to execute the PPA within the stipulated time period, the Bank Guarantee equivalent to the amount of the EMD shall be encased by SECI from the Bank Guarantee available with SECI (i.e. either EMD or PBG) as liquidated damages not amounting to penalty, and the selected Project(s) shall stand cancelled and the selected Bidder expressly waives off its rights and objections, if any, in that respect.
- 1.10 The WPD shall meet financial closure in line with clause 3.16 of the RfS document, within 07 (seven) months from the Effective Date of the PPA. Accordingly, the WPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions within 07 months from the Effective Date of the PPA.
- 1.11 The WPD/Project Company shall achieve commissioning of full capacity of the Project within 18 months from the Effective Date of the PPA as per the conditions stipulated in Clause 3.17 of the RfS and relevant articles of PPA. In case of failure to achieve this milestone, liquidated damages not amounting to penalty shall be levied on the WPD as per the above provisions.
- 1.12 You are requested to make it convenient for signing of Power Purchase Agreement (PPA) as per clause 3.14 of RfS, failing which provisions as per clause 3.11 of the RfS shall be applicable.



Page 5 of 6

- 1.13 All disputes arising out of and/ or in connection with the selection of Wind Power Projects under the said RfS and execution of PPA thereto shall be governed by laws of India and shall be subject to the jurisdiction of Courts of New Delhi.

This LoA is being issued in duplicate and you are requested to kindly acknowledge receipt of this LoA by sending the duly stamped and signed duplicate copy of LoA to SECI within 07 days from date of this LoA.

Thanking you,

Yours faithfully,

For and on behalf of Solar Energy Corporation of India Limited


(Pratik Prasun)
Manager (C & P)


BUYER-WPD PPA

Annexure - P/2

STANDARD
POWER PURCHASE AGREEMENT FOR
PROCUREMENT OF 150 MW WIND POWER
ON LONG TERM BASIS

Between

[M/s Morjar Windfarm Development Private Limited]

And

Solar Energy Corporation of India Limited

[October 2019]





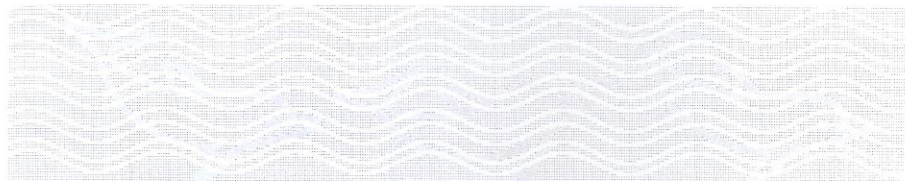
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

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|---------------------------|---|
| Certificate No. | : IN-DL69247216510992R |
| Certificate Issued Date | : 15-Oct-2019 11:44 AM |
| Account Reference | : IMPACC (IV)/ dl921303/ DELHI/ DL-DLH |
| Unique Doc. Reference | : SUBIN-DL92130346237237588125R |
| Purchased by | : SOLAR ENERGY CORPORATION OF INDIA LIMITED |
| Description of Document | : Article 5 General Agreement |
| Property Description | : Not Applicable |
| Consideration Price (Rs.) | : 0 (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 (One Hundred only) |



Please write or type below this line

This Power Purchase Agreement is made on the 29th day of October of 2019 at New Delhi

Between

M/s Morjar Windfarm Development Pvt Ltd, a Company incorporated under the Companies Act 1956 or Companies Act 2013, bearing CIN: U40106MH2019PTC326408, having its registered office at 102, El Tara, Orchard Avenue Hiranandani Gardens, Powai, Mumbai, Maharashtra – 400076, India (hereinafter referred to as “Wind Power Developer or WPD”, which expression shall,

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 users of the Stamp Certificate are advised to use the Stamp Certificate for the purpose of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

BUYER-WPD PPA

unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the FIRST PART;

And

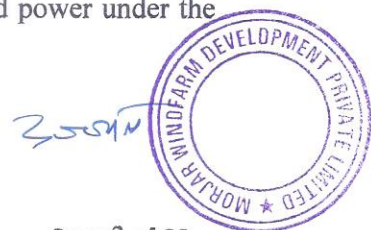
Solar Energy Corporation of India Limited, a company incorporated under the Companies Act 1956, having its registered office at 1st Floor, A-Wing, D-3, District Centre, Saket, New Delhi-110017 (hereinafter referred to as "Buyer", which expression shall, unless repugnant to the context or meaning thereof,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

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

Whereas:

- A As part of the Government of India's target to achieve a cumulative installed capacity of 60 GW of wind power projects by the year 2022, SECI has been instrumental in developing grid connected solar power capacity in India and plays the role of Intermediary Procurer in line with the provisions of the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects, issued by Ministry of Power, vide resolution dated 08.12.2017.
- B M/s Srijan Energy Systems Private Limited (SESPL) has been declared as a successful bidder against Request for Selection (RfS) issued by SECI vide RfS No. SECI/C&P/WPD/1200M/T6 /RFS/122018 dated 31.12.2018 issued by SECI for selection of WPDs for development of cumulative capacity of 150 MW and have been issued Letter of Award (LOA) (LOA No. SECI/C&P/WPD/T6/LOA/SESPL/P1/31625 dated 17.06.2019) for development of 150 MW ISTS-connected Wind Power Project(s), generation and sale of wind power under the above RfS.

M/s Srijan Energy Systems Private Limited has formed a project company, M/s Morjar Windfarm Development Pvt Ltd (the WPD), within the provisions of RfS for development of Wind Power Project, generation and sale of wind power under the above RfS.



Page 3 of 66

BUYER-WPD PPA

- C. The WPD, is established in Mumbai with an objective, interalia, to develop and manage Wind power plants in India.
- D. The WPD is engaged in the business of generation of power and is desirous of setting up a
150 MW Wind power project located at Villages: Kotda (Tharavd), Tharawda, Morjar, Ranara Mota, Ranara Nana, Lakhadi, Tara, Kalyanpar, Fulra, Kanpar, Fotdi, Nagyari, Manjal, of Talukas Bhuj and Nakhtrana, Dist. Kutch, in the state of Gujarat (Hereinafter referred to as the “**Project**”).
- E. The WPD has agreed to sign this Power Purchase Agreement with Buyer to sell 150 MW of Wind Power to Buyer as per the terms and conditions of this Agreement.
- F SECI has agreed to purchase such Wind Power from WPD as an Intermediary Procurer and sell it to Buying Utility on back-to-back basis as per the provisions of above stated scheme, accordingly SECI has agreed to sign/has signed a Power Sale Agreement with the Buying Utility to sell such power as per the provisions of the above said scheme.
- WPD acknowledges and accepts that SECI is only an Intermediary Company and is facilitating the purchase of sale of electricity generated from the Wind Projects and therefore, cannot assume independently, any obligation, financial or otherwise, either to the WPD or to Discom(s), except on a back to back basis, namely, that whatever obligation is enforced by the Discom(s) under the PSA against SECI, WPD(s) shall be bound to fulfil the obligation on a back to back basis towards SECI and similarly, whatever rights that SPD(s) may claim under this Agreement against SECI, shall be subject to due enforcement of the corresponding rights on a back to back basis by SECI against Discom(s), without an independent obligation on the part of SECI;
- G. Pursuant to the aforesaid objective, the Parties are desirous of entering into a Power Purchase Agreement (“PPA”) i.e. a definitive agreement, regarding purchase of power from the Project. Pending execution of the necessary agreements and other relevant documents in relation to the transaction contemplated herein, the Parties wish to execute this PPA setting out the respective obligations of the Parties and the steps necessary to complete the transactions contemplated herein.
- H. To establish the commitment of WPD to sell and Buyer to purchase power from the Project, the Parties have entered into this Agreement.
- I. The WPD has submitted the Performance Bank Guarantee to SECI as per the format provided in Schedule 1 of this Agreement



BUYER-WPD PPA

J. The Parties have accordingly agreed to enter into this PPA to record their understanding and agreement with regard to the purchase of power to be generated from the Project and in respect to the matters incidental or ancillary thereto, upon the terms and conditions set out herein below.

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



BUYER-WPD PPA

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 *Definitions*

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

| | |
|--|--|
| "Act" or "Electricity Act, 2003" | shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time; |
| "Agreement" or "Power Purchase Agreement" or "PPA" | shall mean this Power Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof; |
| "Appropriate Commission" | shall mean the Central Electricity Regulatory Commission referred to in sub- section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act 2003, as the case may be; |
| "Bill Dispute Notice" | shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party; |
| "Business Day" | shall mean with respect to WPD and Buyer, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Delhi; |
| "Buying Entity" | shall mean DISCOM / State Entity/Bulk consumer which has signed the agreement with SECI and which requires wind power to fulfil its non-solar RPO under respective RPO regulations; |
| "Capacity Utilisation Factor" or "CUF" | shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 as amended from time to time; However for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity. In any Contract Year, if 'X' MWh of energy has been metered out at the Delivery Point for 'Y' MW Project capacity, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) * 100\%$; |
| "CERC" | shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors; |
| "CTU" or "Central Transmission Utility" | shall mean the Government Company notified by the Central Government under Sub-Section (1) of Section 38 of the Electricity Act, 2003. |



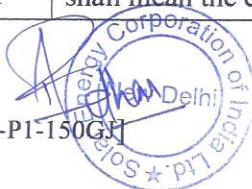
BUYER-WPD PPA

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|------------------------------------|--|
| "Change in Law" | shall have the meaning ascribed thereto in Article 12 of this Agreement; |
| "Commercial Operation Date" | shall mean the actual date of commissioning of the project as declared. In case of part commissioning, COD will be declared only for that part of project capacity; |
| "Commissioning" | The Project will be considered as commissioned if all equipment as per rated Project Capacity has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the PPA. |
| "Competent Court of Law" | shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement; |
| "Consents, Clearances and Permits" | shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power; |
| "Consultation Period" | shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a WPD Preliminary Default Notice or Buyer Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances; |
| "Contract Year" | Shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that: (i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and (ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement |
| "Contracted Capacity" | shall mean 150 MW contracted with Buyer for supply by the WPD to Buyer at the Delivery Point from the Wind Power Project; |



BUYER-WPD PPA

| | |
|--------------------|--|
| "Delivery Point" | shall mean the point at 220 kV or above where the power from the wind power project(s) will be injected into the ISTS. Metering shall be done at this interconnection point where the power will be injected into the ISTS i.e. the Delivery point. For interconnection with grid and metering, the developers shall abide by the relevant CERC Regulations, Grid Code, and Central Electricity Authority Regulations as amended from time to time. All charges and losses related to Transmission of power from project up to and including at the Delivery Point (including but not limited to open access, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, RLDC charges etc.) as notified by the competent authority / regulator shall be borne by the WPD and beyond the Delivery Point all charges and losses as notified by the competent authority / regulator from time to time shall be borne by the Buying Utilities. In case it is paid by SECI on behalf of Buying Utilities / WPD, the same shall be recovered from the Buying Utilities / WPD (as applicable); |
| "Discoms" | shall mean the Buying Entity 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 Buyer and the WPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement; |
| "Due Date" | Due Date shall mean the forty-fifth (45th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hard copy and duly acknowledged by the Buyer or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the Buyer. |
| "Effective Date" | shall have the meaning ascribed thereto in Article 2.1 of this Agreement; |
| "Electricity Laws" | shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission; |
| "Energy Accounts" | shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof or where such regional energy accounts/ state energy accounts are not issued, Joint Meter Reading (JMR) will be considered; SECI reserves the right to choose from any of the above, i.e. JMR/SEA/REA, based on the acceptance of the same by the Buying Entity; |
| "Event of Default" | shall mean the events as defined in Article 13 of this Agreement; |



BUYER-WPD PPA

| | |
|---|---|
| "Expiry Date" | Shall mean the date occurring twenty five (25) years from the Scheduled Commissioning Date or from the date of full commissioning of the Project, whichever is earlier; |
| "Financial Closure" | shall mean means 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; |
| "Financing Agreements" | shall mean the agreements pursuant to which the WPD has sought financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of Buyer; |
| "Force Majeure" or "Force Majeure Event" | shall have the meaning ascribed thereto in Article 11 of this Agreement; |
| "Guidelines: or "Scheme" | shall mean the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects issued by the Ministry of Power on 8 th December 2017; |
| "Grid Code" / "IEGC" or "State Grid Code" | shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub- section (1) of Section 86 of the Electricity Act 2003, as applicable; |
| "Indian Governmental Instrumentality" | shall mean the Government of India, Governments of state(s) of [Insert the name(s) of the state(s) in India, where the Power Project, Buyer and WPD are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India; |
| "Installed Capacity" | Shall mean the name plate capacity of all the units of the Power Project or the capacity of the Power Project (reckoned at the generator terminals); |
| "Insurances" | shall mean the insurance cover to be obtained and maintained by the WPD in accordance with Article 8 of this Agreement; |
| "Interconnection Facilities" | shall mean the facilities on WPD's side of the Delivery Point for sending 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, subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement; |



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| "Intermediary Procurer" | shall mean Solar Energy Corporation of India Limited; |
| "Invoice" or "Bill" | shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties; |
| "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; |
| "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 WPD to SECI; |
| "Pooling Substation/ Pooling Point" | means a point where more than one wind power projects may connect to a common transmission system. Multiple projects can be connected to a pooling substation from where common transmission system shall be constructed and maintained by the developer(s) to get connected to the ISTS substation. The voltage level for such common line shall be 220 kV and above. Further, the metering of the pooled power shall be done at the injection point, i.e. the ISTS substation. However, the voltage level of transmission system of individual projects up to the pooling substation may be at 33 kV and above. Sub-meters shall be installed at the pooling substation for metering and forecasting and scheduling of individual projects. The losses in the common transmission system up to the injection point shall be apportioned to the individual projects for the purpose of billing. In such case, it shall be responsibility of the WPD to obtain and furnish the meter reading jointly by the WPD and any competent authority (State Government or Central Government) (if applicable). |



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| "Power Project" or "Project" | shall mean the Wind power generation facility of Installed Capacity of 150MW , located at Villages: Kotda (Tharavd), Tharawda, Morjar, Ranara Mota, Ranara Nana, Lakhadi, Tara, Kalyanpar, Fulra, Kanpar, Fotdi, Nagyari, Manjal, of Talukas Bhuj and Nakhtrana, Dist. Kutch, in the state of Gujarat having separate points of injection into the grid at interconnection/ metering point at ISTS substation or in case of sharing of transmission lines, by separate injection at pooling point. Each project must also have separate control systems and metering; |
| "Power Sale Agreement" or "PSA" | Shall mean the power sale agreement entered between the Buying Entity and Buyer (Buyer- Buying Entity(ies) PSA) for selling the wind power as per the provisions of Guidelines and annexed hereto as Schedule 3 of this Agreement; |
| "Preliminary Default Notice" | shall have the meaning ascribed thereto in Article 13 of this Agreement; |
| "Project Capacity" | shall mean the maximum AC capacity of the Project at the point of injection on which the Power Purchase Agreement has been signed; |
| "Prudent Utility Practices" | shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project; b) the requirements of Indian Law; and the physical conditions at the site of the Power Project |
| "RBI" | shall mean the Reserve Bank of India; |
| "Rebate" | shall have the same meaning as ascribed thereto in Article 10.3.4 of this Agreement; |
| "RLDC" | shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003; |
| "RPC" | shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region; |
| "Rupees", "Rs.", "₹" | shall mean Indian rupees, the lawful currency of India; |
| "Scheduled Commissioning Date" | shall mean 15.03.2021; |



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| "SERC" | shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Subsection (1) of Section 83 of the Electricity Act 2003; |
| "SLDC" | shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located; |
| "SLDC Charges" | shall mean the charges levied by the SLDC of the state wherein the Wind Power Project is located; |
| "SECI" | shall mean Solar Energy Corporation of India Limited; |
| "State Transmission Utility" or "STU" | shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act; |
| "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; |
| "Week" | shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday; |
| "Wind Power" | Shall mean power generated from the Wind Power Projects; |
| "Wind Power Project" | shall mean the project that uses wind for conversion into electricity and that is being set up by the WPD to provide Wind Power to Buyer as per the terms and conditions of this Agreement; |



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1.2 *Interpretation*

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

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees", "Rs" or new rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as



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a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;

1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;

1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;

1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;

1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;

1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;



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ARTICLE 2: TERM OF AGREEMENT

2.1 *Effective Date and Condition Precedent*

2.1.1 This Agreement shall come into effect from **15.09.2019** and such date shall be referred to as the Effective Date.

2.1.2 The parties agree that adoption of Tariff along with SECI's trading margin, and approval of the same, for procurement of contracted capacity, shall be responsibility of the Discom(s), and shall be dealt by all Parties concerned under Section 63 of the Electricity Act, 2003 and any amendments thereof.

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 if either Buyer or WPD terminates the Agreement, pursuant to Article 13 of this Agreement.

2.4 *Survival*

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 16 (Governing Law and Dispute Resolution), Article 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.



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ARTICLE 3: CONDITIONS SUBSEQUENT & FINANCIAL CLOSURE**3.1 Satisfaction of conditions subsequent & financial closure by the WPD**

The WPD agrees and undertakes to duly perform and complete all of the following activities at WPD's own risk and cost within seven (7) months from the Effective Date of PPA, i.e. by **15.04.2020** 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 WPD shall make 100 % Project financing arrangements and provide necessary certificates to SECI in this regard;
- b) The WPD shall produce the documentary evidence of possession / right to use of 100% of the land identified for the Project;
- c) The WPD shall submit the details of all planned/proposed wind turbine generators and produce the documentary evidence of the same.

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

- 3.2.1 In case of a failure to submit the documents as above, SECI shall encash the Performance Bank Guarantee submitted by the WPD, terminate this Agreement and remove the Project from the list of the selected Projects by giving a notice to the WPD in writing of at least seven (7) days. The termination of the Agreement shall take effect upon the expiry of the 7th day of the above notice.

An extension can however be considered, on the sole request of WPD, on payment of Rs. 1,000/- per day per MW + 18% GST to SECI. Subsequent to the completion of deadline for achieving fulfilment of condition subsequent and financial closure, SECI shall issue notice to the WPD in case it is not meeting the above requirements as per the RfS deadlines. The notice shall provide a period of 7 days to the WPD to either furnish the necessary documents or make the above mentioned payment of Rs. 1,000/MW/day + 18% GST. In case of non-submission of either the requisite documents or the necessary amount upon expiry of the above mentioned notice period of 7 days, SECI shall encash the PBG of the WPD and terminate the PPA for the Project. The amount of Rs. 1,000/MW/day + 18% GST shall be paid by the WPDs in advance prior to the commencement of the said delay period and shall be calculated based on the period of delay as estimated by the WPD. In case of the WPD meeting the requirements of conditions subsequent and financial closure before the last date of such proposed



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delay period, the remaining amount deposited by the WPD shall be returned by SECI. Interest on account of delay in deposition of the above mentioned charges or on any subsequent extension sought, shall be levied @ SBI MCLR rate (1 year)/annum on pro-rata basis. This extension will not have any impact on the Scheduled Commissioning Date. Any extension charges paid so, shall be returned to the WPD without any interest on achievement of successful commissioning within the Scheduled Commissioning Date, on pro-rata basis, based on the project capacity commissioned as on Scheduled Commissioned Date.

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 WPD to fulfil any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfilment of the Conditions Subsequent and Financial Closure as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.

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

3.3 Performance Bank Guarantee

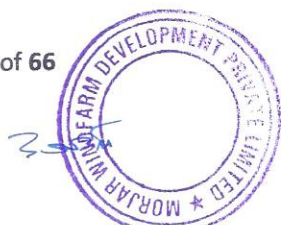
3.3.1 The Performance Bank Guarantee having validity of thirty (30) months from the Effective Date and of Rs. 20 Lakh/MW furnished under this Agreement shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement as per format provided in Schedule 1.

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

3.3.3 If the WPD 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.



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3.4 Return of Performance Bank Guarantee

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

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



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ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 *WPD's Obligations*

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

- a) obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; and
- b) designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.
- c) continuance of supply of Contracted Capacity from the Commercial Operation Date/Project Commissioning throughout the term of the Agreement; and
- d) connecting the Power Project switchyard with the Interconnection Facilities at the Delivery Point; and
- e) maintaining its controlling shareholding prevalent at the time of signing of PPA up to a period of one (1) year after Commercial Operation Date of the Project in line with provisions of the RfS; and
- f) fulfilling all obligations undertaken by the WPD under this Agreement.
- g) obtaining Long Term Access (LTA) and executing transmission service agreement with CTU/STU as the case may be, in line with applicable regulations, for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement.
- h) The WPD shall be responsible to for directly coordinating and dealing with the corresponding Buying Entity(ies), Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Wind Power and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the WPD and the corresponding Buying Entity(ies) are the Grid connected entities and SECI as an Intermediary Procurer/trading licensee is not a Grid connected entity in respect of the Wind Power contracted under this Agreement.

4.2 *Information regarding Interconnection Facilities*

4.2.1 The WPD shall be required to obtain all information with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all



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interconnection plant and apparatus on the WPD's side of the Delivery Point to enable delivery of electricity at the Delivery Point. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the WPD at his own cost.

- 4.2.2 Penalties, fines and charges imposed by the CTU/ STU under any statute or regulation in relation to delay in commissioning of Project shall be payable by the WPD to the extent the delay is attributable to the WPD.
- 4.2.3 All costs and charges including but not limited to the wheeling charges and losses up to and including at the Interconnection Point, if applicable, associated with this arrangement will also be borne by the WPD.
- 4.2.4 In case of Pooling substation, losses in the transmission line shall be apportioned among the WPDs who share such a Pooling arrangement, based on their monthly generation.
- 4.2.5 Government of India, from time to time, issues order for waiver of inter-state transmission system (ISTS) charges and losses on transmission of wind power till a certain date. In case the SCD of the Project is before the date till above ISTS waiver is applicable, and if the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver due to Force Majeure, the liability of transmission charges and losses would be shared between the WPD and Buying Entity in the ratio of 50:50. However, in case the commissioning of the Project gets delayed beyond the applicable date of ISTS waiver due to reasons attributable to the WPD, the liability of transmission charges and losses would be to the account of the WPD.

4.3 *Purchase and sale of Contracted Capacity*

- 4.3.1 Subject to the terms and conditions of this Agreement, the WPD undertakes to sell to Buyer and Buyer undertakes to pay Tariff for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity, subject to Article 4.4.1 of this Agreement.

4.4 *Right to Contracted Capacity & Energy*

- 4.4.1 The WPD will declare the CUF of the Project and will be allowed to revise the same once within first year of COD. Buyer, in any Contract Year except for the first year of operation, shall not be obliged to purchase any additional energy from the WPD beyond **560.1 Million kWh (MU)**. In case of full commissioning of the Project, for the first year of operation, the above limits shall be considered on pro-rata basis. In



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case of part commissioning of the Project, the above limits shall be considered on pro-rata basis till the commissioning of full capacity of the Project. If for any Contract Year, except for the first year of operation, it is found that the WPD has not been able to generate minimum energy of **373.4 Million kWh (MU)** on account of reasons solely attributable to the WPD, the non-compliance by WPD shall make the WPD liable to pay the compensation provided in the respective PSA as payable to Buying Entity(ies) by Buyer to enable Buyer to remit the amount to Buying Entity(ies). The lower limit will, however be relaxable by Buyer to the extent of grid non availability for evacuation which is beyond the control of the developer (subject to certification from SLDC/RLDC). For the first year of operation of the project, the annual CUF shall be calculated for the complete year after COD of the Project. Subsequently, the annual CUF shall be calculated every year from 1st April of the year to 31st March next year. This compensation shall be applied to the amount of shortfall in generation during the Contract Year. The amount of such compensation shall be as determined by the Appropriate Commission/Authority, and such compensation shall ensure that the Buying Entity(ies) is/are offset for all potential costs associated with low generation and supply of power under the PPA. However, the minimum compensation payable to SECI by the WPD shall be 75% (seventy-five percent) of the cost of this shortfall in energy terms, calculated at PPA tariff.

- 4.4.2 Any excess generation over and above as per Article 4.4.1, may be purchased by SECI at a tariff as per Article 9.2, provided Buying Entity consents to purchase such power. While the WPD would be free to install the wind turbines as per its design of required output, including its requirement of auxiliary consumption and to reconfigure and repower the Project from time to time during the term of the PPA, it will not be allowed to sell any excess power to any other entity other than SECI (unless refused by SECI). The WPD shall be required to intimate the Buyer about the proposed excess quantum of energy likely to be generated from the Project within any Contract Year, at least 60 days prior to the proposed date of commencement of excess generation. The Buyer shall be required to intimate its approval/refusal to the WPD, for buying such excess generation not later than 30 days of receiving the above offer from the WPD. In the event the offer of the WPD is not accepted by the Buyer within the said period of 30 days, such right shall cease to exist and the WPD shall, at its sole discretion, may sell such excess power to any third party.



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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 WPD will have to forego the excess generation and reduce the output to the rated capacity and shall also have to pay the penalty/charges (if applicable) as per applicable regulations / requirements / guidelines of CERC / SERC /SLDC or any other competent agency.

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

- 4.4.3 The compensation as per Article 4.4.1 shall be applied to the amount of shortfall in generation during the year. However, this compensation shall not be applicable in events of Force Majeure identified under Buyer-WPD PPA affecting supply of wind power by WPD.

4.5 *Extensions of Time*

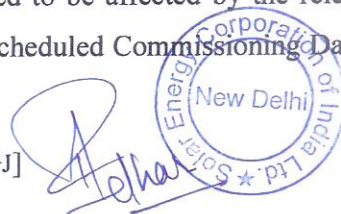
- 4.5.1 In the event that the WPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

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

- 4.5.2 Void.

- 4.5.3 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of nine (9) 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



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deferred by, any Party may raise the Dispute to be resolved in accordance with Article 16.

- 4.5.5 As a result of such extension, the newly determined Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.
- 4.5.6 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond 27 months from the Effective Date of this Agreement.

4.6 *Liquidated Damages not amounting to penalty for delay in commencement of supply of power to Buyer*

- 4.6.1 The Project shall be fully commissioned within 18 months from the Effective Date of this Agreement. In case of failure to achieve this milestone, SECI shall encash the Performance Bank Guarantee (PBG) in the following manner:

Delay beyond the Scheduled Commissioning Date upto (& including) the date as on 27 months from the Effective Date: Buyer will encash total Performance Bank Guarantee on per day basis and proportionate to the balance Capacity not commissioned.

- 4.6.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee shall be limited to 27 months from the Effective Date of this Agreement. In case, the Commissioning of the Project is delayed beyond 27 months from the Effective Date, the PPA capacity shall stand reduced / amended to the Project Capacity Commissioned, provided that the commissioned capacity is not below 50 MW or 50% of the allocated Project Capacity, whichever is lower, and the PPA for the balance Capacity will stand terminated and shall be reduced from the selected Project Capacity.

4.7 *Acceptance/Performance Test*

- 4.7.1 Prior to synchronization of the Power Project, the WPD 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 Wind power projects.



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4.8 Third Party Verification

- 4.8.1 The WPD shall be further required to provide entry to the site of the Power Project free of all encumbrances at all times during the Term of the Agreement to Buyer and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the WPD at the site of the Power Project.
- 4.8.2 The third party may verify the construction works/operation of the Power Project being carried out by the WPD 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 WPD or require the works to be stopped or to comply with the instructions of such third party.

4.9 Breach of Obligations

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

4.10 Generation compensation for Off-take constraints

- 4.10.1 Generation Compensation in offtake constraints due to Grid Unavailability:** During the operation of the plant, there can be some periods where the plant can generate power but due to temporary transmission unavailability, the power is not evacuated, for reasons not attributable to the Wind Power Developer. In such cases, subject to the submission of documentary evidence from the competent authority, the generation compensation shall be restricted to the following and there shall be no other claim, directly or indirectly against SECI:



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| Duration of Grid unavailability | Provision for Generation Compensation |
|---|---|
| Grid unavailability in a contract year as beyond 50 hours in a Contract Year as defined in the PPA: | <p>Generation Loss = [(Average Generation per hour during the Contract Year) × (number of hours of grid unavailability during the Contract Year)]</p> <p>Where, Average Generation per hour during the Contract Year (kWh) = Total generation in the Contract Year (kWh) ÷ 8766 hours less total hours of grid unavailability in a Contract Year</p> |

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

4.10.2 Offtake constraints due to Backdown: The Wind Power Developer and SECI shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. In the eventuality of backdown, except for the cases where the backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions, and subject to the submission of documentary evidences from the competent authority, the WPD shall be eligible for a generation compensation, from SECI, restricted to the following and there shall be no other claim, directly or indirectly against SECI:

| Duration of Backdown | Provision for Generation Compensation |
|---|---|
| Hours of Backdown during a monthly billing cycle. | <p>Generation Compensation = 50% × [(Average Generation during the month corresponding to the capacity backed down) × PPA tariff]</p> <p>Where, Average Generation during the month corresponding to the capacity backed down (kWh) = (CUF during the month) × \sum (Backed down capacity in MW × corresponding time of backdown in hours × 1000)</p> |

The Generation Compensation as calculated above will be limited to the extent of shortfall in annual generation corresponding to the maximum CUF permitted as per Article 4.4.1 and the same will be settled on annual basis. The Generation



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

It is hereby clarified that for the purpose of Article 4.10, "generation" shall mean scheduled energy based on Energy Accounts.



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ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

5.1 *Synchronization, Commissioning and Commercial Operation*

- 5.1.1 The WPD shall give the concerned RLDC/SLDC and Buyer at least sixty (60) days advanced preliminary written notice and at least thirty (30) days advanced final written notice, of the date on which it intends to synchronize the Power Project to the Grid System.
- 5.1.2 Subject to Article 5.1.1, the Power Project may be synchronized by the WPD 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 WPD at its generation facility of the Power Project at its own cost. The WPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/Grid System and checking/verification is made by the concerned authorities of the Grid System.
- 5.1.4 The WPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code. In addition, the WPD will inject in-firm power to grid time to time to carry out operational/ functional test prior to commercial operation
- 5.1.5 The WPD shall commission the Project within eighteen (18) Months from the Effective Date of this Agreement.

5.2 *Performance Bank Guarantee*

- 5.2.1 The Performance Bank Guarantee furnished by WPD to SECI shall be for guaranteeing the commencement of the supply of power up to the Contracted Capacity within the time specified in this Agreement.
- 5.2.2 If the WPD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement, subject to conditions mentioned in Article 4.5, SECI shall have the right to encash the Performance Bank Guarantee without prejudice to the other rights of Buyer under this Agreement.



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ARTICLE 6: DISPATCH

6.1 *Dispatch and Scheduling*

6.1.1 The WPD 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 WPD.

6.1.2 Not Used.

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

6.1.4 Auxiliary power consumption will be treated as per the concern state regulations and/or CTU directive.



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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 WPD and Buyer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.
- 7.1.2 The WPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at WPD's side of Delivery Point.
- 7.1.3 In addition to ensuring compliance of the applicable codes, the WPD shall install Main & Check meters at the Delivery Point, along with Stand-by meter(s) as per the applicable Central/State regulations.
- 7.1.4 In case of pooling of multiple Projects, power from multiple Projects can be pooled at a Pooling Substation prior to the Delivery point and the combined power can be fed at Delivery point through a common transmission line from the Pooling Substation. In such cases, ABT compliant sub-meters are also to be set up at pooling substation to segregate multiple 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 Wind power plants will install necessary equipment for regular monitoring of ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power generated from the plant.
- 7.2.2 Online arrangement would have to be made by the WPD for submission of above data regularly for the entire period of this Power Purchase Agreement to the concerned Ministry.
- 7.2.3 Reports on above parameters on monthly basis shall be submitted by the Wind power developer to Ministry of New and Renewable Energy/ SECI/National Institute of Wind Energy through Buyer for entire period of PPA.



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8 ARTICLE 8: INSURANCES**8.1 Insurance**

8.1.1 The WPD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, Insurances against all the industrial risks, with such deductibles and with such endorsements and coinsured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

8.2 Application of Insurance Proceeds

8.2.1 In case of the Project not being implemented through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

In case of the Project being financed through Financing Agreement(s), save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be applied as per such Financing Agreements.

8.2.2 If a Force Majeure Event renders the Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, Buyer shall have no claim on such proceeds of such Insurance limited to outstanding dues of SECI against the Buying Entity(ies) as per PSA entered into and any other dues of the Buying Entity(ies) against WPD.

8.3 Effect on liability of Buyer

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



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9 ARTICLE 9: APPLICABLE TARIFF

- 9.1 The WPD shall be entitled to receive the Tariff of **Rs. 2.82/ kWh**, fixed for the entire term of this Agreement, with effect from the SCD, for the power sold by the Buyer to the Buying Entity for the scheduled energy as reflected in the REA. In case of early part-commissioning, till the achievement of full commissioning of the Project or SCD, whichever is earlier, subject to the consent for such purchase by the Buying Entity, SECI may purchase the generation @ 75% (seventy-five per cent) of the PPA tariff. Subsequent to the full commissioning of the Project or the SCD, whichever is earlier, the tariff for power purchase by SECI shall be **Rs. 2.82/ kWh**. Any energy produced and flowing into the grid before SCD shall not be at the cost of SECI. SECI may agree to buy such power provided Buying Entity consent to purchase such energy. However, the WPD will not be allowed to sell energy generated prior to SCD or excess energy during any Contract Year to any other entity other than SECI (unless refused by SECI) In cases of early (part or full) commissioning, the WPD shall be required to intimate SECI its proposed date of early commissioning not later than 60 days prior to the proposed commissioning date. SECI shall respond to the WPD not later than 30 days from receipt of the above intimation, regarding its acceptance or refusal to purchase such power from the proposed early commissioning date.
- 9.2 Any excess generation over and above energy specified in Article 4.4.1, will be purchased by SECI at a tariff of 75% of the tariff as per Article 9.1, provided Buying Entity consent for purchase of such excess generation. Any energy produced and flowing into the grid before SCD shall not be at the cost of SECI. SECI may agree to buy such power provided Buying Entity consent to purchase such energy. However, the WPD will not be allowed to sell energy generated prior to SCD or excess energy during any Contract Year to any other entity other than SECI (unless refused by SECI).



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ARTICLE 10: BILLING AND PAYMENT

10.1 *General*

- 10.1.1 Subject to DISCOMs providing Payment Security Fund under the PSA, SECI shall set up a payment security fund in order to ensure timely payment to the WPD. This fund will have a corpus to cover 3 months' payment.
- 10.1.2 From the commencement of supply of power, Buyer shall pay to the WPD the monthly Tariff Payments, on or before the Due Date, in accordance with Article 9. All Tariff Payments by Buyer shall be in Indian Rupees.

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

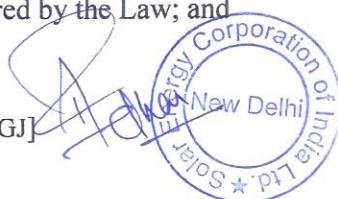
- 10.2.1 The WPD shall issue to Buyer a signed Monthly Bill for the immediately preceding Month after issuance of REA of the Applicable Month.
- Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RPC or any other competent authority which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy as per REA and the applicable tariff. Energy drawn from the grid will be regulated as per the regulations of respective State regulations and/or CTU directives the Project is located in.
- 10.2.2 As per applicable regulation(s) of the Appropriate Commission(s), all charges pertaining to open access and scheduling for transmission of the power from the Delivery Points to the receiving substation(s) of the Buying Entity(ies) if any, shall be reimbursed by Buyer on actuals on receipt of the same from the Buying Entity. Invoicing for all transmission related charges shall be done through Supplementary Bills.

10.3 *Payment of Monthly Bills*

- 10.3.1 Buyer shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the WPD, as shall have been previously notified by the WPD 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



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- ii) amount claimed by Buyer, if any, from the WPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be applicable on day to day basis.

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

10.3.3 Late Payment Surcharge

In the event of delay in payment of a Monthly Bill by Buyer after thirty (30) days beyond its Due Date, a Late Payment Surcharge shall be payable to the WPD at the rate of 1.5% per month on the outstanding amount calculated on a day to day basis subject to such late payment is duly received by Buyer under the PSA.

10.3.4 Rebate

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the WPD to Buyer in the following manner and the WPD shall not raise any objections to the payments made under this Article:

- a) A Rebate of 2% shall be payable to the Buyer for the payments made within a period of 10 (ten) days of the presentation of hard copy of Bill.
- b) Any payments made after ten (10) days of the date of presentation of Bill through hard copy up to the due date shall be allowed a rebate of 1 %.
- c) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties, cess etc. and on Supplementary Bill.

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



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10.4 Payment Security Mechanism

Letter of Credit (LC):

- 10.4.1 Subject to opening and maintenance of Letter of Credit by the Buying Entities (as per terms of Buyer-Buying Entity PSA) in favour of the Buyer, the Buyer shall provide to the WPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the WPD in accordance with this Article.
- 10.4.2 Subject to Article 10.4.1, not later than one (1) Month before the start of supply, Buyer through a scheduled bank open a Letter of Credit in favour of the WPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:
- i) for the first Contract Year, equal to the estimated average monthly billing; ii) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year.
- 10.4.3 Provided that the WPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.
- 10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, Buyer shall restore such shortfall within fifteen (15) days.
- 10.4.5 Buyer shall cause the scheduled bank issuing the Letter of Credit to intimate the WPD, in writing regarding establishing of such irrevocable Letter of Credit.
- 10.4.6 Buyer shall ensure that the Letter of Credit shall be renewed not later than its expiry.
- 10.4.7 All costs relating to opening, maintenance of the Letter of Credit shall be borne by Buyer.
- 10.4.8 If Buyer fails to pay a Monthly Bill or part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.2, the WPD may draw upon the



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Letter of Credit, and accordingly the bank shall pay without any reference or instructions from Buyer, an amount equal to such Monthly Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

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

10.5 Disputed Bill

10.5.1 If the Buyer does not dispute a Monthly Bill or a Supplementary Bill raised by the WPD within fifteen (15) days of receiving such Bill shall be taken as conclusive.

10.5.2 If the Buyer disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 50% of the invoice amount and it shall within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- i) the details of the disputed amount;
 - ii) its estimate of what the correct amount should be; and iii)
- all written material in support of its claim.

10.5.3 If the WPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the WPD 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 WPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the Buyer providing:



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

10.5.5 Upon receipt of the Bill Disagreement Notice by the Buyer under Article 10.5.4, authorized representative(s) or a director of the board of directors/ member of board of the Buyer and WPD shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

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

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

10.6 Quarterly and Annual Reconciliation

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

10.6.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the WPD and Buyer shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the WPD 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



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the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

10.7 *Payment of Supplementary Bill*

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

- i) Adjustments required by the Energy Accounts (if applicable); or
- ii) Change in Law as provided in Article 12, or
- iii) Pertaining to open access, and scheduling related charges for transmission of the power shall be on developer account and payment under Article 4.10 and such Supplementary Bill shall be paid by the SECI after receiving of the same from buying utilities.

10.7.2 Buyer shall remit all amounts due under a Supplementary Bill raised by the WPD to the WPD's Designated Account by the Due Date, except open access charges, RLDC or scheduling charges and transmission charges (if applicable). For Supplementary Bill on account of adjustment required by energy account, Rebate as applicable to Monthly Bills pursuant to Article 10.3.4 shall equally apply. Payment will be made after realization of the same from the Buying Entity. No surcharge will be applicable other than that on the monthly energy payment and associated debit and credit note. If any claim is being raised by the Discom(s) pursuant to the Article 4.4.1, SECI shall make adjustment in the payment made to the WPD.

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.

10.8 Not Used.



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ARTICLE 11: FORCE MAJEURE

11.1 *Definitions*

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

11.2 *Affected Party*

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

11.3 *Force Majeure*

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

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



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- d) An event of Force Majeure identified under Buyer-Buying Entity(ies) PSA, thereby affecting delivery of power from WPD to Buying Entity(ies) .

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 fifteen (15) 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. The other Party shall take a decision on the claim of the Affected Party within 15 days of receipt of the said intimation of Force Majeure.



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

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

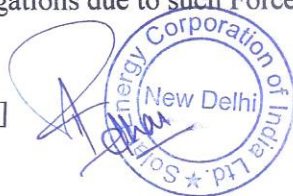
11.6 *Duty to Perform and Duty to Mitigate*

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

11.7 *Available Relief for a Force Majeure Event*

11.7.1 Subject to this Article 11:

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



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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 date, which is the last date of bid submission, resulting into any additional recurring/ non-recurring expenditure by the WPD or any income to the WPD:

- 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 WPD;
- any statutory change in tax structure or introduction of any new tax made applicable for setting up of Wind Power Project and supply of power from the Project by the WPD and has direct effect on the Project, shall be treated as per the terms of this Agreement.

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

12.2 Relief for Change in Law

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

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



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ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION**13.1 WPD Event of Default**

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

(i) the failure to commence supply of power to Buyer up to the Contracted Capacity, by the end of the period specified in Article 4, or failure to continue supply of Contracted Capacity to Buyer after Commercial Operation Date for a continuous period of 1 year, or

if

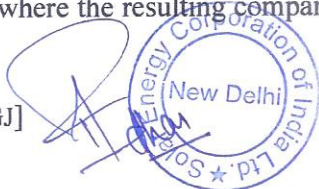
a) the WPD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Project in contravention of the provisions of this Agreement; or

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

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

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

(ii) if (a) the WPD 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 WPD, or (c) the WPD 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 WPD will not be a WPD 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



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

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

13.2 Buyer Event of Default

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

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



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Buyer is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by Buyer within sixty (60) days of receipt of notice in this regard from the WPD to Buyer; or

if

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

13.3 Procedure for cases of WPD Event of Default

13.3.1 Upon the occurrence and continuation of any WPD Event of Default under Article 13.1, Buyer shall have the right to deliver to the WPD a notice stating its intention to terminate this Agreement (Buyer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

13.3.2 Following the issue of a Buyer Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken



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with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

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

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

13.3.5 Subject to the terms of this Agreement, upon occurrence of a WPD Event of Default under this Agreement, the lenders in concurrence with the Buying Entity and SECI, may exercise their rights, if any, under Financing Agreements, to seek substitution of the WPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the WPD and performing the obligations of the WPD. However, in the event the lenders are unable to substitute the defaulting WPD within the stipulated period, SECI may terminate the PPA and the Buying Entity may acquire the Project assets for an amount equivalent to 90% of the debt due or less as mutually agreed, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.

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

13.3.6 The lenders in concurrence with the Buying Entity and SECI, may seek to exercise right of substitution under Article 13.3.3 by an amendment or novation of the PPA in favour of the selectee. The WPD shall cooperate with SECI to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized. In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a new entity, an amount of Rs. 10 Lakh per Project per transaction as facilitation fee (non-refundable) shall be deposited by the WPD to SECI.



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13.4 Procedure for cases of Buyer Event of Default

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

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

13.4.4 After a period of two hundred ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or SECI Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, SECI under intimation to the Buying Entity and the WPD shall, subject to the prior consent of the WPD, novate its part of the PPA to any third party, including its Affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the WPD, or if no offer of novation is made by SECI within the stipulated period, then the WPD may terminate the PPA and at its discretion require Buying Entity to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 150% (one hundred and fifty per cent) of the adjusted equity or, (ii) pay to the WPD, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the WPD.

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 WPD.

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



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13.5 Termination due to Force Majeure

13.5.1 If the Force Majeure Event or its effects continue to be present beyond a period of nine (09) 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.

13.6 Not Used**13.7 Specific Performance of the Agreement**

13.7.1 The Parties acknowledge that a breach of the obligations contained herein would result in injuries. The parties hereby also agree that this PPA is specifically enforceable at the instance of either Party.

13.7.2 Subject to Applicable Law and as granted by the court of appropriate jurisdiction, Parties acknowledge that either party shall be entitled to seek specific performance of this Agreement in the event of a breach of the obligations or the terms and conditions contained herein.

13.7.3 Further, Parties hereby agree that nothing mentioned herein under this Agreement shall be taken to mean or construe that any penalty or damages shall be adequate compensation for the breach of the obligations or the terms & conditions contained herein.



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ARTICLE 14: LIABILITY AND INDEMNIFICATION**14.1 Indemnity**

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

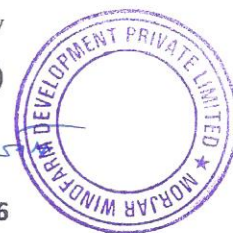
- a) any and all third party claims against Buyer for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the WPD of any of its obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal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

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

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

14.2 Procedure for claiming Indemnity**14.2.1 Third party claims**

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



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or 14.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

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

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

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

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

14.3 *Indemnifiable Losses*

- 14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the



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Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non-payment of such losses after a valid notice under this Article 14.3, such event shall constitute a payment default under Article 13.

14.4 Limitation on Liability

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

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

14.5 Duty to Mitigate

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

14.6 Buyer's Liability

14.6.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and accept that the Buyer is an Intermediary Company to purchase and



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resell the electricity to the Buying Entity(ies) to enable them to fulfill the Renewable Purchase Obligations (RPO) and, therefore, the performance of the obligations of the Buyer under this Agreement shall be subject to the ability of the Buyer to enforce the corresponding obligations assumed by the Buying Entity(ies) on re-sale under the Power Sale Agreement to be entered into by the Buying Entity(ies) with SECI. SECI shall discharge the tariff payment obligation in terms of the provision of this Agreement.

- 14.6.2 The parties agree that in respect of the obligations, in the event the SPD has any claim against the Buyer in regard to the performance of any obligation of the Buyer under this Agreement or enforcement of any right of the SPD against the Buyer under this Agreement, the same shall be subject to the ability of the Buyer to enforce the corresponding obligations assumed by the Buying Entity(ies) under the Power Sale Agreement to be entered into between the SECI and the Buying Entity(ies) on re-sale on mutatis mutandis basis and not otherwise.



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ARTICLE 15: ASSIGNMENTS AND CHARGES**15.1 Assignments**

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

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

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

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

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

An amount of Rs. 5 Lakh per Transaction as Facilitation Fee (non-refundable) shall be deposited by the SPD to Buyer. Provided further that, such consent shall not be withheld by the SPD if Buyer seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

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

15.2 Permitted Charges

15.2.1 WPD 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.

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However, the WPD may create any encumbrance over all or part of the receivables, payment mechanism, or the RFS Documents in favour of the Project Lenders or Lender's Representative on their behalf, as security for their debt under the Financing Agreements.



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ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION

16.1 *Governing Law*

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

16.2 *Amicable Settlement and Dispute Resolution*

16.2.1 *Amicable Settlement*

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



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

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

16.3.2 Not Used.

16.4 Parties to Perform Obligations

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



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ARTICLE 17: MISCELLANEOUS PROVISIONS

17.1 *Amendment*

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

17.2 *Third Party Beneficiaries*

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

17.3 *Waiver*

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

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

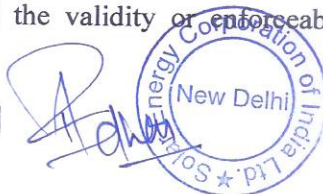
17.4 *Confidentiality*

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

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

17.5 *Severability*

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



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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.

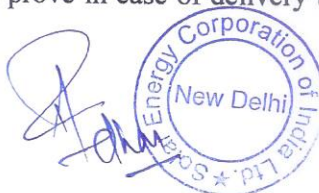
17.6.2 If to the WPD, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address : 102, El Tara,
Orchard Avenue Hiranandani Gardens,
Powai, Mumbai,
Maharashtra – 400076, India
Attention : Ujjwal Surana/ Soumya Ranjan Parida
Email : [ujjwal.surana@continuumenergy.in/](mailto:ujjwal.surana@continuumenergy.in)
soumya.parida@continuumenergy.in
Telephone No : 022-25701567
Fax No: : 022-25703360

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

(i) Address : Solar Energy Corporation of India Ltd., 1st Floor, A-Wing, D-3,
District Centre, Saket, New Delhi-110017
Attention : AGM (Projects)
Email : shreedhar.singh@seci.co.in
Fax. No. :
Telephone No. : 011-71989293

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



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the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

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

17.7 Language

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

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

17.8 Restriction of Shareholders / Owners' Liability

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

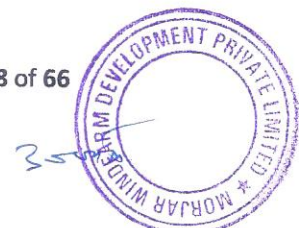
17.9 Taxes and Duties

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

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



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

17.10 *Independent Entity*

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

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

17.11 *Compliance with Law*

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

17.12 *No Consequential or Indirect Losses*

The liability of the WPD and Buyer shall be limited to that explicitly provided in this Agreement.

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

17.13 *Order of priority in application*

In case of inconsistencies between the agreement(s) executed between the

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Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below:

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

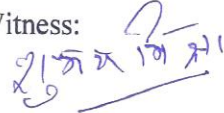

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

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




Name, Designation and Address
Shreedhar Singh


Signature with seal

Witness:



1. 
2. 

For and on behalf of
[Morjar Windfarm Development Pvt Ltd]


Name, Designation and Address
Ujjwal Surana


Signature with seal

Witness:

1. 
2. 

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SCHEDULE 1: FORMAT OF THE PERFORMANCE BANK GUARANTEE

(to be submitted separately for each Project)

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

In consideration of the ----- [Insert name of the Bidder] (hereinafter referred to as selected Wind Power Developer') submitting the response to RfS inter alia for selection of the Project of the capacity of MW, at[Insert name of the place] under RfS for **Setting Up of 1200 MW ISTS- Connected Wind Power Projects (Tranche-VI)**, for supply of power there from on long term basis, in response to the RfS dated..... issued by Solar Energy Corporation of India Ltd (hereinafter referred to as SECI) and SECI considering such response to the RfS of[insert the name of the selected Wind Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Wind Power Project of the Wind Power Developer and issuing Letter of Award No ----- to (Insert Name of selected Wind Power Developer) as per terms of RfS and the same having been accepted by the selected WPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected Wind 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 authorized by it in this behalf, any amount up to and not exceeding Rupees----- [Total Value] only, on behalf of M/s _____ [Insert name of the selected Wind Power Developer / Project Company]

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

Our liability under this Guarantee is restricted to Rs. _____ only.

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

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



BUYER-WPD PPA

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 Wind 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 Wind Power Developer / Project Company, to make any claim against or any demand on the selected Wind Power Developer / Project Company or to give any notice to the selected Wind 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 Wind Power Developer / Project Company.

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

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. _____ (Rs. _____ only) and it shall remain in force until We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if SECI serves upon us a written claim or demand.

Signature _____ Name _____

Power of Attorney No. _____

For
_____ [Insert Name of the Bank] _____



BUYER-WPD PPA

E-mail ID of the bank:

Banker's Stamp and Full Address.

Dated this ____ day of ____, 20__

Witness:

1.

Signature

Name and Address

2.

Signature

Name and Address

Notes:

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



BUYER-WPD PPA

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

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



BUYER-WPD PPA

| | |
|--|---------------------------|
| | 6. Yes Bank Ltd. |
| | 7. Kotak Mahindra Bank |
| | 8. IndusInd Bank Ltd. |
| | 9. Karur Vysya Bank |
| | 10. Ratnakar Bank Limited |



BUYER-WPD PPA

SCHEDULE 3: POWER SALE AGREEMENT (PSA)
[To be annexed]



A large, diagonal blue line drawn across the page, likely indicating a signature line or a placeholder for a signature.

Annexure - P/3

CONTRACT FOR THE SALE OF EQUIPMENT

THIS **Contract for Sale of Equipment (“CONTRACT”)** is entered into at New Delhi into as of the 20 April 2021, by and between:

GE India Industrial Private Limited, a company incorporated, organized and subsisting under the Companies Act, 1956 (1 of 1956) and having its registered office at A-18, 1st Floor, Okhla Industrial Area Phase-2, New Delhi – 110020, India. (the “**Seller**”); and

Morjar Windfarm Development Private Limited, a company incorporated, organized and subsisting under the Companies Act, 1956 (1 of 1956) and having its registered office at 402 & 404, Delphi, C Wing, Hiranandani Business Park, Orchard Avenue, Powai, Mumbai – 400076, Maharashtra, India (the “**Buyer**”)

The Buyer and the Seller are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

Recitals

WHEREAS GE India Industrial Private Limited is engaged in the business of manufacturing, procuring and delivering the type of power generation equipment described in Attachment 1; and

WHEREAS GE India Industrial Private Limited desires to sell and the Buyer desires to purchase the power generation equipment described in Attachment 1 (the “**Equipment**”), intended to be installed at district Bhuj in the State of Gujarat (“**Facility**”) (**NOW, THEREFORE**, in consideration of the mutual promises stated herein, the Parties agree as follows:

Article 1. Effectiveness

This Contract shall become effective when it is signed by both Parties (the “**Contract Effective Date**”) and upon achievement of Notice to Proceed.

Article 2. Scope of Supply

The Seller shall manufacture or procure and supply the Equipment described in Attachment 1, in accordance with the Project Schedule set forth in Section 3 of Appendix B, and subject to the terms and conditions as set forth in this Contract.

Article 3. Price and Payment

In consideration of the supply of the Equipment, the Buyer will pay to the Seller the Contract Price as specified in Attachment 3. The Contract Price and price adjustments, as provided in Attachment 3 shall be further adjusted as necessary to take account of Changes, Additional Supplies or other adjustments as provided for in this Contract.

Article 4. Termination

Neither party has right to terminate this Contract for their convenience. Termination rights are set out in the Conditions as set forth in GC 2-12.

Article 5. Limitations of Liability

The Seller's liability hereunder for all forms of liquidated damages and the Seller's overall aggregate liability hereunder for all damages shall be as set forth in Attachment 4.

Article 6. Governing Law; Disputes

This Contract shall be construed and interpreted according to the law set forth in Attachment 4 (the “**Governing Law**”). Any dispute between the Parties in connection with this Contract shall be resolved in accordance with the procedures set forth in Attachment 4.

Article 7. Contract

The following documents shall comprise and shall together be referred to as the “Contract”:

- (a) This Contract, together with the below Attachments hereto
 - i. Attachment 1: Scope of Seller
 - ii. Attachment 2: Section A: Schedule
Section B: Transportation Terms
 - iii. Attachment 3: Price, Payment Terms, and Passage Title
 - iv. Attachment 4: Governing Law, Disputes and Limitations of Liability
- (b) **Appendix A**
 - i. Section - 1: Special Conditions of Contract (the “**Conditions**”/SCC)
 - ii. Section - 2: General Conditions of the Contract (“GCC”)
 - iii. Section - 3: Definitions
- (c) **Appendix B (“Technical Contract”)**
 - i. Section – 1: Technical Specification
 - ii. Section – 2: Division of Responsibility
 - iii. Section – 3: Project Schedule
- (d) **Annexures**

In the event of any conflict between the terms of the Contract, the provisions of the document first listed above shall prevail.

All capitalized terms not otherwise defined herein shall have the meanings given to them in the Section 3 of Appendix A i.e. Definitions.

Article 8. Entire Agreement

This Contract represents the entire agreement between the Parties and supersedes in its entirety all prior agreements concerning the subject matter hereof, and no modification, amendment, revision, waiver, or other change shall be binding on either Party unless consented to in writing by the Party's authorized representative. Any oral or written representation, warranty, course of dealing, or trade usage not contained or referenced herein shall not be binding on either Party. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in this Contract.

Article 9. Counterparts

The Parties have agreed to execute the Contract by affixing digital signature certificate ("DSC") and accordingly, this Contract shall be given the same binding effect as a physically executed version.

[Signature Page of Buyer and Seller follows]

IN WITNESS WHEREOF the Parties have caused this document to be executed by their authorized representatives on the date first above written.

Signature page for Seller

Seller

GE India Industrial Private Limited

(Signature)

Name

Tilak, Vinayak

Authorized Signatory

Signature page for Buyer**Buyer****Morjar Windfarm Development Private Limited**

*(Signature)***Name****Arvind Bansal****Authorized Signatory**

Contents of the Contract:

Attachments:

| | |
|---------------|--|
| Attachment 1: | Scope of Seller |
| Attachment 2: | Section A: Schedule Section B: Transportation Terms |
| Attachment 3: | Price, Payment Terms, and Passage Title |
| Attachment 4: | Governing Law, Disputes and Limitations of Liability |

Appendix A

| | |
|--------------|--|
| Section - 1: | Special Conditions of Contract (the “ Conditions ”/ “ SCC ”) |
| Section - 2: | General Conditions of the Contract (“ GCC ”) |
| Section - 3: | Definitions |

Appendix B (“Technical Contract”):

| | |
|--------------|--|
| Section - 1: | Technical Specification |
| Exhibit 1. | Equipment Specification |
| Exhibit 2. | Type Certificate |
| Exhibit 3. | Transportation Manual |
| Exhibit 4. | Access Road Specifications |
| Exhibit 5. | Unit Storage Specifications |
| Exhibit 6. | Power Curve |
| Exhibit 7. | Access Roads and Unit Crane Pad Area Specifications |
| Exhibit 8. | Equipment Assembly Area |
| Exhibit 9. | Weight and Dimensions of Major Components |
| Exhibit 10. | List of deliverables from Seller |
| Exhibit 11. | Statement of Compliance to CEA 2019 (Part 1) |
| Exhibit 12. | Statement of Compliance to CEA 2019 (Part 2) |
| Exhibit 13. | Design Evaluation and Conformity Statement-TUV |
| Exhibit 14. | POSOCO Procedure for integration of Power System Elements 2020 June (Wind) |
| Section - 2: | Division of Responsibility Matrix |
| Section - 3: | Project Schedule (L1 and L1 & L2) |
| Section - 4: | Mechanical Load Assessment Report (“ MLA ”) |

Annexures

| | |
|-------------|--|
| Annexure 1: | Format of Advance Bank Guarantee |
| Annexure 2: | Layout of Site Storage Yard |
| Annexure 3: | List of items prone to theft or burglary |
| Annexure 4: | Machine Power Performance Test Procedure |

| | |
|--|--|
| Annexure 5: | Qualified Agencies for Machine Power Performance Test |
| Annexure 6: | Parent Company Guarantee (" PCG ") |
| Annexure 7: | Draft of Consent Letter to Lenders |
| Annexure 8: | Draft of Assignment and Novation Agreement |
| Annexure 9: | Draft of Commercial Invoices for Payment Milestone |
| Annexure 10: | Site Boundary Co-ordinates |
| Annexure 11: | Form of Delivery Note/Deemed Delivery Note |
| Annexure 12: | Form of Unit Reliability Run Report/Deemed Unit Reliability Run Report |
| Annexure 13: | Form of Turbine Completion Certificate/Deemed Turbine Completion Certificate |
| Annexure 14: | Contract Price Breakup |
| Annexure 15: | Buyer's HSE Policy |
| Annexure 16A: | Wind Speed Limitations |
| Annexure 16B: | Seller's HSE Standards |
| (Annexure 16A and Annexure 16B shall be together referred to as Annexure 16) | |
| Annexure 17: | WTG Locations |
| Annexure 18: | Form of Letter of Credit |
| Annexure 19: | Quality Assurance Plan |
| Annexure 20: | Buyer's Vendor Code of Conduct |
| Annexure 21: | Form of Punch List Completion Report/Deemed Punch List Completion Report |

Attachment 1

Scope of Seller

General Description

The Equipment is wind turbine generator model 2.7-132, 50 Hz including 130 m towers, each (as more fully defined in the Technical Specification which is a part of the Technical Contract) a “Unit”.

Scope:

Equipment Scope is as follows:

- Wind turbine generator Equipment consisting of various components & parts for GE 2.7-132 (50 Hz) with 132m rotor diameter together with 130 m hub height tower according to the technical description and specification attached hereto and in detail under Appendix B Section 1 Technical Specifications.
- Warranty as per section SC 1-7 of the Special Conditions of Contract.
- Power Curve Guarantee as per section SC 1-9 of the Special Conditions of Contract
- Delivery of Equipment is delivery duty paid (DDP) (INCOTERMS 2010) to the Delivery Point.
- Detail Division of Responsibility related to the scope shall be as per Section 2 of the Appendix B (Technical Contract).

The Seller may update the Technical Specification to reflect product optimization of the Units up to **120 days** before first Unit Major Component Shipment date. Product optimizations will not materially affect the Equipment or any offered performance guarantees.

Equipment for each Unit will broadly consist of the following:

| | |
|------------------|--|
| Nacelle: | Glass fibre reinforced plastic cover with skylight hatch, lighting, and venting. |
| Noise Abatement: | The gearbox and generator mountings are designed such that they minimize vibration and noise transfer to the bedplate. . |
| Lighting: | Inside nacelle and tower interiors. |
| Tower: | Tubular, steel tower of hub height 130m which also includes anchor cage. |
| Door: | Steel door including locking cylinder and air louvers. |
| Rotor blades: | Three rotor blades with lightning protection system. Rotor diameter 132m. Pitch regulation with electric single blade positioning and supply back up in hub. |
| Rotor Brakes: | Three independent aerodynamic brakes activated by battery-maintained pitch adjustment. |
| Gearbox: | Planetary spur combination. |
| Generator: | Doubly fed asynchronous generator with slip rings. |

Annexure- 14
Contract Price Break-up

| Component | UOM | GST % | Basic Price per Unit without GST (INR) | GST per Unit Rs. | Price per Unit (including GST) | No. of units | Contract Price Inclusive of GST (INR) |
|--------------|------|----------|--|------------------|--------------------------------|--------------|---------------------------------------|
| | | B | D | D = C * B | E = C + D | F | G = E * F |
| ANCHOR CG | each | 5% | 11,00,000 | 55,000 | 11,55,000 | 55 | 6,35,25,000 |
| BLADE | each | 5% | 2,60,00,000 | 13,00,000 | 2,73,00,000 | 55 | 1,50,15,00,000 |
| HEAD | each | 5% | 4,29,00,000 | 21,45,000 | 4,50,45,000 | 55 | 2,47,74,75,000 |
| HUB | each | 5% | 95,00,000 | 4,75,000 | 99,75,000 | 55 | 54,86,25,000 |
| DTE | each | 5% | 43,00,000 | 2,15,000 | 45,15,000 | 55 | 24,83,25,000 |
| PSL KIT | each | 5% | 14,56,571 | 72,829 | 15,29,400 | 55 | 8,41,17,000 |
| TOWER | each | 5% | 3,30,00,000 | 16,50,000 | 3,46,50,000 | 55 | 1,90,57,50,000 |
| SCADA | each | 5% | 1,71,60,000 | 8,58,000 | 1,80,18,000 | 1 | 1,80,18,000 |
| Wind Control | each | 5% | 33,00,000 | 1,65,000 | 34,65,000 | 1 | 34,65,000 |
| Total | | | 11,86,28,571 | | 12,45,60,000 | | 6,85,08,00,000 |

*TCS shall be additional

CHANGE ORDER 2**07 DECEMBER 2021****BETWEEN****GE INDIA INDUSTRIAL PRIVATE LIMITED****AND****MORJAR WINDFARM DEVELOPMENT PRIVATE LIMITED**

CHANGE ORDER 2

This change order ("Change Order 2") is made at New Delhi on 7th December 2021

BETWEEN

GE India Industrial Private Limited, a company incorporated, organized and subsisting under the Companies Act, 1956 (1 of 1956) and having its registered office at A-18, 1st Floor, Okhla Industrial Area Phase-2, New Delhi – 110020, India. (the "**Seller**"); and

Morjar Windfarm Development Private Limited, a company incorporated, organized and subsisting under the Companies Act, 2013 and having its registered office at 402 & 404, Delphi, C Wing, Hiranandani Business Park, Orchard Avenue, Powai, Mumbai – 400076, Maharashtra, India (the "**Buyer**")

The Buyer and the Seller are referred to herein individually as a "**Party**" and collectively as the "**Parties**".

Recitals

WHEREAS

- A. The Buyer and Seller have executed a contract for Supply of Equipment dated 20th April 2021 (hereinafter referred to as the "**Supply Contract**") proposed to be installed and Commissioned at the Facility in accordance with the terms thereof.
- B. The Parties mutually modified the Supply Contract, vide Change Order 1 dated 03rd May 2021.
- C. The Parties now wish to amend the Supply Contract mutually to adjust changes due to change in law – GST effective from 1st Oct 2021, the Contract Price and Annexure 14 is revised in accordance with the terms and conditions contained in this Change Order 2.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

All capitalized words and expressions used hereunder, save and except as defined and/or amended as per this Change Order 2, along with their cognate expressions and grammatical variations, shall, have the meaning ascribed to them in the Supply Contract.

2. EFFECTIVE DATE

- 2.1 This Change Order 2 shall be deemed to have come into force on 7th December 2021, i.e, the date of execution of this Change Order 2 ("**Effective Date**").

3. AMENDMENTS TO THE SUPPLY CONTRACT

- i) **Clause 1 of Section A of Attachment 3** shall stand amended to the Supply Contract as follows:

1. Price

In consideration of the Seller scope under this Contract, the Buyer will pay to the Seller the sum of INR 12,45,86,040/- (Indian Rupees Twelve Crores Forty-Five lakh Eighty-Six Thousand Forty only) per Unit for the first 3 Units and INR 13,27,30,924/- (Indian Rupees Thirteen Crores Twenty-Seven Lakh Thirty Thousand Nine Hundred and Twenty Four only) per Unit for the remaining 52 Units averaging to INR 13,22,86,658/- (Indian Rupees Thirteen Crores Twenty-Two Lakh Eighty-Six Thousand Six Hundred and Fifty-Eight only) per Unit ("Price Per Unit/Unit Price") aggregating to INR 727,57,66,168/- (Indian Rupees Seven Twenty-Seven Crores Fifty-Seven Lakh Sixty-Six Thousand One Hundred and Sixty-Eight Only) for fifty-five (55) Units "Contract Price".

Break-up of Contract Price is provided for under Annexure 14.

The Contract Price is inclusive of applicable GST as on the Contract Effective Date and exclusive of any other applicable taxes.

The Contract Price shall vary (i) on account of changes in taxation rules as applicable to other than Buyer Taxes or Seller Taxes, (ii) applicability of any new taxes other than of the nature of Buyer Taxes or Seller Taxes, or (iii) on account of change in GST rates post the Contract Effective Date.

Each Party is responsible for their respective taxes i.e., Buyer shall be responsible for Buyer Taxes and Seller shall be responsible for Seller Taxes.

The currency in which the Contract Price is stated shall be the "**Contract Currency**".

The Contract Price shall be adjusted as necessary to take account of Changes, additional work or other adjustment provided for in this Contract. The Contract Price shall be further adjusted as necessary to take account of Changes in accordance clause 2 of Section A under Attachment 3 below or Change Order for other matters, as applicable.

- ii) **Section C of Attachment 3** shall stand amended to the Supply Contract as follows:

Payment Schedule

Payment shall be made as set forth in the schedule below without setoff of any kind. Invoices shall be issued by Seller on completion of the relevant Payment Milestone described in Table 1 of this Section C (i.e. Payment Schedule) below or on the date identified as the scheduled date and payment shall be due upon submission required documents as mentioned in the Table of this Payment Schedule ("Negotiated

Documents”) and payable within fifteen (15) days from the date of delivery of Negotiated Documents except for Down Payment 2, which shall be due and payable within seven (7) days from the date of delivery of Negotiated Documents. Wire transfer instructions shall be provided on each invoice for release of payments. Unless a delay in payment is caused due to omission or negligence on the part of the Seller in submitting Negotiated Documents to the LC issuing bank towards any Milestone, late payments more than fifteen (15) days from date of delivery of Negotiated Documents, except in case of Down Payment in which case late payments more than seven (7) days from the date of delivery of Negotiated Documents, shall be subject to an Interest Charge.

Contract Price to be paid in respect of each Payment Milestone (“defined below”) is as follow:

(i) Down Payment 1:

INR 6,585,000/- (Indian Rupees Six Million Five Hundred Eighty-Five Thousand only) per Unit and in aggregate amounting to INR 362,175,000/- (Indian Rupees Three Hundred Sixty-two Million One Hundred Seventy-Five Thousand only) for fifty-five (55) Units received by Seller as non-refundable advance vide UTR reference number SBINR52021032517858736 dated 25th March 2021 (“Down Payment 1”) against submission of bank guarantee for value equivalent to the Down Payment 1 (“Advance Bank Guarantee 1” or “ABG 1”).

(ii) Down Payment 2:

INR 13,170,000/- (Indian Rupees Thirteen Million One Hundred Seventy Thousand only) per Unit and in aggregate amounting to INR 724,350,000/- (INR Seven Hundred Twenty-Four Million Three Hundred Fifty Thousand only) for fifty-five (55) Units as non-refundable advance (“Down Payment 2”) upon execution of the Contract and within three (3) days of submission of bank guarantee for value equivalent to Down Payment 2 (“Advance Bank Guarantee 2” or “ABG 2”). However, no later than 26th April 2021.

- ABG 1 and ABG 2 shall be together referred to as “Advance Bank Guarantee” or “ABG” and shall be as per format provided for at Annexure 1

- Down Payment 1 and Down Payment 2 shall be together referred to as “Down Payment”

(iii) Receipt of Major Component at Delivery Point

INR 85,631,040/- (Indian Rupee Eighty-Five Million Six Hundred Thirty-One Thousand forty only) per Unit on receipt of one full set of Major Component at Delivery Point in Lots for 3 units and INR 93,775,924 (Indian Rupee Ninety-three Million Seven Hundred Seventy Five Thousand Nine Hundred Twenty Four Only) per Unit on receipt of one full set of Major Component at Delivery Point in Lots for 52 Units and in aggregate amounting to INR 5,133,241,168/- for 55 Units (Indian Rupee Five Billion One Hundred Thirty-three Million Two Hundred Forty-One Thousand One Hundred Sixty-Eight Only).

(iv) Turbine Completion

INR 12,615,000/- (Indian Rupees Twelve Million Six Hundred Fifteen Thousand only) per Unit and on Turbine Completion in Batch and in aggregate amounting to INR 693,825,000/- (Indian Rupees Six Hundred Ninety-Three Million Eight Hundred Twenty-Five Thousand only) for 55 Units and payment shall be effected upon submission of Parent Corporate Guarantee ("herein referred as "PCG") for value of INR 362,175,000/- (Indian Rupees Three Hundred Sixty-two Million One Hundred Seventy-Five Thousand only), for the Warranty Period and thereafter the Parent Company Guarantee shall be reduced to INR 144,870,000/- (Indian Rupees One Hundred Forty-Four Million Eight Hundred Seventy Thousand only) for the subsequent twelve (12) months period beyond Warranty Period. The PCG shall be as per format provided for at Annexure 6.

(v) Upon completion of Unit Reliability Run

INR 3,951,000/- (Indian Rupees Three Million Nine Hundred Fifty-One Thousand only) per Unit upon completion of Unit Reliability Run for the Unit in Lots and in aggregate amounting to INR 217,305,000/- (Indian Rupees Two Hundred Seventeen Million Three Hundred Five Thousand only) for 55 Units

(vi) Upon completion of Punch List

INR 2,634,000/- (Indian Rupees Two Million Six Hundred Thirty-Four Thousand only) per Unit upon completion of Punch List items for the Units in Lots and in aggregate amounting to INR 144,870,000/- (Indian Rupees One Hundred Forty-Four Million Eight Hundred Seventy Thousand only) for 55 Units.

(vii) It is agreed between the Parties that the Seller has submitted the ABG 1 as per the requirement specified under the term sheet agreement dated 19 March 2021 executed between the Parties for the Project ("Term Sheet"). The Seller has submitted ABG 1 for release of Down Payment 1 under the Term Sheet and the Buyer has released the Down Payment 1. Subsequent to execution of the Term Sheet, the Parties have executed the Supply Contract and for the purpose of this Supply Contract, ABG 1 is deemed to be submitted under this Supply Contract and the Down Payment 1 is deemed to be released under this Supply Contract. The receipt of Down Payment 1 is already acknowledged by the Seller under sub-clause (i) of this Section C of Attachment 2 of the Supply Contract.

(viii) It is agreed between the Parties that ABG(s) shall be reduced on pro-rata basis upon Delivery of Major Components and shall be reduced to zero upon Delivery of Major Components of all the Equipment.

For avoidance of doubt, it is agreed between the Parties that "wind turbine generator" as referred in the ABGs shall deemed to be a reference to Equipment under the Supply

Contract and “main components” as referred in the ABGs shall deemed to be a reference to Major Component under the Supply Contract.

Table 1: Payment Milestone and documents for realization of Payment Milestone

| S.No. | Payment Milestone | Documents to be submitted for realization of payment. ("Negotiated Documents") |
|-------|--|--|
| 01 | Down Payment 1 | <ul style="list-style-type: none"> • Seller's invoice; and • Advance Bank Guarantee 1. |
| 02 | Down Payment 2 | <ul style="list-style-type: none"> • Seller's invoice; and • Advance Bank Guarantee 2 |
| 03 | Upon delivery of Major Component at Delivery Point in Lots | <p>Via documentary Letter of Credit, upon submission of following documents:</p> <ol style="list-style-type: none"> 1. Seller's commercial invoice as per Annexure 9 comprising a Lot 2. Lorry receipts (Consigner copy) for Major Components evidencing dispatch of Major Components; and 3. Copy of (i) Delivery Note for the full Lot issued by the Seller and endorsed by the Buyer; or (ii) Copy of Deemed Delivery Note issued by the Seller. 4. Copy of Transit insurance policy certificate dated not later than the date of Lorry receipt |
| 05 | Upon Turbine Completion in Batches | <p>Via documentary Letter of Credit, upon submission of following documents:</p> <ol style="list-style-type: none"> 1. Seller's commercial invoices as per Annexure 9 for each Unit comprising a Batch; and 2. Copy of (i) Turbine Completion Certificate signed by the Buyer; or (ii) Deemed Turbine Completion Certificate/Deemed Commissioning Certificates signed by the Seller/ I&C Contractor in each case for all Units comprising the Batch. 3. PCG |
| 06 | Upon completion of Unit Reliability Run in Lots | <p>Via documentary Letter of Credit, upon submission of following documents:</p> <ol style="list-style-type: none"> 1. Seller's commercial invoices as per Annexure 9 for each Unit comprising a Lot; and 2. Copy of (i) Unit Reliability Run Test Report signed by the Buyer; or (ii) Deemed Unit Reliability Run Test Report signed by Seller/ I&C Contractor in each case comprising for each Unit comprising the Lot |
| 07 | Upon completion of Punch List in Lots for the Units | <p>Via Documentary Letter of Credit, upon submission of following negotiated documents:</p> <ol style="list-style-type: none"> 1. Seller's commercial invoices as per Annexure 9 for each Unit comprising a Lot; and 2. Copy of (i) Punch List Completion Report signed by the Buyer; or (ii) Deemed Punch List Completion Report signed by Seller/I&C Contractor in each case for each Unit comprising a Lot. |

Payment corresponding to Down Payment above is net due and shall be made by wire transfer directly to Seller's bank. All other payments are net due and will be made upon presentation of the Negotiated Documents against the irrevocable documentary Letter of Credit (as per format provided or under Annexure 18). Provided, that any tax that may be required to be deducted at source by the Buyer, as per Applicable Law, may be deducted by the Buyer and the Buyer shall furnish, on quarterly basis, to the Seller accurate official receipts and certificates (as applicable) for such amount deducted.

- iii) Annexure 14 to the Supply Contract stands amended and is attached as Annexure 14 to this Change Order 2.

4. MISCELLANEOUS

- 4.1 On and from the Effective Date, any reference to the Supply Contract shall include a reference to the Supply Contract, as amended by this Change Order 2, and this Change Order 2 together with the Supply Contract, shall be read and construed as one document.
- 4.2 Except for the amendments made to the Supply Contract, as provided in this Change Order 2, all the other terms and conditions of the Supply Contract, shall remain in full force and effect. Provided however, other provisions of the Supply Contract which have not been specifically amended shall be, to the extent not set out in this Change Order 2, read and construed in a manner that gives full force and effect to the understanding between the Parties as recorded in this Change Order 2.
- 4.3 Each Party represents and warrants to the other that it has duly executed and delivered this Change Order 2, and, assuming the due authorization, execution and delivery thereof, this Change Order 2 constitutes (or when so executed and delivered shall constitute) valid and binding obligations of such Party, enforceable against it in accordance with the terms hereof.
- 4.4 The Parties have agreed to execute this Change Order 2 by affixing digital signature certificate ("DSC") and accordingly, this Change Order 2 shall be given the same binding effect as a physically executed version.
- 4.5 This Change Order 2 shall be governed by, and construed in accordance with, the laws of India. Any dispute arising out of this Change Order 2 shall be dealt with in the manner prescribed under the Supply Contract.

IN WITNESS WHEREOF the Parties executed this Change Order 2 on the date, month and year first written above by the duly authorized and empowered officers or Representatives in the presence of the following witnesses:

Executed for and on behalf of Buyer

.....
Name: N V Venkataramanan
Authorised Signatory

Executed for and on behalf of Seller

.....
Name: Pankaj Kumawat
Authorised Signatory

Annexure -14
Contract Price Break Up

| Component | UOM | GST % | Basic Price per Unit without GST (INR) | GST per Unit Rs. | Price per Unit (including GST) | No. of units | Contract Price Inclusive of GST (INR) |
|--------------|------|----------|--|------------------|---------------------------------|--------------|---------------------------------------|
| | | B | D | D = C * B | E = C + D | F | G = E * F |
| ANCHOR CG | each | 5% | 11,00,000 | 55,000 | 11,55,000 | 40 | 4,62,00,000 |
| ANCHOR CG | each | 12% | 11,00,000 | 1,32,000 | 12,32,000 | 15 | 1,84,80,000 |
| BLADE | each | 5% | 2,60,00,000 | 13,00,000 | 2,73,00,000 | 3 | 8,19,00,000 |
| BLADE | each | 12% | 2,60,00,000 | 31,20,000 | 2,91,20,000 | 52 | 1,51,42,40,000 |
| HEAD | each | 5% | 4,29,00,000 | 21,45,000 | 4,50,45,000 | 4 | 18,01,80,000 |
| HEAD | each | 12% | 4,29,00,000 | 51,48,000 | 4,80,48,000 | 51 | 2,45,04,48,000 |
| HUB | each | 5% | 95,00,000 | 4,75,000 | 99,75,000 | 4 | 3,99,00,000 |
| HUB | each | 12% | 95,00,000 | 11,40,000 | 1,06,40,000 | 51 | 54,26,40,000 |
| DTE | each | 5% | 43,00,000 | 2,15,000 | 45,15,000 | 4 | 1,80,60,000 |
| DTE | each | 12% | 43,00,000 | 5,16,000 | 48,16,000 | 51 | 24,56,16,000 |
| PSL KIT | each | 5% | 14,56,571 | 72,831 | 15,29,402 | 4 | 61,17,608 |
| PSL KIT | each | 12% | 14,56,571 | 1,74,789 | 16,31,360 | 51 | 8,31,99,360 |
| TOWER | each | 5% | 3,30,00,000 | 16,50,000 | 3,46,50,000 | 3 | 10,39,50,000 |
| TOWER | each | 12% | 3,30,00,000 | 39,60,000 | 3,69,60,000 | 52 | 1,92,19,20,000 |
| SCADA | each | 12% | 1,71,60,000 | 20,59,200 | 1,92,19,200 | 1 | 1,92,19,200 |
| Wind Control | each | 12% | 33,00,000 | 3,96,000 | 36,96,000 | 1 | 36,96,000 |
| Total | | | 11,86,28,571 | | 13,22,86,658* | | 7,27,57,66,168 |

*Derived price per Unit basis Total Contract Value of INR 7,27,57,66,168 divided by 55 Units.

Annexure - P/4

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 8/2021-Integrated Tax (Rate)

New Delhi, the 30th September, 2021

G.S.R.(E).- In exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 666(E), dated the 28th June, 2017, namely:-

In the said notification, -

(a) in Schedule I – 5%, -

(i) after S. No. 71 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|------|------|--|
| “71A | 1209 | Tamarind seeds meant for any use other than sowing”; |
|------|------|--|

(ii) S. Nos. 138 to 148 and the entries relating thereto shall be omitted;

(iii) after S. No. 186 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|-------|------|--|
| “186A | 3826 | Bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel”; |
|-------|------|--|

(iv) S. No. 187A and the entries relating thereto shall be omitted;

(v) S. No. 234 and the entries relating thereto shall be omitted;

(vi) in List 1, after item number 231 and the entries relating thereto, the following shall be inserted, namely: -

“(232) Pembrolizumab (Keytruda)”;

(vii) in List 3, after item number (B) (2) and the entries relating thereto, the following shall be inserted, namely: -

" (3) Retro fitment kits for vehicles used by the disabled";

(b) in Schedule II – 12%, -

(i) against S. No. 80A, in column (3), for the entry, the following entry shall be substituted, namely: -

“Bio-diesel (other than bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel)”;

(ii) S. No. 122 and the entries relating thereto shall be omitted;

(iii) S. Nos. 127 to 132 and the entries relating thereto shall be omitted;

(iv) after S. No. 201 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|-------|--------------|---|
| “201A | 84, 85 or 94 | <p>Following renewable energy devices and parts for their manufacture:-</p> <p>(a) Bio-gas plant;</p> <p>(b) Solar power based devices;</p> <p>(c) Solar power generator;</p> <p>(d) Wind mills, Wind Operated Electricity Generator (WOEG);</p> <p>(e) Waste to energy plants / devices;</p> <p>(f) Solar lantern / solar lamp;</p> <p>(g) Ocean waves/tidal waves energy devices/plants;</p> <p>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.</p> <p>Explanation:- If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified</p> |
|-------|--------------|---|

| | | |
|--|--|--|
| | | in the entry at S. No. 38 of the Table mentioned in the notification No. 8/2017-Integrated Tax (Rate), dated 28 th June, 2017 [G.S.R. 683(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.”; |
|--|--|--|

(v) S. Nos. 205A to 205H and the entries relating thereto shall be omitted;

(vi) S. No. 232 and the entries relating thereto shall be omitted;

(c) in Schedule III – 18%, -

(i) after S. No. 26B and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|------|------|---|
| “26C | 2601 | Iron ores and concentrates, including roasted iron pyrites. |
| 26D | 2602 | Manganese ores and concentrates, including ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight. |
| 26E | 2603 | Copper ores and concentrates. |
| 26F | 2604 | Nickel ores and concentrates. |
| 26G | 2605 | Cobalt ores and concentrates. |
| 26H | 2606 | Aluminium ores and concentrates. |
| 26I | 2607 | Lead ores and concentrates. |
| 26J | 2608 | Zinc ores and concentrates. |
| 26K | 2609 | Tin ores and concentrates. |
| 26L | 2610 | Chromium ores and concentrates.”; |

(ii) after S. No. 101 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|--------|------|--|
| “101A. | 3915 | Waste, Parings and Scrap, of Plastics.”; |
|--------|------|--|

(iii) for S. No. 153A and the entries relating thereto, the following S. No. and the entries shall be substituted, namely: -

| | | |
|--------|------|--|
| “153A. | 4819 | Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like.”; |
|--------|------|--|

(iv) after S. No. 157 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|--------|------------|---|
| “157A. | 4906 00 00 | Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, being originals drawn by hand; hand-written texts; photographic reproductions on sensitised paper and carbon copies of the foregoing. |
| 157B. | 4907 | Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognised face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title (other than Duty Credit Scrips). |
| 157C. | 4908 | Transfers (decalcomanias). |
| 157D. | 4909 | Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings. |
| 157E. | 4910 | Calendars of any kind, printed, including calendar blocks. |
| 157F. | 4911 | Other printed matter, including printed pictures and photographs; such as Trade advertising material, Commercial catalogues and the like, printed Posters, Commercial catalogues, Printed inlay cards, Pictures, designs and photographs, Plan and drawings for |

| | | |
|--|--|--|
| | | architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices.”; |
|--|--|--|

(v) after S. No. 398 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|-------|------|--|
| “398A | 8601 | Rail locomotives powered from an external source of electricity or by electric accumulators. |
| 398B | 8602 | Other rail locomotives; locomotive tenders; such as Diesel electric locomotives, Steam locomotives and tenders thereof. |
| 398C | 8603 | Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604. |
| 398D | 8604 | Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, track liners, testing coaches and track inspection vehicles). |
| 398E | 8605 | Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604). |
| 398F | 8606 | Railway or tramway goods vans and wagons, not self-propelled. |
| 398G | 8607 | Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof. |
| 398H | 8608 | Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signaling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing.”; |

(vi) against S. No. 447, in column (3), for the entry, the entry “Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens; stylograph pens and other pens; duplicating stylos; pen holders, pencil holders and similar holders; parts

(including caps and clips) of the foregoing articles, other than those of heading 9609.”, shall be substituted;

(d) in Schedule IV – 28%, -

(i) after S. No. 12A and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

| | | |
|------|------|---|
| “12B | 2202 | Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice.”; |
|------|------|---|

2. This notification shall come into force on the 1st day of October, 2021.

[F. No.190354/206/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: - The principal notification No.1/2017-Integrated Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 666(E), dated the 28th June, 2017, and was last amended by notification No. 01/2021 – Integrated Tax (Rate), dated the 2nd June, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 375(E), dated the 2nd day of June, 2021.



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-अ.-22102021-230629
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असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)
PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 608]

नई दिल्ली, शुक्रवार, अक्टूबर 22, 2021/आश्विन 30, 1943

No. 608]

NEW DELHI, FRIDAY, OCTOBER 22, 2021/ASVINA 30, 1943

विद्युत मंत्रालय

अधिसूचना

नई दिल्ली, 22 अक्टूबर, 2021

सा.का.नि. 751(अ).—केंद्रीय सरकार, विद्युत अधिनियम, 2003 (2003 का 36) की धारा 176 की उपधारा (2) के खण्ड (य) के साथ पठित उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित नियम बनाती है, अर्थात्:-

1. संक्षिप्त शीर्षक, प्रारंभ और लागू होना- (1) इन नियमों का संक्षिप्त नाम विद्युत (विधि में परिवर्तन के कारण लागत की समय पर वसूली) नियम, 2021 है।
(2) ये राजपत्र में उनके प्रकाशन की तारीख से प्रवृत्त होंगे।
(3) ये नियम उत्पादन कंपनी और पारेषण अनुज्ञप्तिधारी पर लागू होंगे।
2. परिभाषाएं- (1) इन नियमों में, जब तक कि संदर्भ से अन्यथा अपेक्षित न हो,-
(क) “अधिनियम” से विद्युत अधिनियम, 2003 (2003 का 36) अभिप्रेत है;
(ख) “करार” से अधिनियम के अधीन विद्युत के क्रय, आपूर्ति अथवा पारेषण के लिए किया गया करार अभिप्रेत है;
(ग) जब तक कि करार में अन्यथा परिभाषित न हो, टैरिफ के संबंध में, “विधि में परिवर्तन” से अधिनियम की धारा 62 अथवा धारा 63 के अधीन टैरिफ के निर्धारण के पश्चात किया गया, किसी-किसी का अधिनियमन अथवा संशोधन अथवा निरसन अभिप्रेत है, जिसके फलस्वरूप लागत में तत्स्थानी परिवर्तन द्वारा अपेक्षित टैरिफ में परिवर्तन है, और इसमें निम्नलिखित सम्मिलित हैं-
(i) किसी सक्षम न्यायालय द्वारा किसी विधि के निर्वचन में परिवर्तन; अथवा

- (ii) केन्द्रीय सरकार, राज्य सरकार अथवा संघ राज्य क्षेत्र प्रशासन द्वारा शुल्क, उद्ग्रहण, उपकर, प्रभार अथवा अधिभार सहित किसी भी घरेलू कर में परिवर्तन जिसके परिणामस्वरूप लागत में तत्स्थानी परिवर्तन हो; अथवा
- (iii) विद्युत की खरीद, आपूर्ति अथवा पारेषण के लिए प्राप्त किए गए अथवा प्राप्त किए जाने वाले अनुमोदन या अनुज्ञप्ति की किसी भी शर्त में परिवर्तन, जब तक कि विद्युत की खरीद, आपूर्ति अथवा पारेषण के लिए करार में विशिष्ट रूप से अपवर्जित न किया गया हो, जिसके परिणामस्वरूप लागत में कोई परिवर्तन हो,

परंतु निम्नलिखित सम्मिलित नहीं है-

- (क) उत्पादन कंपनी अथवा पारेषण अनुज्ञप्तिधारी के शेयरधारकों को वितरित आय अथवा लाभांश पर किसी प्रकार की कर कटौती में कोई परिवर्तन; अथवा
- (ख) उपयुक्त आयोग द्वारा विचलन समाधान प्रभार अथवा आवृत्ति अंतराल के संबंध में परिवर्तन;
- (ग) “विधि” में, भारत देश में, वर्तमान समय में प्रवृत्त कोई अधिनियम, अध्यादेश, आदेश, उप-विधि, नियम, विनियम, अधिसूचना सम्मिलित है।

(2) उन शब्दों और पदों के, जो इसमें प्रयुक्त हैं और परिभाषित नहीं हैं किन्तु अधिनियम में परिभाषित हैं, वही अर्थ होंगे जो उस परिभाषा में हैं।

3. विधि में परिवर्तन पर टैरिफ का समायोजन- (1) विधि में परिवर्तन होने पर, मासिक टैरिफ अथवा प्रभारों को समायोजित किया जाएगा और प्रभावित पक्ष की क्षतिपूर्ति करने के लिए इन नियमों के अनुसार वसूली की जाएगी जिससे प्रभावित पक्ष को उसी आर्थिक स्थिति में पुनर्स्थापित किया जा सके कि जैसे विधि में ऐसा कोई परिवर्तन हुआ ही नहीं था।

(2) उप-नियम (1) के प्रयोजनार्थ, उत्पादन कंपनी अथवा पारेषण अनुज्ञप्तिधारी, प्रभावित पक्ष के रूप में, जो विधि में परिवर्तन के कारण लागत को समायोजित और वसूल करने का प्रभाव रखता है, अन्य पक्ष को टैरिफ या प्रभारों के प्रस्तावित घनात्मक अथवा अन्य पक्ष से वसूली योग्य ऋणात्मक प्रभाव, के बारे में तीन सप्ताह पूर्व नोटिस देगा।

(3) प्रभावित पक्ष विधि में परिवर्तन होने के तीस दिनों के भीतर अथवा उप-नियम (2) में संदर्भित नोटिस की तारीख से तीन सप्ताह की समाप्ति पर, जो भी बाद में हो, समायोजित और वसूल किए जाने वाले टैरिफ अथवा प्रभारों के प्रभाव का परिकलन दूसरे पक्ष को प्रस्तुत करेगा, और टैरिफ अथवा प्रभारों में प्रस्तावित प्रभाव की वसूली टैरिफ के अगले बिलिंग चक्र से शुरू होगी।

(4) समायोजित और वसूल किए जाने वाले विधि में परिवर्तन के प्रभाव का परिकलन एक बारगी अथवा मासिक प्रभारों अथवा प्रति यूनिट आधार पर अथवा उनके संयोजन के रूप में किया जाएगा और टैरिफ के हिस्से के रूप में मासिक बिल से वसूल किया जाएगा।

(5) समायोजित और वसूल किए जाने वाले विधि में परिवर्तन के प्रभाव की राशि की गणना निम्नानुसार की जाएगी-

(क) जहां करार ऐसे फार्मूले के अनुसार, कोई फार्मूला निर्धारित करता है; अथवा

(ख) जहां करार इन नियमों की अनुसूची में दिए गए फार्मूले के अनुसार कोई फार्मूला निर्धारित नहीं करता है।

(6) नियत राशि के मामले में, प्रभावित राशि निम्नानुसार वसूल की जाएगी-

(क) उत्पादन परियोजना के मामले में, एक सौ अस्सी माह की अवधि के भीतर; अथवा

(ख) आवर्ती प्रभाव के मामले में, जब तक प्रभाव बना रहता है।

(7) उत्पादक कंपनी अथवा पारेषण अनुज्ञप्तिधारी, विधि में परिवर्तन के प्रभाव की वसूली के प्रभावी होने के तीस दिनों के भीतर, मासिक टैरिफ अथवा प्रभारों के प्रभाव की राशि के समायोजन के लिए उपयुक्त आयोग के परिकलन के ब्यौरे के साथ सभी संबंधित दस्तावेज प्रस्तुत करेगा।

(8) उपयुक्त आयोग उप-नियम (7) के अधीन संबंधित दस्तावेजों की प्राप्ति की तारीख से साठ दिनों के भीतर परिकलन को सत्यापित करेगा और प्रभाव की राशि को मासिक टैरिफ अथवा प्रभारों में समायोजित करेगा।

(9) उप-नियम (8) के अधीन मासिक टैरिफ अथवा प्रभारों के प्रभाव की राशि के समायोजन के बाद, उत्पादन कंपनी अथवा पारेषण अनुज्ञप्तिधारी, जैसा भी मामला हो, यह सुनिश्चित करने के लिए कि प्रभावित पक्ष को भुगतान वार्षिक वार्षिकी राशि से अधिक न हो, वास्तविक वसूली गई राशि के आधार पर मासिक टैरिफ अथवा प्रभारों को वार्षिक रूप से समायोजित करेगा।

अनुसूची

[नियम 5(ख) देखें]

विधि में परिवर्तन के कारण टैरिफ अथवा प्रभारों पर प्रभाव के निर्धारण के लिए सूत्र

विधि में परिवर्तन के प्रभाव के कारण मासिक टैरिफ के समायोजन की गणना करने का सूत्र, जो अनावर्ती प्रकृति का है-
उत्पादन परियोजना के लिए:-

मान लें कि विधि में परिवर्तन का वित्तीय प्रभाव = P;

तो वित्तीय प्रभाव की प्रतिपूर्ति के लिए मासिक टैरिफ (MT) में संशोधन को—

$$MT = \frac{Y}{X}$$

द्वारा प्रदर्शित किया जाएगा।

जहां X = अनुमानित मासिक विद्युत उत्पादन (केडब्ल्यूएच में) = $(1/12) \times$ [करार के अनुसार विद्युत संयंत्र की अनुबंधित क्षमता (मेगावाट में) \times करार के अनुसार नियामक संयंत्र भार गुणक (पीएलएफ) या उपलब्धता गुणक* अथवा क्षमता उपयोग गुणक (सीयूएफ) (आरई के मामले में) (% में) $\times 8760$ घंटा $\times 10$];

(* जहां पीएलएफ और सीयूएफ उपलब्ध नहीं कराया गया है, वहां करार में वर्णित उपलब्धता गुणक पर विचार किया जाए। तथापि, वास्तविक उत्पादन के संदर्भ में इसका वार्षिक आधार पर मिलान किया जाएगा।)

$$\text{और } Y = \frac{(P \times M_T)(1 + M_T)^n}{(1 + M_T)^n - 1};$$

जहां,—

n = महीनों की संख्या जिस पर वित्तीय प्रभाव का भुगतान किया जाना है (अनावर्ती निश्चित राशि के मामले में अधिकतम 180 महीने के अध्यक्षीन किंतु आवर्ती प्रभाव के मामले में इस प्रभाव के जारी रहने तक होगा); तथा

$$Mr = \text{ब्याज की मासिक किश्त} = \frac{R}{12 \times 100};$$

जहां R = केंद्रीय विद्युत विनियामक आयोग द्वारा परियोजना चालू होने के वर्ष के लिए पारंपरिक या नवीकरणीय ऊर्जा स्रोतों (जो भी लागू हो) से टैरिफ निर्धारण के लिए अपने आदेश में ऋण घटक पर ब्याज की वार्षिक दर (% में)। संबंधित वर्ष के लिए केंद्रीय विद्युत विनियामक आयोग के संबंधित आदेशों की अनुपस्थिति में, ऐसी अवधि के लिए अंतिम उपलब्ध छह महीने के दौरान प्रचलित, एक वर्ष की अवधि की, भारतीय स्टेट बैंक की मार्जिनल कॉस्ट ऑफ फंड्स आधारित औसत अग्रणी दर पर औसत ब्याज दर जमा 200 आधार अंक की ब्याज दर होगी।

इसके अतिरिक्त, उत्पादन कंपनी या मध्यवर्ती क्रेता या ट्रेडिंग अनुज्ञप्तिधारी वर्ष के वास्तविक उत्पादन के आधार पर वार्षिक MT का मिलान करेगा ताकि यह सुनिश्चित किया जा सके कि प्रभावित पक्षकार को भुगतान वार्षिक वार्षिकी राशि पर सीमित किया गया है।

[फा. सं. 23/18/2020-आरएंडआर]

घनश्याम प्रसाद, संयुक्त सचिव

MINISTRY OF POWER**NOTIFICATION**

New Delhi, the 22nd October, 2021

G.S.R. 751(E).—In exercise of the power conferred by sub-section (1), read with clause (z) of sub-section (2), of section 176 of the Electricity Act, 2003 (36 of 2003), the Central Government hereby makes the following rules, namely:—

1. Short title, commencement and application.—(1) These rules may be called the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) These rules shall apply to a generating company and transmission licensee.

2. Definitions.— (1) In these rules, unless the context otherwise requires,—

(a) “Act” means the Electricity Act, 2003 (36 of 2003);

(b) “agreement” means an agreement for the purchase, supply or transmission of electricity entered into under the Act;

(c) “change in law”, in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes—

(i) a change in interpretation of any law by a competent court; or

(ii) a change in any domestic tax, including duty, levy, cess, charge or surcharge by the Central Government, State Government or Union territory administration leading to corresponding changes in the cost; or

(iii) a change in any condition of an approval or license obtained or to be obtained for purchase, supply or transmission of electricity, unless specifically excluded in the agreement for the purchase, supply or transmission of electricity, which results in any change in the cost,

but does not include—

(A) any change in any withholding tax on income or dividends distributed to the shareholders of the generating company or transmission licensee; or

(B) change in respect of deviation settlement charges or frequency intervals by an Appropriate Commission;

(d) “law” includes any Act, Ordinance, order, bye-law, rule, regulation, notification, for the time being in force, in the territory of India.

(2) The words and expressions used and not defined herein but defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Adjustment in tariff on change in law.— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated—

(a) where the agreement lays down any formula, in accordance with such formula; or

(b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;

(6) The recovery of the impacted amount, in case of the fixed amount shall be,—

(a) in case of generation project, within a period of one-hundred eighty months; or

(b) in case of recurring impact, untill the impact persists.

(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.

THE SCHEDULE

[See rule 5(b)]

FORMULA FOR DETERMINATION OF IMPACT IN TARIFF OR CHARGES DUE TO CHANGE IN LAW

Formula to calculate adjustment in the monthly tariff due to the impact of Change in Law, which is non-recurring in nature—

For Generation Project:—

Let financial impact of change in law = **P**;

then the modification in the monthly tariff (**MT**) for compensating the financial impact is given by—

$$MT = \frac{Y}{X}$$

where **X** = estimated monthly electricity generation (in kWh) = $(1/12) \times$ [contracted capacity of the power plant as per the Agreement (in MW) \times Normative Plant Load Factor (PLF) or Availability factor* or Capacity Utilisation Factor (CUF) (in case of RE), as per the Agreement (in %) \times 8760 hours \times 10];

(* in case PLF and CUF is not provided, the availability factor mentioned in the agreement may be considered. However, it will be trued up with reference to the actual generation on annual basis.)

$$\text{and } Y = \frac{(P \times M_r)(1 + M_r)^n}{(1 + M_r)^n - 1},$$

where,—

n = No. of months over which the financial impact has to be paid (subject to a maximum of 180 months in case of the non-recurring fixed amount but in case of recurring impact it will be till the impact persists); and

$$M_r = \text{monthly rate of interest} = \frac{R}{12 \times 100};$$

where **R** = annual rate of interest on loan component (in %) as considered by the Central Electricity Regulatory Commission in its Order for Tariff determination from Conventional or Renewable Energy Sources (whichever is applicable) for the year in which the project is commissioned. In absence of relevant Orders of the Central Electricity Regulatory Commission for the concerned year, the interest rate shall be average interest rate plus 200 basis points above the average State Bank of India Marginal Cost of Funds based leading rate, of one year tenor, prevalent during the last available six months for such period.

Further, generating company or intermediary procurer or the trading licensee shall true up the MT annually based on actual generation of the year so as to ensure that the payment to the affected party is capped at the yearly annuity amount.

[F. No. 23/18/2020-R&R]

GHANSHYAM PRASAD, Jt. Secy.

Monthly Annuity Working**Annexure - P/6**

NEW

| Particulars | INR | Remarks |
|---------------------|--------------|---|
| Cost Increase | 42,49,66,160 | GST increase as discussed with GE |
| Annuity Instalment: | | As per the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 issued by the MoP on 22.10.2021. |
| Years | 15.0 | As per the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 issued by the MoP on 22.10.2021. |
| Discount rate, p.a. | 10.50% | |
| Monthly Annuity | 46,97,571 | |

As per the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 issued by the MoP on 22.10.2021

| Particulars | Abbreviation given As per the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 issued by the MoP on 22.10.2021 | Remarks |
|---|---|--------------|
| Contracted Capacity (Agreement) | 150.0 MW | 148.5 MW |
| PLF to be declared as per RFS/PPA (in %) | | 35.11% |
| Declared Generation | | 456.8 mn kWh |
| Rate of Interest | R | 10.5% |
| Financial impact of change in law | P | 42,49,66,160 |
| Estimated monthly electricity generation (in kWh) | X | 3,80,62,500 |
| $[(PxMr)(1+Mr)^n] / [(1+Mr)^n - 1]$ | Y | 46,97,571 |
| Monthly Rate | Mr | 0.88% |
| Modification in the monthly tariff | MT = Y/X | 0.123417 |

TRUE

| As per the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 issued by the MoP on 22.10.2021 | Formula |
|--|---|
| 42,49,66,160 | |
| 3,80,62,500 | $(1/12) \times MW \times PLF \times 8760 \times 10$ |
| 46,97,571 | $[(PxMr)(1+Mr)^n] / [(1+Mr)^n - 1]$ |
| 0.88% | $R / (12 \times 100)$ |
| 0.12 | |

F.No. 283/3/2018-GRID SOLAR-Part(4)

भारत सरकार / Government of India

नवीन और नवीकरणीय ऊर्जा मंत्रालय/ Ministry of New & Renewable Energy (MNRE)

ग्रिड सौर ऊर्जा प्रभाग / Grid Solar Power Division

Atal Akshay Urja Bhawan,
Lodhi Road, New Delhi – 110003Date: 27th September, 2022

To

1. The Managing Director, Solar Energy Corporation of India (SECI), 6th Floor, Plate-B, NBCC Office Block Tower-2, East Kidwai Nagar, New Delhi-110023, Email: md@seci.co.in
2. The Chairman & Managing Director, NTPC Ltd., NTPC Bhawan, Scope Complex, 7, Institutional Area, Lodhi Road, New Delhi, Email: cmd@ntpc.co.in
3. The Chairman & Managing Director, NHPC Limited, N.H.P.C Office Complex, Sector-33, Faridabad – 121003, Haryana, Email: cmd@nhpc.nic.in

Sub: Covering of imposition of Basic Customs Duty on import of solar PV cells and modules and hike in rates of GST, under 'Change-in-Law' – reg.

Madam / Sir,

With effect from April 1, 2022, a Basic Customs Duty (BCD) @ 25% has been imposed on import of solar PV cells (HS Code: 85414200) and a Basic Customs Duty @ 40% has been imposed on import of solar PV modules (HS Code: 85414300).

2. Further, as per Notification No. 8/2021 dated 30.09.2021, the GST rate for specified renewable energy devices and parts for their manufacture have increased from 5% to 12%.
3. The Renewable Energy (RE) Developers have represented to MNRE for treating the above two events as 'Change-in-Law'.
4. The matter has been examined in MNRE and MNRE's Renewable Energy Implementing Agencies (SECI/ NTPC Ltd./ NHPC Ltd.) are hereby requested that:

a) BCD imposition as Change-in-Law: W.r.t. solar PV / solar PV-wind hybrid power projects, wherein the last date of bid submission was on or before the announcement on March 9, 2021, regarding imposition of Basic Customs Duty (BCD) on import of solar PV cells and modules with effect from April 1, 2022, and wherein the Scheduled Commissioning Date (SCD), including time extensions granted, if any, was on or after April 1, 2022, REIAs may consider imposition of BCD on import of solar PV cells and modules with effect from April 1, 2022 under 'Change-in-Law' unless the same is disallowed by specific provisions in the tender documents/ contracts.

b) Hike in GST rate as Change-in-Law: W.r.t. RE power projects, wherein the last date of bid submission was on or before September 30, 2021, i.e. on or before



the issuance of notification regarding increase in GST rate for specified renewable energy devices and parts for their manufacture from 5% to 12%, and wherein the Scheduled Commissioning Date (SCD), including time extensions granted, if any, was on or after October 1, 2021, REIAs may consider this hike in GST rate from 5% to 12% under 'Change-in-Law' unless the same is disallowed by specific provisions in the tender documents/ contracts.

5. This issues with the approval of Hon'ble Minister (Power & NRE).

Yours faithfully,


 (Mohd Azmal Mansoori)
 Scientist-B
 Email: azmal.mnre@gov.in

Copy to:

1. Addl. Chief Secretaries / Pr. Secretaries / Secretaries of Power / Energy / Renewable Energy Departments of State Governments/ UT Govts./ Administrations (*with a request for similar consideration*)
2. NIC, MNRE for uploading on MNRE's website

Copy for Internal Circulation:

PS to Hon'ble Minister (Power & NRE)/ PS to Hon'ble MoS (NRE)/ PSO to Secretary/ Sr. PPS to AS (VK)/ Sr. PPS to JS&FA/ DS (VD)



MORJAR WINDFARM DEVELOPMENT PRIVATE LIMITED

November 9, 2021

To,
AGM Projects,
Solar Energy Corporation of India Ltd. (SECI),
1st Floor, A Wing, D-3, District Centre,
Saket, New Delhi-110017.

Sub.: Notice under Article 12 of the PPA dated regarding Change in law due to change in GST Rates from 5% to 12% on renewable energy devices and parts for their manufacture as per the Central Government notification

**Ref.: 1. PPA dated October 29, 2019.
2. Notification No. 8/2021- Integrated Tax (Rate) from Ministry of Finance (Department of Revenue) dated September 30, 2021 ("GST Change Notification")**

Dear Sir,

We would like to bring to your kind attention the GST Change Notification dated September 30, 2021 wherein, in exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the GST Council, has made the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Integrated Tax (Rate), dated the June 28, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 666(E), dated the June 28, 2017 ("Original Notification"):

- I. S. No. 234 and the entries relating thereto shall be omitted from Schedule I (5%) in the Original Notification; and
- II. S. No. 201A has been inserted under Schedule II (12%) in the GST Change Notification

Pursuant to the decisions taken at the 45th GST Council Meeting, the above changes i.e. the renewable energy devices and parts for their manufacture, and particularly Windmills, Wind Operated Electricity Generator (WOG) shall now be subject to a higher GST rate effective from October 1, 2021 (i.e., 5% GST rate changed to 12% GST).

The above change will increase the cost of procurement of wind turbine generators under our existing contract with 'GE India Industrial Private Limited' by INR 45.12 crores.

It may be noted that the above change will be a 'Change in Law' under the PPA. As per **Article 12 ('Change in Law')** of the PPA, 'Change in Law' includes "Any statutory change in tax structure or introduction of any new tax made applicable for setting up of Wind Power Project and supply of power from the Project by the WPD and has direct effect on the Project, shall be treated as per the terms of this Agreement" and the

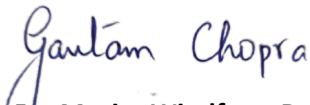
aggrieved party shall be required to approach the Appropriate Commission for seeking approval of Change in Law.

Further the Hon'ble Ministry of Power (MoP) has notified the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 on October 22, 2021, wherein any "change in law" includes "*a change in any domestic tax, including duty, levy, cess, charge or surcharge by the Central Government, State Government or Union territory administration leading to corresponding changes in the cost*". Further, as per the Rule 3 (2) of the said rule, the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

Hence in the view of the above, we hereby issue notice as per the Rule 3 (2) of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 and as per the Article 12 and Article 17.6 of the PPA dated October 29, 2019, to recover the additional cost which will be incurred by us on account of change in law due change in GST rates as per the Central Government notification (No:08/2021) dated September 30, 2021.

Basis the above incremental cost and formula suggested in the above MoP notification, we expect tariff to increase by approximately 0.1486 paisa for minimum generation committed under the PPA. We therefore request you to confirm the increase in tariff for us to confirm to our contractors and lenders.

Thanking you,
Yours faithfully,


For **Morjar Windfarm Development Private Limited**
Authorized Signatory

Enclosure: -

1) The Central Government notification (No:08/2021) dated 30.09.2021

**MORJAR WINDFARM DEVELOPMENT PRIVATE LIMITED**

CERTIFIED TRUE EXTRACT OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF MORJAR WINDFARM DEVELOPMENT PRIVATE LIMITED (THE "COMPANY" OR "MWDPL") ON JUNE 24, 2019

AUTHORITY TO SIGN AND SUBMIT DOCUMENTS, TO STATE ON OATH AND APPEAR BEFORE JUDICIAL, QUASI-JUDICIAL AND NON-JUDICIAL AUTHORITIES AND TO DELEGATE THE POWER TO THE OFFICERS AND/ OR EMPLOYEE / GROUP COMPANIES' EMPLOYEES AND/ OR THIRD PARTIES, IF REQUIRED FOR DAY TO DAY OPERATIONAL ACTIVITIES

"RESOLVED THAT consent of the Board be and is hereby accorded to the Directors/ Officers/Senior Management Personnel of the Company to sign and submit documents with judicial, quasi-judicial and non-judicial authorities with respect to any claims raised against the Company or initiated against the Company and for day to day operational activities of the Company.

RESOLVED FURTHER THAT any Director of the Company or Mr. Tarun Bhargava, Chief Financial Officer (CFO) of Continuum Wind Energy (India) Private Limited ("CWEIPL"), ultimate holding company of the Company or Mr. Nilesh Patil, Vice President & Controller of CWEIPL or Mr. Nishit Shah, Deputy General Manager, Finance and Accounts of CWEIPL, or Mr. Mohmad Saleh Mutvalli, Senior Manager, CWEIPL, ("**Authorised Person/s**") of the Company be and are hereby severally authorised to sign, submit, present and state on oath, lodge, admit, execute necessary documents including but not limited to applications, affidavits, vakil patra, compromise deed, statements, caveat application etc. and appear before any judicial, quasi-judicial, non-judicial authorities including but not limited to court, tribunal etc. and do all such acts, deeds and things, as may be necessary or desirable to give effect to the aforesaid resolutions and further authorised to delegate the aforesaid power to any of its officer and/or employee and/or group companies' employees and/or third party, if required, and to appoint a suitable lawyer / law firm / consultancy firm on behalf of the Company.

RESOLVED FURTHER THAT any Director of the Company or any of the Authorised Persons be and are hereby severally authorised to issue authority letter and/or power of attorney etc. in favor of any of its officer and/or employee and/or group companies' employees and/or third party, if required, for the aforesaid, on behalf of the Company.

RESOLVED FURTHER THAT any of the Director(s) of the Company or Authorised Persons be and are hereby authorised severally to do all such acts, deeds, matter and things to give effect to the above on behalf of the Company including certifying the resolution and forwarding a certified true copy of the resolution to the concerned parties or departments as may be required from time to time."

//Certified True Extract//

For Morjar Windfarm Development Private Limited

Smit Dedhia
Company Secretary
Membership No. A63959

Date: March 06, 2023
Place: Mumbai



VAKALATNAMA

BEFORE THE HON'BLE CENTRAL ELECTRICITY REGULATORY
COMMISSION, NEW DELHI
PETITION NO. ____/MP/2023

IN THE MATTER OF:

M/s. Morjar Windfarm Development Private Limited
VERSUS

...PETITIONER

Solar Energy Corporation of India Limited & Ors.

...RESPONDENTS

KNOW ALL to whom these presents shall come that I, **VISHAL SAXENA**, working as Assistant Manager, in the Petitioner Company and having office at 402 & 403, Delphi, C Wing, Hiranandani Business Park, Orchard Avenue, Powai, Mumbai-400076 do hereby appoint **Mr. Akshat Shrivastava** Advocate having their office at D 75, Gulmohar Park, Khel Gaon Road, New Delhi; Mobile No. 9958481216; Email: akshat.shriv@gmail.com; in the above mentioned cause, to do all the following acts, deeds and things or any of them, that is to say:-

1. To act, appear and plead in the above-mentioned cause in this Court or any other Court in which the same may be tried or heard in the first instance or in appeal or letters patent appeal or review or revision or execution or in any other stage of its progress until its final decision.

2. To present pleadings, appeals, letter patent appeal, petition for leave to appeal to Supreme Court, Cross-objection or petitions for execution, review revision, withdrawal, compromise or other petitions or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said cause in all its stages.

3. To withdraw or compromise the said cause or submit to arbitration any differences or dispute that shall arise touching or any manner relating to the said cause.

4. To receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done in the progress and in the cause of the prosecution of the said cause.

5. To employ and other Legal Practitioner authorizing him to exercise the power and authority hereby conferred on the Advocates whenever they may think fit to do so.

AND I/we hereby agree to rectify whatever the said Advocates or their substitutes shall do in the premises.

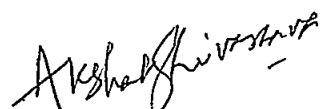
And I/we hereby agree not to hold the Advocates or their substitutes responsible for the result of the said cause in consequence of their/his absence from the Court when the said cause is called up for hearing.

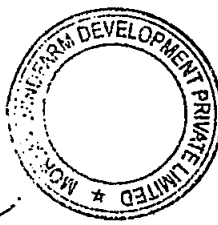
AND I/we hereby agree that in the event of the whole or any part of the fee agree by me/us to be paid to the Advocates remaining unpaid, they shall be entitled to withdraw from the prosecution of the said cause until the same is paid.

IN WITNESS WHEREOF I/we hereunto set my/our hand to these presents the contents of which have been explained to and understood by me/us.

This the ____ day of March, 2022.

Accepted & Identified subject to the term regarding fees.


Akshat Shrivastava
Advocate



VISHAL SAXENA,
Assistant Manager
Authorized Representative of the
Petitioner Company