

**STANDARD**

**POWER PURCHASE AGREEMENT**

**FOR**

**PROCUREMENT OF .....MW WIND-SOLAR HYBRID POWER**  
**ON LONG TERM BASIS**

**BETWEEN**

**..... [INSERT NAME OF RE POWER DEVELOPER/RE POWER**  
**GENERATOR]**

**AND**

**SJVN LIMITED**

**..... [INSERT MONTH AND YEAR]**

This Power Purchase Agreement is made on the ..... day of..... of 2024 at .....

Between..... [Insert name of the RE Power Developer/RE Power Generator], a Company incorporated under the Companies Act 1956 or the Companies Act 2013, having its registered office at.....

[Insert address of the registered office of Hybrid RE Power Developer] (hereinafter referred to as “Hybrid RE Power Developer” or “HPD”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **First Part;**

And

SJVN Limited, a company incorporated under the Companies Act 1956, having its registered office at ..... and Liaison Office at ..... (hereinafter referred to as “SJVN”, or “Intermediary Procurer” or “Buyer” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assignees) as a Party of the **Second Part**

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

**WHEREAS:**

- A. The Government of India has announced the Policy for promotion of the renewable energy-based project installation in the country and has set an ambitious target to achieve 500 GW of non-fossil-based installed energy capacity by the year 2030;
- B. Ministry of Power, Government of India has issued Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects” vide Gazette of India Notification No 202 dated 21.08.2023, including subsequent amendments and clarifications thereto, issued until [Enter the last date of bid submission of the RfS].
- C. SJVN Ltd (hereinafter referred as “SJVN/Renewable Energy Implementing Agency”) has been designated as Intermediary Procurer/Renewable Energy Implementing Agency (REIA) vide Office Memorandum F. No. 283/33/2020-GRID SOLAR dt 24th April 2023 issued by Ministry of New and Renewable Energy (MNRE), Govt of India.
- D. SJVN had initiated a Tariff Based Competitive Bid Process for Selection of Hybrid RE Power Developers for Supply of 1500 MW ISTS-connected Wind-Solar Hybrid Power Projects in India anywhere in India on the terms and conditions contained in the Request for Selection (hereinafter referred to as ‘RfS’) issued by SJVN vide RfS No..... dated ..... including its subsequent amendments and clarifications;
- E. [Insert name of the Bidding Company] has been selected in the Competitive Bidding Process

{in case Bidding Company is executing the Project through SPV}, has constituted a Special Purpose Vehicle ..... [Insert the name of SPV, if applicable] (hereinafter referred to as 'HPD') for development, generation and supply of electricity from the.....MW Hybrid Power Project to be established by HPD anywhere in India and for supply of such electricity by SJVN as an Intermediary Agency to the Buying Utility(ies) (as defined) under a Power Sale Agreement to be entered into between SJVN and such Buying Utility (ies).

F. Not used

G. Not used

H. SJVN, based on the above, has issued the Letter of Award (LoA) vide No..... dated..... in favour of the HPD for the above purpose and for the development and establishment of Wind-Solar Hybrid Project in the State(s) of ..... and in the territory [Insert name of the RLDCs] and supply of Wind-Solar Hybrid RE Power for a Contracted Capacity of .....MW as per the terms and conditions contained in the RfS including amendments and clarifications thereto, the standard draft of this Power Purchase Agreement circulated at the time of the bidding and other bidding documents as well as the conditions contained in the aforementioned Letter of Award;

I. Not used

J. SJVN has agreed to purchase such Hybrid RE Power as an Intermediary Procurer for onward back-to-back sale to Buying Utility(ies) to be identified and with whom SJVN is to duly conclude/has concluded a binding and enforceable Power Sale Agreement(s) with due regulatory approvals required to be taken by the Buying Utility(ies), as per the Conditions Precedent contained in this Agreement;

K. In terms of the RfS, the HPD has furnished the Performance Bank Guarantee/ Payment on Order Instrument, as the case may be, in the sum of Rs ..... in favour of SJVN as per the format provided as a part of the RfS Documents and a copy of the Bank Guarantee / Payment on Order Instrument / Letter of Undertaking as per RfS, as applicable) provided is in Schedule – 1 / Schedule-2 to this Agreement;

L. The HPD has fulfilled the terms of the bidding and the terms of the Letter of Award for signing this Power Purchase Agreement as a definitive agreement, subject to the Conditions Precedent contained in this Agreement;

M. The Parties have agreed to execute this Power Purchase Agreement in terms of the provisions of the RfS documents and the Letter of Award, the recitals hereinabove, in regard to the terms and conditions for establishment of the Hybrid RE Power project at ....., [Insert name of state and region] and for generation and supply of ----- MW contracted capacity Hybrid RE Power to SJVN at the tariff as per Article 9 (herein below) for onward sale to the Buying Entities on back to back basis under respective Power Sale Agreement;

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

**ARTICLE 1: DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed thereunder, 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;
Affiliate	shall mean a company that, directly or indirectly, i. Controls, or ii. is controlled by, or is under common control with, a company developing a Project or a Member in a Consortium developing the Project and control means ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such company or right to appoint majority Directors to the Board of Directors.
“Agreement” or “Power Purchase Agreement” or “PPA”	shall mean this Power Purchase Agreement including its recitals and Schedules, Appendixes amended or modified from time to time in accordance with the terms hereof;
“Appropriate Commission”	Unless otherwise stated or the context requires, Appropriate Commission shall mean Central Electricity Regulatory Commission/State Electricity Regulatory Commission, as applicable
“Awarded capacity”	Shall mean.....MW [enter the capacity as awarded by SJVN as per the LoA]
“Backdown”	Means part of Contracted capacity available for scheduling but not scheduled based on instructions from /Buying Utility/SLDC /RLDC, 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 HPD and SJVN, a day other than Saturday, Sunday or a statutory holiday, on which the banks remain open for business in Delhi and [insert name of State where HPD Registered Office is located] both;

“Bulk Consumer”	Shall have the same meaning as provided in CERC (Indian Electricity Grid Code) Regulations, 2023 as amended from time to time;
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<p>“Capacity utilization Factor” or “CUF”</p>	<p>Shall have the same meaning as provided in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2024 as amended from time to time. However, for avoidance of any doubt, it is clarified that the CUF shall be calculated based on the Contracted Capacity at the “Delivery / Inter- connection / Metering Point”; Same is illustrated as follows</p> <p>In any Contract Year, if ‘X’ MWh of energy has been metered out at the Delivery Point for ‘Y’ MW Project capacity, then %CUF= (X MWh/(Y MW*8766)) X100%;</p> <p>Declared CUF for this Project shall be _____% (to be revised as applicable)</p>
<p>“CERC”</p>	<p>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;</p>
<p>CTU” or “Central Transmission Utility”</p>	<p>shall mean the Government Company notified by the Central Government under Sub-Section (1) of Section 38 of the Electricity Act,2003.</p>
<p>“Change in Law”</p>	<p>shall have the meaning ascribed thereto in Article 12 of this Agreement;</p>
<p>“Commissioning”</p>	<p>The Project will be considered as commissioned if all equipment as per rated Project Capacity as declared in the Grid Connected Hybrid Power Projects ensuring Hybrid Power configuration has been installed and energy has flown into grid, in line with the Commissioning procedures defined in the PPA read along with RfS. The Project shall be commissioned in line with the provisions of the Grid Code.</p>
<p>“Commercial Operation Date (COD)”</p>	<p>shall mean the date on which the commissioning certificate is issued upon successful commissioning (as per provisions of the SJVN-HPDs PPA) of the Project or the last part capacity of the Project as the case may be and regular supply of power from Grid Connected Hybrid Renewable Energy Power Projects as per provisions of SJVN-HPDs PPA. Such date of the issuance of Commissioning Certificate shall be deemed to be the date on which HPD has successfully demonstrated the compliance of the all requirements for the commissioning as well as commercial operation for the entire Contracted Capacity and commencement of supply of Hybrid Renewable Energy Power of full contracted capacity as per provisions of SJVN- HPDs PPA read along with provisions of the RfS.</p>
<p>“Competent Court of Law”</p>	<p>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;</p>
<p>Commencement of Supply of Power Date (CSD)”</p>	<p>shall mean the actual date of supply of power of the contracted capacity subsequent to COD.</p>

<p>“Consents, Clearances and Permits”</p>	<p>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;</p>
<p>“Consultation Period”</p>	<p>shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a HPD Preliminary Default Notice or SJVN 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;</p>
<p>“Contract Year”</p>	<p>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: in the financial year in which commencement of supply of the first part capacity of the Contracted Capacity would occur, the Contract Year shall commence from the date of commencement of supply of power of first capacity 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 provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement</p>
<p>“Contracted Capacity”</p>	<p>shall mean ..... [Insert capacity] MW, which is the AC capacity contracted with SJVN for supply by the HPD to SJVN at the Delivery Point.</p>
<p>“Cumulative Availability”</p>	<p>Shall mean for any period, the average of the daily Availability for all the time blocks during the such period / Month/ Contract Year (as applicable) expressed as percentage of the Contracted capacity in MW</p>
<p>“Day”</p>	<p>shall mean a day, if not a Business Day, the immediately succeeding Business Day.</p>
<p>“Declared Capacity” “Offered Capacity” “Offered Power”</p>	<p>shall mean the schedule (in MW) as declared by the developer at the Delivery Point (ISTS Substation) for any time-block of the day as defined in the Grid Code.</p>

<p>“Delivery Point” / “Interconnection Point”</p>	<p>“Delivery Point” shall mean a single point or multiple points at the voltage level of 220 kV or above of the ISTS Sub-station including the transmission line connecting the Hybrid RE Power projects with the substation system as specified in the Rf S document. Metering shall be done at this interconnection point(s) where the power is injected into. For interconnection with grid and metering, the HPD shall abide by the relevant and applicable regulations, Grid Code notified by the CERC or and Central Electricity Authority (Installation and Operation of Meters Regulations, 2006) as amended and revised from time to time, or orders passed thereunder by the appropriate commission or CEA. Pursuant to Article 4.2.6, all charges and losses related to Transmission of power from project up to Delivery Point (including but not limited to open access, transmission, wheeling, Unscheduled Interchange, Scheduling, Reactive power, RLDC/SLDC charges etc.) as notified by the competent authority / regulator shall be borne by the HPD and beyond the Delivery Point all charges and losses as notified by the competent authority/ regulator from time to time shall be borne by the Buying Utilities.</p>
<p>“Discoms” or “Distribution licensees” or “Buying Entity (ies)” or “Buying Utility(ies)” or “Procurer(s)”</p>	<p>shall mean the Buying Entity or the distribution utilities who have signed/will sign the back-to-back PSA(s) with SJVN for purchase of Power. It is clarified that all obligations of SJVN under this Agreement shall be deemed to be the obligations of Buying Entities with which SJVN has signed/will sign Power Sale Agreement.</p>
<p>“Dispute”</p>	<p>shall mean any dispute or difference of any kind between SJVN and the HPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement.</p>
<p>"Due Date"</p>	<p>The term "Due Date" as defined in this context refers to the <b>Fiftieth (50<sup>th</sup>) day</b> subsequent to the receipt, in hard copy, and the proper acknowledgment by SJVN, of a Monthly Bill (inclusive of all pertinent documents) or a Supplementary Bill. If the specified day is not a Business Day, the ensuing immediate Business Day shall be considered the due date, by which the payment for the respective Monthly Bill or Supplementary Bill is obligated to be made by SJVN.</p>
<p>“Effective Date”</p>	<p>shall have the meaning ascribed thereto in Article 2.1 of this Agreement;</p>

“Electricity Laws”	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Accounts"	shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof
“Event of Default”	shall mean the events as defined in Article 13 of this Agreement;
“Expiry Date”	Shall mean the date occurring twenty-five (25) years from the Scheduled Commencement of Supply Date (SCSD) or the date of commissioning of full project capacity, whichever is later, unless extended by the Parties as per this Agreement;
“Financial Closure”	shall mean compliance with the requirements under Article 3.1 of this Agreement;
“Financing Agreements”	shall mean the agreements pursuant to which the HPD has sought financing for the Hybrid RE 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 SJVN;
"Force Majeure" or “Force Majeure Event”	shall have the meaning ascribed thereto in Article 11 of this Agreement;
“Guidelines” or “Scheme”	shall mean the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects.” vide Gazette Resolution no. 27/03/2023-RCM.-1.dated 21.08.2023, including subsequent amendments and clarifications issued / notified till the last date of Bid submission against the referred RfS;
"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;
“GNA Regulations”	shall mean the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 notified on 07.06.2022, including subsequent amendments and clarifications issued thereof. Any reference to the terms “connectivity” or “network access” or “general network access” in this Agreement shall be interpreted in terms of the provisions of these Regulations.
‘Hybrid Power’	‘Hybrid Power’, shall mean the power from Solar Power Generating Stations and Wind Power generation Stations, where the rated power capacity of one resource (wind or solar) is at least 33% of the total Contracted Capacity.

<p>“Hybrid Power Generator’ (HPG)”</p>	<p>Shall mean a generator and supplier of electricity generated through a Wind Solar Hybrid power generating station along with other profile characteristics as specified in the RfS.</p>
<p>“Indian Governmental Instrumentality”</p>	<p>shall mean the Government of India, Governments of state(s) .....[Insert the name(s) of the state(s) in India, where the Hybrid RE Power project, SJVN, Buying Entity and HPD are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or the above state Government(s) or both, any political sub-division of any of them; including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India</p>
<p>“Insurance”</p>	<p>shall mean the insurance cover to be obtained and maintained by the HPD in accordance with Article 8 of this Agreement;</p>
<p>Interconnection Facilities"</p>	<p>shall mean the facilities on HPD’s side and/or the power generator(s) (as under Appendix-A), as the case may be, of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;</p>
<p>“Intermediary agency” or “Intermediary nodal agency” or “Intermediary</p>	<p>shall mean SJVN Limited (SJVN);</p>
<p>“Invoice” or “Bill”</p>	<p>shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;</p>
<p>“Joint Control”</p>	<p>shall have same meaning as defined in RfS Document;</p>
<p>“Late Payment Surcharge”</p>	<p>shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;</p>
<p>"Law"</p>	<p>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;</p>

“Letter of Credit” or “L/C”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“MNRE”	shall mean the Ministry of New and Renewable Energy, Government of India;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
“Part Commencement of Supply of Power”	Shall mean Part Commencement of supply of power from the Project shall be accepted by Procurer subject to the condition that the minimum capacity for acceptance of commencement of supply of power shall be at least 50 MW, without prejudice to the imposition of penalty, in terms of the PPA on the part which has not yet commenced supply of power. The projects can further commence supply of power in parts of at least 10 MW capacity; with last part as the balance capacity. However, the SCSD will not get altered due to part commencement of supply of power. Irrespective of dates of part or full commencement of supply of power, the PPA will remain in force for the period specified in the RfS.
“Payment Security Mechanism”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“Payment on Order Instrument” or “POI”	shall mean the irrevocable unconditional letter of undertaking issued by M/s Indian Renewable Energy Development Agency/ M/s Power Finance Corporation Limited/ M/s Rural Energy Corporation Limited, submitted by the HPD in place of PBG to SJVN in the form attached hereto as Schedule 2;
“Performance Bank Guarantee” or “PBG”	shall mean the irrevocable unconditional bank guarantee, submitted by the HPD to SJVN in the form attached hereto as Schedule 1;
“Pooling Substation/ Pooling Point”	means a point where more than one power Project may connect to a common transmission system. Multiple Projects can be connected to a pooling substation from where common transmission system shall be constructed and maintained by the HPD (s) to get connected to the Delivery Point. The voltage level for such common line shall be as per the voltage level specified in “Interconnection Point”. Further, the metering of the pooled power shall be done at the injection point, i.e. the ISTS substation. However, the voltage level of transmission system of individual projects up to the pooling substation may be at 33 kV and above. Sub-meters shall be installed at the pooling substation for metering and forecasting and scheduling of individual projects. The losses in the common transmission system up to the injection point shall be apportioned to the individual Projects for the purpose of billing. In such case, it shall be responsibility of the HPD to obtain and furnish the meter reading jointly by the HPD and any competent authority (State Government or Central Government) (if applicable).

“RE Project” or “Project” or “Project Capacity”	shall mean the rated AC capacity of RE components as declared to be installed under the PPA and shall be equal to the installed capacity committed under the Connectivity granted under the GNA Regulations. It is to be noted that prior to commencement of supply of power under the PPA, the installation and commencement of power supply from the corresponding committed rated capacity of Wind and Solar PV components as declared in the PPA, will be verified by SJVN.
“Power Sale Agreement” or “PSA”	shall mean the back-to-back power sale agreement entered between the Buying Entity and SJVN (Buyer-Buying Entity(ies) PSA) for onward sale of power being procured under this Agreement as per the provisions of Guidelines and forms Schedule_of this Agreement;
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 13 of this Agreement;
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted within India 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: operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project; the requirements of Indian Law; and the physical conditions at the site of the Power Project
“RBI”	shall mean the Reserve Bank of India;
“RE Power”	shall mean the power generated from a Hybrid RE Project;
“Rebate”	shall have the same meaning as ascribed thereto in Article 10.3.5 of this Agreement;
“Request for Selection / RfS/Bidding Documents”	shall mean Request for Selection Documents issued by SJVN vide No._____dated <u>including</u> subsequent clarifications, amendments and addenda thereto.
"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 Commencement of Supply Date (SCSD)”	Shall mean Scheduled Commencement of Supply Date (SCSD) in relation to the contracted capacity or the part of the contracted capacity shall mean the date(s) corresponding to the date of commencement of supply quoted in the RfS (Request for Selection).
“SERC”	shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Subsection (1) of Section 83 of the Electricity Act 2003;
“SLDC”	shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the State(s) where the Delivery Point is located;
“SLDC Charges”	shall mean the charges levied by the SLDC of the state wherein the Hybrid RE Power project is located;
“Solar Photovoltaic Project” or “Solar PV Project”	shall mean the solar photovoltaic power project that uses sunlight for conversion into electricity and that is being set up by the HPD to provide Solar Power to SJVN as per the terms and conditions of this Agreement;
“Solar Power”	shall mean power generated from the Solar Photovoltaic Power Project;
“SJVN”	shall mean SJVN Limited;
“State Transmission Utility” or “STU”	shall mean the Government company notified by the respective State Government as such under Sub-section (1) of Section 39 of the Act;
"Tariff" or “Applicable Tariff”	Shall have the same meaning as provided for in Article 9 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
“Termination Notice”	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;
Unit Commercial Operation Date (UCOD)”	shall mean the date of issuance of commissioning certificate for the respective part(s) of the Contracted Capacity subsequent to the demonstration of the compliance of commissioning as per this Agreement and witnessed by the Committee duly constituted and also start of injection and scheduling power from the Project to the Delivery Point and availability / installation of all necessary arrangements / equipment including RTU for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;
“Wind Power Project”	shall mean the wind power project that uses wind energy for conversion into electricity through wind turbine generator;

## 1.2 Interpretation

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

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees", "Rs" or new rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "Winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, Winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

- 1.2.14** The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15** All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty-five (365) days;
- 1.2.16** The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17** The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18** For avoidance of any doubt, it is clarified that irrespective of the contractual arrangement between the HPD /Hybrid Power Generator, all the generator related liabilities, under the Guidelines and the PPA hereunder, shall be of the entity signing the PPA, and recognized as ‘Hybrid Power Generator’ (HPG). Further, subject to the provisions of this Agreement, SJVNs liability is limited to HPD only and SJVN is not responsible for any dispute between HPD.
- 1.2.19** This Agreement and other documents such as Request for Selection Documents, Letter of Award, Guidelines including subsequent clarifications, addenda, amendments and further clarifications in regard to the tender as well as Power Sale Agreement shall be read in conjunction with each other and interpreted in harmonious manner. However, in case of any mismatch/contradiction between provisions of different documents, following shall be the order of precedence:
- 1) Power Purchase Agreement read with Power Sale Agreement
  - 2) RfS Documents

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

### **2.1 Effective Date**

- 2.1.1** This Agreement shall come into effect from date of signing of this Agreement by both the parties and such date shall be the Effective Date for the purpose of this Agreement.
- 2.1.2** The Parties agree that decisions pertaining to adoption of the Tariff and approval of the same, for procurement of contracted capacity, shall be binding on all Parties concerned, as contained in the Electricity Act, 2003 and any amendments thereof.
- 2.1.3** Notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be the unfulfillment of the following:
- A. Due Adoption of the Tariff by the Central Electricity Regulatory Commission / State Electricity Regulatory Commission on the application/Petition filed for the said purpose;
  - B. Signing of the Power Sale Agreement between SJVN and the Buying Utilities for the entire contracted capacity on the back-to-back basis with the terms of this Agreement. In case, the PSA is signed only for the part of the capacity with the Buying Utilities, HPD and SJVN may mutually agree to implement this agreement limited to the said capacity, in which event the contracted capacity for all intent and purposes considered to be the reduced capacity.
- 2.1.4** The parties acknowledge and agree that the Scheduled Commencement of Supply Date (SCSD) for supply of contracted capacity of Hybrid RE Power has been agreed to in this agreement based on each of the Conditions Precedent contained in Article 2.1.3 being duly accomplished not later than 60 days of submission of such petition by SJVN/HPD or within 120 days from the date of signing of PSA, whichever is later. In the event of delay beyond the deadline as above, of such fulfilment of Conditions Precedent, there shall be corresponding extension of Scheduled Commencement of Supply Date (SCSD) and extension of time for satisfaction of Conditions Subsequent.

Provided further that in case, the order of adoption of Tariff and/or procurement approval from CERC and/or SERC as required above is not received or delayed, either Party shall not be liable for payment of any compensation to other Party for any loss or damage on account of such delay in availability or non-availability of the approval of CERC/SERC, as the case may be.

### **2.2 Term of Agreement**

- 2.2.1** Subject to Article 2.3 and 2.4 of this Agreement, this Agreement shall be valid for a term from the Effective Date until the Expiry Date. The Expiry Date of the Agreement may be further extended upto 35 years, on such term and conditions as mutually agreed between the parties and approved by the Appropriate Commissions, for which interested Party shall issue notice for such intention at least one hundred eighty (180) days prior to

the Expiry Date or otherwise as may be mutually agreed provided the arrangements with the land and infrastructure owning agencies, the relevant transmission utilities and system operators permits operation of the Project beyond such extended period.

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

## **2.3 Early Termination**

- 2.3.1** This Agreement shall terminate before the Expiry Date only if either SJVN or HPD terminates the Agreement, pursuant to Article 13 of this Agreement and not otherwise.

- 2.3.2** In case the SJVN-Buying Entity PSA corresponding to the Contracted Capacity is terminated or modified for a reduced capacity during the Term of this Agreement, the event will result in Termination of this Agreement or pro-rata reduction in Contracted Capacity of this Agreement, as the case may be. In such scenario, any termination compensation payable by the respective Buying Entity, will be passed on to the HPD, after deducting SJVN's costs, if any.

- 2.3.3** In case SJVN is unable to execute the PSA for the capacity allocated under the RfS Document within nine (09) months from the date of issuance of LoA or any mutually extended period, capacity under this agreement shall stand reduced on pro-rata basis without creating any liability to either party. In such case, if such reduced capacity turns out to be less than 50% of the awarded Capacity and the HPD desires to abandon/ exit the PPA for such capacity also, HPD shall be allowed to exit this Agreement without any liability to either party and Instruments provided by the HPD for the Performance of this Agreement i.e. Performance Bank Guarantee shall be released by SJVN without any deduction.

## **2.4 Survival**

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

## **ARTICLE 3: CONDITIONS SUBSEQUENT**

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

- i) The HPD agrees and undertakes to duly perform and complete all of the required Project financing arrangements and achieve the Financial Closure at the HPD's own responsibility, cost and risk by ..... [Insert date as per RfS conditions], unless such completion is affected by any Force Majeure event, or for the activities specifically waived in writing by SJVN.
- ii) The HPD shall make Project financing and furnish other supporting documents / certificates to SJVN in regard to the due compliance with the Conditions Subsequent within the deadline as above.
- iii) The HPD shall also submit the Detailed Project Report along with proposed commissioning schedule of the Project within the above deadline.
- iv) Any other details sought as per the checklist communicated by SJVN in line with Annexure-C of the RfS.

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

**3.2.1** In case of a failure on the part of HPD to fulfil the condition subsequent and submit the documents as provided in Article 3.1, SJVN shall be entitled to encash the Performance Bank Guarantee/Payment on Order Instrument submitted by the HPD, terminate this Agreement and remove the Project from the list of the selected Projects by giving a notice to the HPD in writing of at least seven (7) days, unless the delay (subject to the conditions that HPD has made / is making all possible efforts) is solely on account of delay in allotment of land by the Government not owing to any action or inaction on the part of the HPD or caused due to a Force Majeure. Unless extended as per provisions of Article 3.2.2 (i) of this Agreement in writing, the termination of the Agreement shall take effect upon the expiry of the 7th day of the above Notice.

**3.2.2** (i) An extension, without any impact on the Scheduled Commencement of Supply Date (SCSD), may however be considered by SJVN, on the request of HPD (which is to be made prior to such deadline), on payment of Rs. 1000/- per day per MW of the Contracted Capacity to SJVN. Such extension charges are required to be paid by HPD to SJVN in advance, for the period of extension sought for. In case of any delay in depositing the extension charge, HPD shall pay an interest on this extension charge for the days lapsed beyond due date of Financial Closure @ SBI-MCLR (1Year). In case such delay in making payment of the extension charges to SJVN is more than 7 days, the termination of the Agreement shall take effect upon the expiry of such 7th day.

(ii) In case of the HPD meeting the requirements of conditions subsequent and financial closure before the last date of such proposed delay period, the excess amount deposited by the HPD shall be returned by SJVN to HPD without interest.

(iii) The extension given in terms of this Article will not have any impact on the obligation of the HPD to achieve Commencement of Supply of Power by the Scheduled Commencement of Supply Date. Any extension charges paid so by the HPD, shall be

returned to the HPD, without any interest, on achievement of Commencement of Supply of Power within the Scheduled Commencement of Supply Date, on pro-rata basis, based on the Contracted Capacity for supply of power has commenced as on Scheduled Commencement of Supply Date (SCSD). However, in case the HPD fails to commence the supply of power for the Contracted Capacity by Scheduled Commencement of Supply Date (SCSD), the extension charges deposited by the HPD shall not be refunded by SJVN.

(iv) Subject to the above the amount recovered by SJVN under sub-clause (ii) above will be transferred to the Payment Security Fund maintained by SJVN.

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

Further, any delay in adoption of tariff by the Appropriate Commission, beyond the timelines as indicated in Article 2.1.4 shall entail a corresponding extension in the deadline as stipulated in Article 2.1.4.

**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 Commencement of Supply Date.

### **3.3 Performance Bank Guarantee / Payment on Order Instrument**

**3.3.1** The Performance Bank Guarantee (PBG) / Payment on Order Instrument (POI) having validity from the date of submission of PBG/POI until..... (insert validity period as per RfS conditions), submitted for a value of INR 30.65 Lakhs/MW (Rs. 30,65,000/MW) 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 1/2.

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

**3.3.3** If the HPD fails to commence supply of power from the Scheduled Commencement of Supply Date specified in this Agreement or any further extension thereof duly granted by SJVN, subject to conditions mentioned in Article 4.5, SJVN shall encash the Performance Bank Guarantee / Payment on Order Instrument equivalent to the amount calculated as per liquidated damages applicable under Article 4.6 without prejudice to the other rights of SJVN under this Agreement. The damages/dues recovered by SJVN by encashing the PBG/POI, upon the default of the HPD under the PPA, shall be credited to the payment security fund maintained by SJVN.

### **3.4 Return of Performance Bank Guarantee / Payment on Order Instrument**

**3.4.1** Subject to Article 3.3, SJVN shall return / release the Performance Bank Guarantee /

Payment on Order Instrument within 45 days after the successful commencement of supply of power within Scheduled Commencement of Supply Date (SCSD) of the contracted capacity after taking into account any liquidated damages due to delays in Commencement of Supply of power as per provisions stipulated in this Agreement.

- 3.4.2** The return / release of the Performance Bank Guarantee / Payment on Order Instrument shall be without prejudice to other rights of SJVN under this Agreement.

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

### **4.1 Obligations of the Parties**

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

- a) The HPD shall be solely responsible and shall make arrangements for land & associated infrastructure for development of the Project and for Connectivity with the ISTS System (connectivity can be taken by HPD at different Interconnection Points) for confirming the availability of the power system required for evacuation of power by the Scheduled Commencement of Supply Date and all clearances related thereto.
- b) On or before Scheduled Commencement of Supply Date /extended Scheduled Commencement of Supply Date (or date of commencement of supply of power in case of early commencement of supply of power), the HPD shall demonstrate possession/right to use of 100% (Hundred Percent) of the land identified for the RE Project in its name for a period not less than the complete term of this Agreement. In this regard, the HPD shall submit documents/ Lease Agreement to establish possession/ right of use of 100% of the required land in the same of the HPD. Wherever leasing of private land is involved, the lease should allow transfer of land lease rights to the lenders or SJVN, in case of default of the HPD. The HPD shall submit an undertaking in the form of sworn affidavit from the authorized signatory of the HPD listing the details of the land and certifying that total land required for the Project is under clear possession of the HPD.

With respect to demonstration of land possession by the HPD, commissioning of the Project will not be allowed until the demonstration of land possession by the HPD in terms of this Clause and Clause 6.8.4 (v) of the RfS. However, in case of delays in demonstrating land possession by the HPD on account of Government delay (including but not limited to delay in land use pattern change, and/or relaxation under respective State land ceiling Act, and/or land lease permission from State Government/Authorities) or delay caused due to a Force Majeure as per PPA, SCSD shall be suitably extended.

- c) 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. SJVN shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the Hybrid RE Power project. The HPD shall, on his own, obtain permissions/ sanctions from Government authorities, if any required for establishing the project. Any steps that may be taken by SJVN in regard to grant of such consents and permits or any other approval to be taken by the HPD shall only be a voluntary facilitating endeavour on the part of SJVN with no intention of being bound by any legal or binding obligation.

- d) Designing, constructing, erecting, commissioning, completing and testing the Hybrid RE Power project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.
- e) The HPD shall make adequate arrangements to connect the Hybrid RE Power project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point to connect the Power Project switchyard with the Interconnection Facilities at the Delivery Point.
- f) Obtaining Connectivity and executing connectivity agreement as per provision of GNA regulation issued by CERC, for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement. It is further clarified that the Entities (HPD and Buying Entity) as indicated in the Detailed Procedure issued subsequently under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter- State Transmission System) Regulations, 2022 and its amendments, will be responsible for their respective obligation as notified in the Detailed Procedure irrespective of the provisions of the RfS, PPA and PSA.
- g) The commencement of supply of power up to the Contracted Capacity to SJVN no later than the Scheduled Commencement of Supply Date and continuance of the supply of power throughout the term of the Agreement.
- h) Owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;
- i) Maintaining its shareholding pattern as per provisions of the RfS Document. Any change in shareholding pattern shall be dealt as per provisions of RfS Document. It is also to be noted that M/s .....[enter name of the successful bidder which has been awarded LoA by SJVN] shall ensure that its promoters shall not cede control of the bidding company till 01 (ONE) years from the CSD, except with the prior approval of SJVN;

- j) Payment Security Mechanism (PSM) Charges: As part of the Payment Security Mechanism as brought out in the PPA, the HPD shall undertake to pay PSM Charges @Rs. 0.02/kWh to SJVN, by offering a commensurate discount in the monthly tariff payment being made by SJVN.
- k) Fulfilling all obligations undertaken by the HPD under this Agreement and also as per the terms of the RfS
- l) The HPD shall be responsible for directly coordinating and dealing with the corresponding Buying Utility(ies), any other source generator(s), Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of RE Power as well as other RE source power and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the HPD, the any other source Generator(s) and the corresponding Buying Utility(ies) are the Grid connected entities and SJVN as an Intermediary Procurer/ trading licensee is not a Grid connected entity in respect of the Power contracted under this Agreement.
- m) For the respective Solar and Wind Power generations systems, the HPD shall fulfil the technical requirements according to criteria mentioned under Annexure A of the RfS and the applicable Guidelines, including subsequent amendments and clarifications thereof. For the solar PV capacity, the modules used in the Project shall be sourced only from the models and manufacturers included in the List-I under the “Approved List of Models and Manufacturers” as published by MNRE and valid as on the date of invoicing of such modules. In case of wind capacity, the type-certified wind turbine models listed in Revised List of Models and Manufactures (RLMM) issued by MNRE as updated until the date of commissioning of the project will be allowed for deployment under the RfS.
- n) HPD shall be solely responsible for and obligated to ensure that the Project being implemented under this Agreement shall fulfil the criteria as per Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, and subsequent amendments and clarifications thereof,
- o) As part of scheduling of power from the Project, the HPD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces of all the RLDCs concerned for the corridor of power flow, including the RLDC of the Buying Entity(ies), as per the Regulations in force, under intimation to SJVN. The HPD must intimate SJVN in advance (preferably in the first week of

the month), the energy transacted in previous month so that it will help to comply statutory obligations of SJVN as a trading licensee. The HPD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices.

- p) The HPD shall be responsible to for directly coordinating and dealing with the corresponding Buying Utility(ies), Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of power and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the HPD and the corresponding Buying Utility(ies) are the Grid connected entities and SJVN as an Intermediary Procurer/trading licensee is not a Grid connected entity in respect of the power contracted under this Agreement.
- q) Not Used
- r) After signing of PPA, the HPD shall apply for drawl NOC(s) from the respective STU(s) of the State(s) as per the power mapping provided by SJVN.
- s) HPDs shall ensure signing of PPA with SJVN within 30 days from the signing of the PSA with Buying Entity(ies).
- t) The HPD shall submit a detailed completion Schedule for the Project prior to the signing of PPA. Broad details to be captured in the Schedule are the land procurement, grid connectivity; order, supply and erection status of various Project components; financial arrangement/ tie up etc. The HPD shall also submit the progress report to SJVN in a form acceptable to SJVN and shall contain percentage completion achieved compared with the planned percentage completion for each activity, and any such other information as required by SJVN. The HPD shall also furnish, along with the progress report, photographs indicating various stages of project activities.

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

**4.2.1** The HPD shall be required to obtain all information from the STU/CTU/concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection plant and apparatus on the HPD's side of the Delivery Point to enable delivery of electricity at the Delivery Point. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the HPD at its own cost.

**4.2.2** Penalties, fines and charges etc. imposed by the CTU/ STU under any statute or / guidelines

in relation to delay in commissioning/ SCSD of the RE Project shall be entirely dealt by the HPD and any such amounts claimed by such agency(ies) shall be payable by the HPD.

- 4.2.3** The responsibility of getting connectivity with the transmission system up to the Interconnection Point / Delivery point, will lie with the HPD. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the HPD to be obtained at his own cost. The maintenance of Transmission system up to the designated point as per the applicable terms and conditions shall be also the responsibility of the HPD to be obtained at his own cost. All costs and charges including but not limited to the wheeling charges and losses up to and including at the Interconnection Point / Delivery point associated with this arrangement will also be borne by the HPD.. In case an HPD is required to use Intra STS to bring RE power at ISTS point, it may do so as per rule and regulations prescribed by the respective SERC in this regard. The maintenance of transmission system up to the Interconnection Point(s) shall be responsibility of the HPD, to be undertaken entirely at its cost and expense.
- 4.2.4** In case of Pooling substation, losses in the transmission line shall be apportioned among the HPDs who share such a Pooling arrangement and duly signed by all HPDs, based on their monthly generation.
- 4.2.5** The arrangement of connectivity shall be made by the HPD through a transmission line. The entire cost of transmission including cost of construction of line, any other charges, losses etc. from the Project up to the Interconnection Point will be borne by the HPD. In case of non-availability of Grid and Transmission System during Term of this Agreement, for reasons not attributable to the HPD, provisions of Article 4.10 shall be applicable.
- 4.2.6** ISTS charges and losses on transmission of power, including waiver for RE power, shall be applicable as per extant regulations. Government of India/CERC at their sole discretion, from time to time, issue order for waiver of inter-state transmission system (ISTS) charges and losses on transmission of wind and solar power till a certain date. In case the commencement of supply of contracted capacity gets delayed beyond the applicable date of ISTS waiver, arising out of any reasons whatsoever, SJVN shall bear no liability with respect to transmission charges and losses levied, if any. However, in case the commencement of supply of the Hybrid Power gets delayed beyond the applicable date of

waiver of ISTS charges and losses due to reasons solely attributable to the HPD, the liability of inter-state transmission charges and losses would be of the HPD.

Delay in Project commissioning beyond the deadline as stipulated by the Government of India, and treatment of ISTS charges and losses thereof, shall be dealt in line with the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) (First Amendment) Regulations, 2023 dated 07.02.2023, and subsequent amendments and clarifications thereto, as applicable. The provisions of PPA and PSA in regard to liability of the Buying Entity to pay the ISTS charges and losses shall stand modified by such exemption/waiver provided as per the above Order/Office Memoranda and regulations issued by CERC, as applicable.

Subject to the above, the ISTS charges and losses beyond the Delivery Point(s) and upto the drawl point(s), shall be borne by the Buying Utility upon the execution of the relevant PSA.

It is further clarified that even in a scenario wherein one of the RE Project components is ready for commissioning but commissioning of the Other RE gets delayed for reasons solely attributable to the HPD, and as a result, in case commissioning of the Project in terms of the RfS and PPA gets delayed beyond the ISTS-waiver deadline, such ISTS charges and losses for the transmission of RE power, if any, will be levied on the HPD.

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

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

**4.3.2** Power procured from the Projects under this Agreement shall be allocated on back-to-back basis to the Buying Entities at the discretion of SJVN, in consultation with Buying Entities. Any obligation of SJVN being intermediary Procurer shall be deemed to be the obligation of Buying Entity(ies) with which SJVN has / will execute Power Sale Agreement.

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

**4.4.1** Under this Agreement, procurement of contracted capacity shall be in power (MW) terms. The HPD shall offer the Contracted Capacity for supply of Hybrid RE power for scheduling and procurement of power by the Buying Utility as per provisions of this

Agreement. The HPD shall deliver the power to the Buying Utility as scheduled by the Buying Utility on a day ahead basis, as detailed out in Article 6.2 below. Further, the HPD shall be required to offer Hybrid RE power annually in a manner such that the Annual CUF is minimum\_%. The HPD also commits to supply a minimum annual energy of.....MUs corresponding to annual CUF of -----% from RE sources as part of this Agreement. The Buying Utility shall be entitled to use the power from this Project for fulfilment of its RPO in the proportion of contracted capacity of each component in the Project respectively.

The HPDs will be allowed to revise the same once within first Three year after Commencement of Supply of Power Date (CSD), subject to condition that the revised annual CUF shall not be less than 90 % of the CUF initially offered by the HPD and the revised annual CUF shall in no case be less than 30%. Thereafter, the CUF for the contracted capacity shall remain unchanged for the entire term of the PPA. It shall be the responsibility of the HPDs, entirely at its cost and expense set up adequate Hybrid power Capacity as may be necessary to achieve the required CUF. The HPDs shall maintain generation so as to achieve annual CUF within + 20 % and -10 % of the declared value till the end of the PPA duration of 25 years.

The criteria as mentioned above will, however, be relaxable by SJVN to the extent of non-availability of grid for evacuation which is beyond the control of the HPDs, as determined under provisions of Article 4.10.1.

For the first year of operation of the project, the annual CUF shall be calculated based on the first year after Commencement of Supply of Power Date (CSD) of contracted capacity. Subsequently, the annual CUF will be calculated every year from 1<sup>st</sup> April of the year to 31<sup>st</sup> March next year. Similarly, for the last year of operation of the Project, these limits shall be considered for the complete year before the expiry of the PPA.

The Buying Entity shall, in accordance with Applicable Laws and Regulations thereunder, issue instructions to the HPD for production of electricity and despatch thereof to the Grid during such period and in such volume as it may specify in its instructions. Provided that the Entity shall not ask for despatch in excess of the declared Availability by the HPD, unless mutually agreed between the HPD and the Utility.

The HPD shall plan the despatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Electricity Act, 2003 and subsequent amendment thereto.

The scheduling and its punching thereof at different Regional Load Despatch Centres (RLDCs) / State Load Despatch Centres (SLDCs) (including the injecting, intervening and buyer SLDCs / RLDCs) shall be the responsibility of HPD only. The generated energy shall be dispatched through scheduling of power by the buying utility.

It is to be noted that the summation of generation schedule of RE Power by the Procurer from multiple sources and/or locations cannot be more than the Contracted Capacity specified in the RfS or PPA, considering the applicable losses.

- 4.4.2** In case of availability of energy more than the maximum annual CUF, HPD will be free to sell it to any other entity provided the first right of refusal will vest with the Procure(s). The HPD shall be required to intimate SJVN 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 Procure(s) shall provide refusal within 15 days from the receipts of the request, beyond which it would be considered as deemed refusal. In case the Procurer purchases the excess generation, the same shall be purchased **at PPA Tariff** plus SJVN's trading margin (to be paid by the Buying Entity)

The HPD may also sell the power which was offered on day ahead basis to the Procurer (within Contracted Capacity) but not scheduled by the Procurer, to any third party or in power exchange without requiring NOC from the Procurer. However, it may be noted that at any instance of energy supply from the Project, priority shall be accorded to meet the energy requirements as per PPA, before selling any quantum of energy in the open market. The HPD may repower the Project at any stage, if required in order to meet the generation or availability requirement of this Project. However, after repowering, the minimum rated power capacity of each resource shall be at least 33% of Contracted Capacity. Further, any addition to the installed capacity (including solar panels and/or wind turbines) subsequent to commencement of supply of power for the full capacity/part capacity of the Project (as applicable), shall not be eligible for any future claims made by the HPD, seeking compensation on account of any changes in the applicable provisions covered under Change in Law as defined in this Agreement.

In case at any point of time, the power generated from the Wind-Solar Hybrid configuration reached is higher than the Contracted Capacity and causes disturbance in the system at the point where power is injected, the HPD will have to forego the excess generation and reduce the output to the Contracted Capacity to ensure compliance with grid requirement and shall further be liable to pay the penalty/charges (if applicable) as per applicable regulations / requirements / guidelines of CERC / SERC /RLDC/SLDC or any other competent agency.

Any instance of third-party sale of power from the Project by the HPD, while the demand

/ contracted Capacity specified in the PPA remains unfulfilled, shall constitute a breach of HPD's obligations under the PPA and make the HPD liable for penalty @ 1.5 times of extant market rate/kWh (reference rate being the applicable rate on the Indian Energy Exchange (IEX)) for the quantum of such sale.

Any energy produced and flowing into the grid before Scheduled Commencement of Supply Date (SCSD) shall not be to the account of or at the cost of SJVN/ Buying Entity(ies). SJVN may however agree to buy such power at a tariff as agreed to between SJVN and the Buying Entity (including SJVN's trading margin) as per the PSA, provided the Buying Utility consents for purchase of such power.

**4.4.3 Consequences of Shortfall in supplying / offering (as applicable) the Contracted Capacity -**

- i) If for any Contract Year, it is found that the HPD has not been able to supply minimum energy corresponding to the value of annual CUF within the permissible lower limit of CUF declared by the HPD, on account of reasons primarily attributable to the HPD, such shortfall in performance shall make the HPD liable to pay the liquidated damages as per criteria mentioned below at Clause 4.4.3 (ii) below.
- ii) In case of shortfall in the supply of energy corresponding to minimum CUF as specified in Clauses 4.4.3 (i), for reasons attributable to HPD, the HPD shall be liable to pay to the Procurer, penalty for such shortfall in supply of energy. Penalty for not meeting the stipulated supply of energy shall be equal to one and a half times the tariff for the number of units not supplied, which in turn, shall be remitted to the Buying Entity. The penalty as per above shall be applied on the amount of shortfall in generation from the Project during any Contract Year. It is clarified that the shortfall in energy supply will be calculated based on the total annual energy commitments, and not on the solar and wind energy units as indicated above.

**An illustration to this effect is attached at Schedule-4.**

- iii) The performance criteria as per Clause 4.4.3 (i) above shall not be applicable for the Contract Year ending on 31st March immediately after SCSD of the contracted capacity.

**4.4.4** The detailed list of documents required for verification of energy supply and performance of the Projects will be intimated to the Developers subsequent to commissioning. For each Contract Year, the above data will be required to be submitted by the respective Developers to SJVN within 30 days after expiry of the previous Contract Year, for verification of the performance parameters for calculating applicable compensation on account of shortfall.

- 4.4.5** The HPD agrees that the methodology specified hereinabove for calculation of compensation in the form of liquidated damages payable by the HPD for shortfall in generation, and/or the shortfall in RE power is a genuine and accurate pre-estimation of the actual loss that will be suffered by SJVN / Buying Entities. HPD shall further acknowledge that a breach of any of the obligations contained herein result in injuries and that the amount of the damages or the method of calculating the damages specified in this document is a genuine and reasonable pre-estimate of the damages that may be suffered by the SJVN / Buying Entities in each case specified under this Agreement.
- 4.4.6** The parties agree that damages shall not be applicable in events of Force Majeure identified under the PPA, affecting supply of power by the HPD. HPD shall not be liable to pay any damages whatsoever including consequential damages for any shortfall in generation in excess of what becomes payable under Article 4.4.3. It is also clarified that the shortfall in energy supply will be calculated based on the total annual energy commitments.

#### **4.5 Extensions of Time**

- 4.5.1** In the event that the HPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commencement of Supply Date due to:

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

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

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

- i) The HPD has complied with the complete application formalities as per RfS,
- ii) The HPD has adhered to the applicable Procedure in this regard as notified by the CERC/CTU, and
- iii) The delay in operationalization of GNA and/or delay in readiness of the ISTS substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the ISTS network, is solely attributable to the CTU/transmission licensee and is beyond the control of the HPD;

The above shall be treated as delays beyond the control of the HPD and SCSD for such Projects shall be revised as the date as on 60 days subsequent to the readiness of the

Delivery Point and power evacuation infrastructure and/or grant/operationalization of GNA. Decision on requisite extension on account of the above factor shall be taken by SJVN.

In case of delay in commissioning of Project due to reasons beyond the reasonable control of the RPD, SJVN may extend the SCSD after examining the issue on a case-to-case basis. In case of change in Project location(s) by the RPD, extension requests under this clause shall be dealt by SJVN on case-to-case basis. For avoidance of ambiguity, it is clarified that for decisions made under this Clause, the phrase “change in Project location” or its similar connotations, shall refer solely to change in Delivery Point(s) of the Project.

In case of multiple project components, and in case one of the Project components (wind or solar PV) is ready for injection of power into the grid, but the remaining component is unable to get commissioned, the HPD will be allowed for commissioning of such component which is ready outside the ambit of the SJVN-HPD PPA, and the HPD at its sole discretion, may sell such power to any third party till the operationalization of GNA. Following should be noted under this scenario:

- a) First right of refusal for such power shall vest with Buying Entity, and if agreed by Buying Entity, power procurement from such component will be undertaken at up to 75% of the Applicable Tariff as per the SJVN-HPD PPA. In case the same is procured through SJVN, trading margin of 7 paise/unit will be applicable on such power procurement.
- b) Subsequent to refusal of such power by the Buying Entity, the second right to refusal shall vest with SJVN. In this case if SJVN buys it outside the PPA then the same shall be bought at up to 75% of the Applicable Tariff as per PPA. Trading margin of 7 paise/unit will be applicable on such power procurement.
- c) The above scenario does not qualify under the provisions of Part/Early Commencement of supply of power under the RfS, PPA and PSA. This is a special case wherein in case a project component is ready, the generation from such component is not wasted.
- d) The terms “SCSD” and “Commencement of supply of power” as per the RfS, PPA and PSA will not be applicable for such component. Commissioning/injection of power from such component will be allowed only if the same is allowed as per the applicable regulations.

The above scenario will be applicable until the HPD is ready for commencement of supply of power from the Project as per the provisions of “Early and/or Part Commencement of Supply of Power” of the Project.

- 4.5.3** In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of 180 days from the date of the Force Majeure Notice, this Agreement may be terminated as per the provisions of Article 11.10 of this Agreement.
- 4.5.4** If the HPD and SJVN 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 Commencement of Supply Date or the Expiry Date should be deferred, either Party may raise the Dispute to be resolved in accordance with Article 16.
- 4.5.5** As a result of such extension on account of Article 4.5.1 or Article 4.5.2, the newly determined Scheduled Commencement of Supply Date and newly determined Expiry Date shall be deemed to be the Scheduled Commencement of Supply Date and the Expiry Date for the purposes of this Agreement.
- 4.5.6** Further, any delay in adoption of tariff by the Appropriate Commission, beyond 60 days of submission of petition for adoption of tariff before the Appropriate Commission or 120 days from the date of signing of PSA, whichever is more, shall entail a corresponding extension in the SCSD, in line with provisions of Article 2.1.4 of this Agreement.
- 4.5.7** Delay in commissioning of the project beyond the Scheduled Commencement of Supply Date for reasons other than those specified in Article 4.5.1 & Article 4.5.2 shall be an event of default on part of the HPD and shall be subject to the consequences specified in the Article 4.6.

#### **4.6 Liquidated Damages not amounting to penalty for delay in Commencement of Supply of Power**

**4.6.1** The Project shall be fully commissioned and HPD shall commence supply of power of contracted capacity within the SCSD as defined in this Agreement. If the HPD is unable to commence the supply of power by the SCSD for any of the reasons other than those specified in Article 4.5.1, and 4.5.2, the HPD shall pay to SJVN, damages for the delay in such commissioning and making the Contracted Capacity available for dispatch by the SCSD as per the following:

- a) For Delay in commencement of supply of power up to (and including) 06 (six) months after SCSD/Extended SCSD, encashment of Performance Bank Guarantee (PBG)/POI, on per day basis and proportionate to the contracted capacity that has not commenced supply of power.

In case of calculation of liquidated damages, a 'month' shall comprise 30 days. For example, in case of a Contracted Capacity of 640 MW capacity, if commissioning of 100 MW capacity is delayed by 18 days beyond the SCSD, then the liquidated damages shall be: PBG/ POI amount X (100/640) X (18/180).

- b) For avoidance of doubt it is clarified that provisions of Article 4.6.1 will be applicable even in cases where no capacity (**i.e. 0 MW**) is commissioned.

**4.6.2** The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee / POI shall be limited to 06 months after the SCSD/extended SCSD of the Project. In case, the commencement of supply of power for contracted capacity is delayed beyond 06 months after the SCSD/extended SCSD of the Project, the Contracted Capacity shall stand reduced / amended to the capacity for which power supply has commenced until the date as on 06 months after the SCSD/extended SCSD of the project and the PPA for the balance capacity will stand terminated and shall be reduced from the Contracted Capacity.

However, SJVN has the full right to give extension to HPDs beyond the time line as mentioned above in case reason of delay is beyond the reasonable control of HPD.

**4.6.3** The HPD acknowledges and accept that the methodology specified herein above for calculation of liquidated damages payable by the HPD is a genuine and accurate pre-estimation of the actual loss that will be suffered by SJVN. HPD further acknowledges that a breach of any of the obligations contained herein result in injuries and that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the SJVN in each case specified under this Agreement.

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

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

**4.7.2** The date of onset of commercial offtake of power by SJVN/Buying Entity shall be determined as the date of commencement of power supply under the RfS/PPA. Prior to declaration of commencement power supply, the HPD shall submit COD certificate for the corresponding Installed Capacity to SJVN as part of the requisite documents.

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

**4.8.1** The HPD shall be further required to provide entry to the sites of the Project (from which power under this Agreement is being made available) free of all encumbrances at all times during the Term of the Agreement to SJVN and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the HPD at the site of the Power Project. The HPD shall provide full support to SJVN and/or the third party in this regard

**4.8.2** The third party may verify the construction works/operation of the Project being carried out by the HPD and if it is found that the construction works/operation of the project is not as per the Prudent Utility Practices, it may seek clarifications from HPD or require the works to be stopped or to comply with the instructions of such third party.

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

**4.9.1** Except as specifically provided under Article 4.4.2 & 4.10.1 (b), the Parties herein agree that during the subsistence of this Agreement, subject to SJVN being in compliance of its obligations & undertakings under this Agreement, the HPD would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity of power which is the subject matter of this Agreement. It is the specific understanding between the Parties that such bar will apply throughout the entire term of this Agreement.

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

If the Procurer does not off-take power scheduled by HPD, the penalty shall be in accordance with the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021, as amended from time to time.

**4.10.1** 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 HPD. In such cases the generation compensation shall be addressed by the Buying Entity in following manner:

<b>Duration of Grid unavailability</b>	<b>Provision for Generation Compensation</b>
Grid unavailability beyond 50 hours in a Contract Year, as defined in SJVN- HPD PPA	<p>Generation Compensation = (Tariff x RE power (MW) offered but not scheduled by Procurer) X 1000 X No. of hours of grid unavailability.</p> <p>However, in case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realized, after deducting expenses, shall be adjusted against the Generation compensation payable, on monthly basis.</p>

The above compensation will be paid to the HPD on an annual basis.

**4.10.2** Payment in case of reduced offtake:

In case the plant is available to supply power but the off take of power is not done by the Buying Entity / procurer, including non-dispatch of power due to noncompliance with “Electricity (late payment surcharge and related matters) rules, 2022 notified by the ministry of power vide gazette notification dated 3rd june 2022” and any clarifications or amendment thereto, considering the principle of ‘must run’ status for RE power in accordance with the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021, as amended from time to time, the procurer shall pay to the HPD, corresponding to the reduced off take, in terms of following manner:

<b>Reduced offtake</b>	<b>Provision for Generation Compensation</b>
Reduced off-take beyond 50 hours in a year, as defined in the PPA	<p><b>Generation Compensation =</b> (Tariff x RE power (MW) offered but not scheduled by Procurer) X 1000X No. of hours of Reduced Offtake</p> <p>However, in case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realized, after deducting expenses, shall be adjusted against the Generation compensation payable, on monthly basis.</p>

Tariff shall be the Tariff as per Article 9.

The HPD shall be eligible for payment from the Buying Entity, corresponding to the reduced offtake of Power as per above mentioned methodology. The Payment is to be done as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA) / SEA. No Trading Margin shall be applicable on this Payment.

It is hereby clarified that for the purpose of Article 4.10 “generation” shall mean scheduled/actual energy as applicable based on Energy Accounts. The HPD shall not be eligible for any compensation in case the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions or Force Majeure.

**4.10.3** For claiming compensation, the HPD must sell their power in the power exchange as a price taker. Thus, the compensation would be limited to the difference of the actual generation up to declared capacity subject to a maximum of up to the contracted capacity and the quantum of power scheduled by the Buying Utility.

## **ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMENCEMENT OF SUPPLY OF POWER**

### **5.1 Synchronization, Commissioning and Commencement of Supply of Power**

- 5.1.1** The HPD shall give the concerned RLDC/SLDC and SJVN and also to the Buying Entity at least sixty (60) days' advanced preliminary written notice and at least thirty (30) days' advanced final written notice, of the date on which it intends to synchronize the Hybrid RE Power project to the Grid System.
- 5.1.2** Subject to Article 5.1.1, the Hybrid RE Power project may be synchronized by the HPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect including providing reactive power compensator etc. in line with Working Committee report (July 2022) of CEA/applicable rules, regulations in this regard 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 Hybrid RE Project and transmission of data to the concerned authority as per applicable regulations shall be installed by the HPD at its generation facility at its own cost. The HPD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the Authorized official(s) of the concerned substation/Grid System and checking/verification is made by the concerned authorities of the Grid System, in line with the provisions of the Grid Code.
- 5.1.4** The HPD shall immediately after each synchronization /tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected and all other concerned authorities in accordance with applicable Grid Code under intimation to SJVN and "End Procurer" (s). In-addition the HPD may inject power into grid from time to time to carry out operational/ functional test prior to declaration of part/full commissioning subject to applicable laws and regulations at the project site. SJVN shall not be liable to pay any price to HPD for such infirm Power injected. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commencement of Supply of power of the Project.
- 5.1.5** The HPD shall commission the Project in line with provisions of the Grid Code. It is clarified that SJVN shall bear no responsibility in declaration of commissioning/COD of the Project. SJVN's scope will be limited to verifying the installation of rated capacity(ies)

of the Project, with respect to the committed Installed Capacity as part of the PPA. This verification will be at SJVN's discretion and shall not constitute any certification/confirmation of Commissioning/COD of the Project by SJVN. The date of onset of commercial offtake of power by SJVN/Buying Entity shall be determined as the date of commencement of power supply under the RfS/PPA. Prior to declaration of commencement of power supply, HPD shall submit Commissioning/COD certificate for the corresponding Installed Capacity which has commenced power supply to SJVN as part of the requisite documents.

The HPD shall submit requisite documents at least 30 days prior to trial run of the Project, including but not limited to the following:

- i. Intimation regarding the proposed timeline for commencement of supply of power from the Project.
- ii. Copy of CON-4 report submitted to CTU.
- iii. CEI/CEIG (as applicable) report containing approval for all the components, including modules, WTGs, inverters, transformers, Transmission system and protection system, along with all annexures/attachments. It would be the responsibility of the HPD to obtain the certificate.
- iv. Approval of Metering arrangement/scheme from CTU/GRID INDIA/ any other concerned authority as applicable
- v. Plant Layout, Plant (AC & DC) SLD
- vi. Affidavit certifying that the HPD has obtained for all the necessary approvals for commencement of power supply from the Project, and indemnifying SJVN against any discrepancies in the above details.
- vii. Affidavit from the HPD certifying possession of land identified for the Project, bearing the details of such land parcels where Project is located, and indemnifying SJVN against any discrepancies in the above details.
- viii. Documents to establish the compliance of technical requirement as per PPA/RfS.
- ix. Invoices against purchase of the solar modules, WTGs, Inverters/PCUs, WMS, SCADA and DC cables along with the summary sheet containing the list of all the invoices, inverters including details and number of items. Lorry Receipts for delivery of solar modules, WTGs and inverters at site along with certified summary sheet by the authorized signatory.
- x. In addition to the above, the HPD shall provide coordinates of WTGs, KML files for the Solar PV component (specifying each block), details of energy storage systems, if any, RLMM/ALMM certificates (as applicable), insurance documents of Project etc.

#### **5.1.6 Early Commencement of Supply of Power:**

- i) The HPD shall be permitted for full as well as part-commencement of power supply from the Project even prior to the SCSD, subject to availability of connectivity and General

Network Access. Early commencement of power supply will be allowed solely

at the risk and cost of the HPD, and first right of refusal for offtake of such power will vest with the Buying Entity. Such intimation for early commissioning shall be provided to SJVN at least 60 days before the proposed early commissioning date. SJVN/ Buying Entity(ies) shall provide refusal within 15 (fifteen) Days from the receipt of the request, beyond which it would be considered as deemed refusal. The 15-days period will be applicable separately for SJVN and the Buying Entity. In case the Buying Entity refuses to buy such power, the right of refusal shall vest with SJVN. In case Buying Entity/SJVN agrees to purchase power from such early part/full commencement of power supply prior to SCSD, such power will be purchased at the PPA tariff plus SJVN's trading margin (to be paid by the Buying Entity(ies)). In case SJVN/ Buying Entity(ies) does not agree to purchase such energy, early part/full commissioning of the Project shall still be allowed and the HPD will be free to sell such energy to a third party; subject to grant of connectivity and GNA, until SCSD or the date of commencement of procurement of power from the Project as notified by SJVN whichever is earlier.

Even in case of early part commissioning or early full commissioning, the PPA will remain in force for a period of 25 (twenty-five) years from the SCSD/Extended SCSD, whichever is later.

- ii) In order to facilitate early completion of the RE Project, the HPD is allowed to inject power from the RE components. Such commissioning/injection of power from the RE component will be allowed in line with the provisions of Article 4.2.6 above, and will not be treated as Project commissioning as per the provisions of the RfS, PPA and PSA.

#### **5.1.7 Part Commencement of supply of Power:**

- i) Part Commencement of Supply of Power of the Project shall be accepted by SJVN subject to the condition that the Minimum Capacity for acceptance of commencement of supply of power shall be 50% of Project Capacity or 50 MW whichever is lower, without prejudice to the imposition of penalty, in terms of the PPA on the part which has not yet commenced supply of power. However, in case of inter-state project, minimum capacity for acceptance of commencement of supply of power shall be at least 50 MW. The projects can further commence supply of power in parts of at least 10 MW capacity; with last parts as the balance capacity.
- ii) In case of part commencement of power supply under the PPA, it shall be mandatory to demonstrate commencement of power supply from both solar and wind capacities in proposed ratio on pro-rata basis, otherwise the Project shall not be considered to have commenced power supply under the PPA. In other words, it is clarified that

commencement of supply of power of a single component or having a composition lower than the above required percentage, shall not construe part-commencement of power supply from the Hybrid Project.

- iii) Based on the declaration of commissioning/COD of Project components as submitted by the HPD, Contracted Capacity to be declared as having commenced power supply under the PPA (part/full) shall be calculated as follows:

Commissioned Capacity = Least of  $(A/S \times C, W/B \times C)$

where,

C: Contracted Capacity (MW) awarded to the HPD;

S: Rated capacity (MW) of Solar PV component as per LoA (or revised rated capacity in line with provision of the RfS);

W: Rated capacity (MW) of Wind component as per LoA (or revised rated capacity in line with provision of the RfS);

A: Installed capacity (MW) of Solar PV component; and

B: Installed capacity (MW) of Wind component.

However, the SCSD will not get altered due to part-commencement of supply of power. Irrespective of dates of part or full commencement of supply of power, the PPA will remain in force for the period specified in the bid. Irrespective of dates of part commencement of supply of power, the PPA will remain in force for a period of 25 years from the Scheduled Commencement of Supply Date or the date of commencement of full contracted Capacity, whichever is later.

- iv) In case of multiple project components and if one or more such component (wind or solar) is ready for injection of power into the grid, but the remaining component is unable to commence supply of power, the Generator will be allowed to commence supply of power from such component which is ready outside the ambit of PPA, with first right of refusal for such power being vested with the End Procurer. Subsequent to refusal of such power by the End Procurer, the right of refusal shall vest with the Intermediary Procurer. In case the Procurer/ Intermediary Procurer decides to buy such discrete component(s) power outside the PPA, such power shall be purchased at up to 75% of the PPA Tariff plus SJVN's trading margin for the applicable Contract Year or specific provisions in this regard will be stipulated in the tender documents.

Following should be noted under this scenario:

- i) First right of refusal for such power shall vest with Buying Entity and if agreed by Buying Entity, power procurement from such component will be undertaken 75% of the Applicable Tariff as per PPA. In case the same is procured through SJVN, trading margin of 7 paise/unit will be applicable on such power procurement.
- ii) Subsequent to refusal of such power by the Buying Entity, the second right to refusal shall vest with SJVN. In this case if SJVN buys it outside the PPA then the same shall be bought at 75 % of the Applicable Tariff as per PPA. Trading margin

of 7 paise/unit will be applicable on such power procurement.

- iii) The above scenario does not qualify under the provisions of Part commencement of supply of power under the RfS, PPA and PSA. This is a special case wherein in case a project component is ready, the generation from such component is not wasted.
- iv) The terms “SCSD” and “Commencement of supply of power” as per the RfS, PPA and PSA will not be applicable for such component. Commissioning/injection of power from such component will be allowed only if the same is allowed as per the applicable regulations.
- v) The above scenario will be applicable until the HPD is ready to commence supply of power from the Project as per the provisions of “Early and/or Part commencement of supply of power” from the Project.

**5.1.8** Not used

**5.1.9** In case of availability of energy more than the maximum annual CUF, HPD will be free to sell it to any other entity provided the first right of refusal will vest with the Procure(s). The Procure(s) shall provide refusal within 15 days from the receipts of the request, beyond which it would be considered as deemed refusal. In case the Procurer purchases the excess generation, the same shall be purchased at PPA tariff plus SJVN’s trading margin (to be paid by Buying Entities).

The HPD may also sell the power which was offered on day ahead basis to the Procurer (within Contracted Capacity) but not scheduled by the Procurer, to any third party or in power exchange without requiring NOC from the Procurer. However, it may be noted that at any instance of energy supply from the Project, priority shall be accorded to meet the energy requirements as per PPA, before selling any quantum of energy in the open market.

The HPD may repower the Project at any stage, if required in order to meet the generation or availability requirement of this Project. However, after repowering, the minimum rated power capacity of each resource shall be at least 33% of Contracted Capacity.

In case at any point of time, the power generated from the Wind-Solar Hybrid configuration reached is higher than the Contracted Capacity and causes disturbance in the system at the point where power is injected, the HPD will have to forego the excess generation and reduce the output to the Contracted Capacity to ensure compliance with grid requirement.

Any instance of third-party sale of power from the Project by the HPD, while the demand / contracted Capacity specified in the PPA remains unfulfilled, shall constitute a breach of RPD’s obligations under the PPA and make the RPD liable for penalty @1.5 times of extant market rate/kWh (reference rate being the applicable rate on the Indian Energy Exchange (IEX)) for the quantum of such sale.

**5.1.10** The SJVN & HPD agree that for the purpose of commencement of the supply of electricity by HPD to SJVN, liquidated damages for delay etc., the Schedule Commencement of Supply Date (SCSD) / Extended SCSD as defined in this Agreement shall be the relevant date.

**5.1.11** The HPDs will be free to reconfigure and repower various components of the Hybrid configuration from time to time during the PPA duration, pursuant to Clause 6.7.3 of the RfS. However, SJVN will be obliged to buy power only upto the Contracted Capacity as per this Agreement.

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

### **6.1 Dispatch and Scheduling**

- 6.1.1** The HPD shall be entirely responsible and shall be required to declare the Declared Capacity for the Hybrid RE Project and arrange for dispatch of Contracted Capacity in a composite manner under this Agreement as per the applicable regulations / requirements / guidelines of CERC / SERC /SLDC / RLDC or any other competent agency and same being recognized by the RLDC / SLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/Grid Code requirements and directions, if any, as specified by concerned SLDC/RLDC from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the HPD.
- 6.1.2** The HPD shall be responsible for directly coordinating and dealing with Buying Entity(ies), Regional Load Dispatch Centres, State Load Dispatch Centres, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the HPD and Buying Entity are the Grid connected entities and SJVN as an Intermediary Procurer/ trading licensee is not a Grid connected entity in respect of the power contracted under this Agreement.
- 6.1.3** The HPD shall be responsible for any deviation from scheduling and for any resultant liabilities on account of charges for deviation as per applicable prevailing regulations. For Hybrid RE component of the total power supplied, DSM as per RE regulations / guidelines / directions shall be applicable. Deviation Settlement Mechanism (DSM) charges on this account shall be directly paid by the HPD.
- 6.1.4** Auxiliary power consumption will be treated as per the concerned Central/ State regulations.
- 6.1.5** It is to be noted that the summation of generation schedule of Hybrid RE Power cannot be more than the Contracted capacity in any 15 minutes' time-block.

### **6.2 Dispatch of Contracted Capacity**

- 6.2.1** The HPD shall install, operate and maintain the Hybrid RE Project such that the Hybrid RE Power as per the parameters stipulated in this Agreement and RfS (Annual CUF) is supplied during each Contract Year for the entire Term of this Agreement.
- 6.2.2** Not Used.
- 6.2.3** The Buying Utility shall, in accordance with Applicable Laws and Regulations thereunder, issue instructions to the HPD for schedule of electricity and dispatch thereof to the Grid during such period and in such volume as it may specify in its instructions (the “**Dispatch**”). Provided that the Utility shall not as for dispatch in excess of the declared Availability by the HPD, unless mutually agreed between the HPD and the Buying Utility(ies).
- 6.2.4** The HPD shall plan the production and Dispatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC, as the case may be, and shall supply electricity in accordance with the provisions of the Grid Code and the Electricity Act, 2003 (as amended) etc.
- 6.2.5** HPD agrees and undertakes that the fundamental and mandatory obligation of the HPD under this Agreement is to make available the Contracted Capacity in the manner specified under this Agreement to provide Hybrid RE Power (Annual basis) to the buying utility.
- 6.2.6** Not Used.
- 6.2.7** For deviations from schedule, the DSM (Deviation Settlement Mechanism) shall be applicable as per the prevailing regulations. For RE component of the total power supplied, DSM as per RE regulations shall be applicable. The DSM charges at the generation ends shall be settled by the HPD.

### **6.3 Supply Obligation of the HPD**

In case the HPD fails to offer the contracted power as per this Agreement to SJVN/Buying Entity and sells the contracted power without its consent to any other party, the HPD, on a complaint to this effect by SJVN/Buying Entity to the load dispatch centre concerned, shall be debarred from participating in Power Exchanges and on the Discovery of Efficient Electricity Pricing portal and scheduling of any new short-term contracts from the Project for a period of three months from the date on which the default has been taken cognizance by the concerned load dispatch centre. The period of debarment

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shall increase to six months for second default and shall be one year for each successive default. Such debarment of the HPD shall be without prejudice to the rights of SJVN/Buying Entity for seeking compensation for the default by the HPD under this Agreement.

## **ARTICLE 7: METERING**

### **7.1 Meters**

- 7.1.1** For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the HPD and SJVN shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.
- 7.1.2** The HPD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at HPD 's side of Delivery Point.
- 7.1.3** In addition to ensuring compliance of the applicable codes, the HPD shall install Main & Check meters at the Delivery Point, along with Stand-by meter(s) as per the applicable Central/State regulations. Further, it shall be the obligation and responsibility of the HPD, to ensure metering arrangement at any other source component in compliance with the Applicable Regulations, Guidelines & Laws and as per the requirement of this Agreement.
- 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 as per relevant regulation/approvals are also to be set up at pooling substation for individual projects in addition to the meters at Delivery Point as described in Article 7.1.3.

Further, each project components (viz. Wind / Solar) shall have separate metering arrangement for metering of source wise energy generation for meeting the respective RPO Obligations as applicable.

### **7.2 Reporting of Metered Data and Parameters**

- 7.2.1** The grid connected RE power plants will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the RE Project.
- 7.2.2** Online arrangement would have to be made by the HPD for submission of above data from RE Project regularly for the entire period of this Power Purchase Agreement to the RLDC, SLDC, SJVN and the concerned Ministry or concerned agency asper applicable

regulation / directions. Further, HPD shall also be responsible for ensuring online arrangement for submission of all required data for the Contracted Capacity as per provisions of this Agreement during entire Term of this Agreement as per applicable guidelines, regulations, laws to RLDC, SLDC, SJVN and the concerned Ministry or concerned agency.

**7.2.3** Reports on above parameters on monthly basis (or as required by regulation / guidelines) shall be submitted by the HPD to Ministry of New and Renewable Energy/SJVN/or authorized agency of SJVN/ MNRE for entire Term of this Agreement.

**7.2.4** In addition to the abovementioned data, the HPD shall also be required to submit information, as required by SJVN, for regular monitoring of status of the Project.

## **ARTICLE 8: INSURANCES**

### **8.1 Insurance**

**8.1.1** The HPD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, Insurances against such risks to keep the RE Project in good condition and shall take Industrial All Risk insurance policy /Mega /any Suitable Insurance policy as per Market practices / as deemed fit by HPD covering risks against any loss or damage, with such deductibles and with such endorsements and co- insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements, Implementation and Support Agreement (if applicable) and under the applicable laws.

### **8.2 Application of Insurance Proceeds**

**8.2.1** In case of the RE 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 RE 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 Hybrid RE Power project or any part of the Hybrid RE Power project shall be applied as per such Financing Agreements.

**8.2.2** If a Force Majeure Event renders the Hybrid RE Power project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, SJVN shall have claim on such proceeds of such Insurance limited to outstanding dues of SJVN against the Buying Utility(ies) as per PSA entered into and any other dues of the Buying Utility(ies) against HPD.

### **8.3 Effect on liability of SJVN**

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

**ARTICLE 9: APPLICABLE TARIFF**

- 9.1 The HPD shall be entitled to receive the Tariff of Rs..... / kWh [Insert the Tariff discovered through the bidding process conducted by SJVN], fixed for the entire term of this Agreement with effect from the SCSD/Extended SCSD/ Actual Commencement of Supply Date, for the power sold by the Buyer to the Buying Entity for the scheduled energy as reflected in the Energy Accounts.
- 9.2 In case of early part/full commencement of power supply from the project, till SCSD as per provision stipulated under Article 5.1.6, the HPD will be free to sell the electricity generated, to any entity other than the SJVN/ Buying Entity(ies), only after giving the first right of refusal to the SJVN/Buying Entity(ies). In case SJVN/Buying Entity agree to purchase such power from a date prior to the SCSD, such power shall be purchased at the Applicable Tariff plus SJVN's trading margin (to be paid by the Buying Entity(ies)).
- 9.3 Any excess generation over and above energy specified in Article 4.4.1, will be purchased by SJVN at the Applicable Tariff, and provided the Buying Entity consents for purchase of such excess generation. Any energy produced and flowing into the grid before SCSD shall not be at the cost of SJVN. SJVN may agree to buy such power provided Buying Entity consents to purchase such energy at Applicable Tariff plus SJVN's Trading margin.

However, the HPD will not be allowed to sell energy generated prior to SCSD or excess energy during any Contract Year to any other entity other than SJVN (unless refused by SJVN).

The HPD may also sell the power which was offered on day ahead basis to the Procurer (within Contracted Capacity) but not scheduled by the Procurer, to any third party or in power exchange without requiring NOC from the Procurer as per provision of Article 4.4.2.

- 9.4 During any Contract Year the HPD shall also be obliged to achieve the supply of energy corresponding to the CUF quoted by HPD. Non-compliance of any of aforementioned provision shall attract damages as per Article 4.4.3 of this Agreement. The Buying Utility shall be entitled to use the RE power supplied under this Agreement for fulfilment of its RPO of each RE component respectively.
- 9.5 In case of multiple project components, and if one or more such component (wind or solar) is ready for injection of power into the grid, but the remaining component is unable to commence supply of power, the Generator will be allowed to commence supply of power from such component which is ready outside the ambit of PPA, with first right of refusal for such power being vested with the End Procurer. Subsequent to refusal of such power by the End Procurer, the right of refusal shall vest with the Intermediary Procurer. In case the Procurer/ Intermediary Procurer decides to buy such discrete component(s) power outside the PPA, such power shall be purchased at 75% of the PPA Tariff plus SJVN's trading margin for the applicable Contract Year or specific provisions in this regard will be stipulated in the tender documents.

Following should be noted under this scenario:

- a) First right of refusal for such power shall vest with Buying Entity and if agreed by Buying Entity, power procurement from such component will be undertaken 75% of

the Applicable Tariff as per PPA. In case the same is procured through SJVN, trading margin of 7 paise/unit will be applicable on such power procurement.

- b) Subsequent to refusal of such power by the Buying Entity, the second right to refusal shall vest with SJVN. In this case if SJVN buys it outside the PPA then the same shall be bought at 75 % of the Applicable Tariff as per PPA. Trading margin of 7 paise/unit will be applicable on such power procurement.
- c) The above scenario does not qualify under the provisions of Part commencement of supply of power under the RfS, PPA and PSA. This is a special case wherein in case a project component is ready, the generation from such component is not wasted.
- d) The terms “SCSD” and “Commencement of supply of power” as per the RfS, PPA and PSA will not be applicable for such component. Commissioning/injection of power from such component will be allowed only if the same is allowed as per the applicable regulations.

The above scenario will be applicable until the HPD is ready to commence supply of power from the Project as per the provisions of “Early and/or Part commencement of supply of power” from the Project.

- 9.6 Monthly energy billing will be computed based on the Applicable Tariff, and payments will Be made accordingly.

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

### **10.1 General**

- 10.1.1** Pursuant to Article **4.1.1 (j)**, SJVN shall set up a payment security fund for Wind Solar Hybrid RE Projects in order to ensure timely payment.
- 10.1.2** From the commencement of supply of power, SJVN shall pay to the HPD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with Article 9. All Tariff Payments by SJVN shall be in Indian Rupees.
- 10.1.3** For the purpose of payment of the bills raised by the HPD(s), in case Energy Account is published on cumulative basis, payment to the HPD(s) for the energy delivered shall be apportioned based on REA/SEA/JMR taken for the HPD's Project at the Pooling substation/metering Point.
- 10.1.4** The HPD shall be required to make arrangements and payments for import of energy and other charges (if any) required for supply / offer of the contracted capacity under this Agreement as per applicable regulations.
- 10.1.5** Not used
- 10.1.6** The Parties acknowledge and accept that the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified vide G.S.R 416(E) on 03.06.2022 by the Central Government in exercise of the power conferred by Sub-section (1) of Section 176 of the Electricity Act, 2003 shall apply and govern the terms and conditions of this Agreement in regard to matters contained in the said Rules including but not limited to the Late Payment Surcharge, adjustment towards the Late Payment Surcharge, Payment Security mechanism- its operations and consequences, actions of Defaulting Entities, supply obligation of HPD, power not requisitioned by the Buying Entity, the order of payment and adjustment towards late payment surcharge and indemnification. In case of any inconsistency in the Guidelines and/or the provisions of this Agreement, with the provisions of the above Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 will supersede and be applicable and govern the terms and conditions of this Agreement. The above shall apply both in regard to the present agreement as well as on mutatis mutandi and back-to-back basis to the PSA. The Rules referred to hereinabove being statutory shall, to the extent applicable, supersede any provisions in this Agreement and the PSA which are inconsistent or contrary to the provisions of the Rules.

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

**10.2.1** The HPD shall issue to SJVN hard copy of a signed Monthly Bill/Supplementary Bill for the immediately preceding Month/relevant period based on the issuance of Energy Accounts/ JMR along with all relevant documents (payments made by HPD for drawl of power, payment of reactive energy charges, Metering charges or any other charges as per guidelines of SERC/CERC, if applicable).

Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RPC/SLDCs/ JMR or any other competent authority which shall be binding on both the Parties. The Monthly Bill amount shall be the product of the energy as per Energy Accounts and the Applicable Tariff. Energy drawn from the grid will be regulated as per the regulations of respective State the Project is located in.

**10.2.2** HPD may raise Monthly bill based on the provisional REA published at RPC of the Buying Entity, the final adjustments in bill, if any, may be done on the basis of the final REA along with Debit/Credit Note. The Monthly Bill amount shall be the product of the energy as per Energy Accounts and the Applicable Tariff.

**10.2.3** The HPD shall issue the monthly Bill by deducting the discount of Rs.0.02/kWh as per Article 10.1.1 (strike out if not applicable), and 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. Energy drawn from the grid will be regulated as per the applicable Central/State regulations and other relevant document as desired.

**10.2.4** As per applicable regulation(s) of the Appropriate Commission(s)/respective SERC(s), all charges pertaining to obtaining open access and scheduling of power, if any, upto the Delivery Point(s), shall be borne by the HPD.

## **10.3 Payment of Monthly Bills**

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

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

i) deductions required by the Law; and

ii) amount claimed by SJVN, if any, from the HPD, will be adjusted from the monthly energy payment. In case of any excess payment adjustment, 1.25% surcharge will be

applicable on day-to-day basis.

The HPD shall open a bank account (the "HPD's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by SJVN to the HPD and notify SJVN of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. SJVN shall also designate a bank account at New Delhi ("SJVN Designated Account") for payments to be made by the HPD to SJVN, if any, and notify the HPD of the details of such account ninety (90) Days before the Scheduled Commencement of Supply Date. SJVN and the HPD shall instruct their respective bankers to make all payments under this Agreement to the HPD's Designated Account or SJVN'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 SJVN beyond the Due Date, a Late Payment Surcharge shall be payable by SJVN to the HPD on the outstanding payment, at the base rate of Late Payment Surcharge applicable for the period for the first month of default. "Base rate of Late Payment Surcharge" means the marginal cost of funds-based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent (500 bps) and in the absence of marginal cost of funds-based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify.

The Late Payment Surcharge shall be claimed by the HPD through the Supplementary Bill. Late Payment Surcharge shall be payable on the outstanding payment at the base rate of Late Payment Surcharge applicable for the period for the first month of default. The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent (50 bps) for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time.

If the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years.

The above payment will be made by SJVN subject to such late payment surcharge being duly received by SJVN under the PSA from the Buying Entity(ies).

**10.3.4** Subject to the Article 9 of this Agreement, in the event of early Commencement of Supply of Power and subject to acceptance by SJVN, the payment for the power fed to the grid may be accounted from the date of Early Commencement of Supply Date, and HPD

would be allowed to raise Bills against such power as per Article 10.2.1. However, payment against the 1st such bill raised by the HPD, will be made subject to acceptance of the bill by the Buying entity.

### **10.3.5 Rebate**

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

- a) A Rebate of 1.5% shall be payable to the SJVN 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 up to and including the **35<sup>th</sup> Day** after the date of presentation of Bill through hard copy, shall be allowed a rebate of 1 %.
- c) Any payments made beyond a period of **35 days** upto and including the Due date from the date of presentation of Bill through hard copy, no rebate shall be allowed.
- d) For the above purpose, the date of presentation of Bill shall be the next Business Day of delivery of the physical copy of the Bill at SJVN with proper acknowledgment by SJVN.
- e) No Rebate shall be payable on the Bills raised on account of Change in Law (except in case of annuity tariff model being implemented, where rebate will be applicable) relating to taxes, duties, cess etc. and on Supplementary Bill.

### **10.4 Payment Security Mechanism Letter of Credit (LC):**

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

**10.4.2** Before the start of supply, SJVN shall, through a scheduled bank, open a Letter of Credit in favour of the HPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to 110% of the estimated average monthly billing
- ii) for each subsequent Contract Year, equal to 110% of the average of the monthly billing of the previous Contract Year.

**10.4.3** Provided that the HPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawl 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, SJVN shall restore such shortfall before next drawl.

- 10.4.5** SJVN shall cause the scheduled bank issuing the Letter of Credit to intimate the HPD, in writing regarding establishing of such irrevocable Letter of Credit.
- 10.4.6** SJVN shall ensure that the Letter of Credit shall be renewed not later than its current expiry date.
- 10.4.7** All costs relating to opening, maintenance of the Letter of Credit shall be borne by SJVN.
- 10.4.8** If SJVN fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including date as on the Due Date, then, subject to Article 10.4.6 & 10.5.2, the HPD may draw upon the Letter of Credit, and accordingly the bank shall pay an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
- i) a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to HPD and;
  - ii) a certificate from the HPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

## **10.5 Disputed Bill**

- 10.5.1** If the SJVN does not dispute a Monthly Bill or a Supplementary Bill raised by the HPD within thirty (30) days of receiving such Bill shall be taken as conclusive.
- 10.5.2** If the SJVN disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay the undisputed amount and it shall within thirty (30) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:
- i) the details of the disputed amount;
  - ii) its estimate of what the correct amount should be; and iii) all written material in support of its claim.
- 10.5.3** If the HPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the HPD shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.
- 10.5.4** If the HPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the SJVN providing:

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

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

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

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

## **10.6 Quarterly and Annual Reconciliation**

**10.6.1** HPD and SJVN 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** HPD and SJVN, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the HPD and SJVN shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the HPD/Upshall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

## **10.7 Payment of Supplementary Bill**

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

- i) Adjustments required by the Energy Accounts (if applicable); or

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- ii) Change in Law as provided in Article 12, or
- iii) Payment under Article 4.10,

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

**10.7.2** SJVN shall remit all amounts due under a Supplementary Bill raised by the HPD to the HPD 's Designated Account by the Due Date, except open access charges, RLDC or scheduling charges and transmission charges (if applicable). For Supplementary Bill on account of adjustment required by energy account and payments under Article 4.10, Rebate as applicable to Monthly Bills pursuant to Article 10.3.5 shall equally apply. Except for payment under Article 10.7.1 (i), Payment will be made after realization of the same from the Buying Utility under the Power Sale Agreement. No Late Payment Surcharge will be applicable other than that on the monthly energy payment and associated debit and credit note.

## **ARTICLE 11: FORCE MAJEURE**

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

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

### **11.2 Force Majeure Events:**

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

### **11.3 Force Majeure Exclusions**

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

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

- power generation materials and equipment;
- d. Strikes at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
  - i. Negligent or intentional acts, errors or omissions;
  - ii. Failure to comply with an Indian Law/ Applicable Law; or
  - iii. Breach of, or default under this Agreement.
- g. Any pre-existing dispute on project land/substation and/or right-of-way or other project related issues

### **11.3.2 Not Used**

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

**11.4.1** The Affected Party shall give notice to the other Party of any event of Force Majeures 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 Party who receives the Force Majeure Notification, shall take a decision on the claim of occurrence of Force Majeure Event, within 15 days of the receipt of the intimation supported with documentary evidence.

**11.4.2** 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 weekly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

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

## **11.5 Performance Excused**

**11.5.1** Subject to Article 11.4, the Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the PPA as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.

**11.5.2** For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the HPD shall be entitled for a day-to-day extension of the period provided for Financial Closure or Scheduled Commencement of Supply of Power Period or the PPA period, as the case may be.

Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.

Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

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

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

#### **11.7 Resumption of Performance**

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

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

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

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

Subject to this Article 11:

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

### **11.10 Available Relief & Termination Due to Force Majeure Event**

- a) If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that Force Majeure Event is likely to continue beyond such 180 (one hundred and eighty) Day period or any extended period agreed in pursuance of Article 11.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the PPA, and the termination shall take effect from the date on which such decision is taken.
- b) Without prejudice to the provisions of Article 11.10.(a) above, the Affected Party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the PPA in its sole discretion by issuing a notice to that effect.
- c) On termination of the PPA pursuant to Article 1.10.(b):
  - i. no Termination Compensation shall be payable to the HPD.
  - ii. the HPD shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event

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

### **12.1 Definitions**

In these rules, unless the context otherwise requires,

12.1.1 In this Article 12, the term “Change in Law” shall refer to the occurrence of any of the following events, only after..... [Insert the last date of bid submission], including any enactment or amendment or repeal of any law, which have a direct effect on the Project, leading to corresponding changes in the cost requiring change in tariff, and includes-

- i. 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.

However, Change in Law/Regulation shall not include-

- i. Any change in taxes on corporate income or any change in any withholding tax on income or dividends; or
- ii. change in respect of deviation settlement charges or frequency intervals by an Appropriate Commission.

The term “law” in this provision includes any Act, Ordinance, order, bye-law, rule, regulation, notification, for the time being in force, in the territory of India.

12.1.2 In the event of occurrence of any of events as provided under Article 12.1.1 which results in any adverse financial loss/ gain to the HPD/Procurer then, in order to ensure that the HPD/Procurer 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 HPD/ Procurer shall be entitled to compensation by the other party, as the case may be. Compensation payment on account of such ‘Change in Law’ shall be adjusted and be recovered in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 notified by the Ministry of Power on 22.10.2021 (and subsequent amendments, if any).

Further, Compensation payment on account of such ‘Change in Law’ shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

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

12.2.1 In case of Change in Law taking place prior to SCSD / Extended SCSD from the Project, the compensation will be passed through on in the form of increase/decrease in the tariff, linked with increase/decrease in the Project cost, which will be automatically paid through the monthly energy billing. The pass through in this case shall be as per the formula / provisions as stipulated in Schedule-A and shall be effective from date of commissioning of the Project. HPD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 12.

12.2.2 For the purposes of 12.2.1 above, the affected party, which intends to adjust and recover the costs due to change in law, shall give a 21 days' 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.

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 21 days from the date of the notice above, whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

12.2.3 Within 30 days of coming into effect of such relief of Change in Law, the HPD shall approach the Appropriate Commission for Truing up of the calculations on account of the above Change in Law events, failing which further payment will be discontinued and SJVN shall make such deductions in the monthly tariff payments on immediate basis. In the event of any decision by the Appropriate Commission which modifies or cancels any changes in the tariff, recovery/additional payment of the amount already paid until then, will be done immediately. 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 as required above.

12.2.4 Further, in case of Change in Law during the operational period of the Project, and where such change is not applicable as an automatic modification in the tariff, suitable compensation will be provided as decided by the Appropriate Commission.

12.2.5 In case Change in Law results in delay in commissioning of the Project, where cause and effect between these two can be clearly established, the SJVN under intimation to the Buying Entities may provide suitable time-extension in Financial Closure, Scheduled Commissioning Date or Scheduled Date of Commencement of Supply of Power, as the

case may be.

12.2.6 If the event of any decrease in the project cost by the HPD or any income to the HPD on account of any of the events as indicated above, HPD, as per methodology/ formula specified in Schedule-A, shall pass on the benefit of such to SJVN which shall be further passed on to the Buying Entity. In the event of the HPD failing to comply with the aforementioned requirement, SJVN shall make such deductions in the monthly tariff payments on immediate basis.

12.2.7 After the adjustment of the amount of the impact in the tariff, the HPD, shall adjust the monthly tariff or charges annually based on actual amount recovered/ paid, to ensure that the payment to the affected party is not more than the yearly annuity amount.

12.2.8 The recovery of the impacted amount, in case of the fixed amount shall be,

- a. within a period of one-hundred eighty months; or
- b. in case of recurring impact, until the impact persists.

### **12.3 Notification of Change in Law**

12.3.1 In case any increase or decrease in the Project Cost occurs due to Change in Law affecting the Tariff payable under this Agreement, in accordance with Article 12, the HPD shall serve notice to SJVN and Buying Entity(ies) of such Change in Law for giving a three weeks prior notice about the proposed impact in tariff, positive or negative, to be recovered. HPD, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the aforementioned notice referred whichever is later, shall furnish SJVN and Buying Entity(ies), the computation of impact in tariff or charges to be adjusted and recovered. Such recovery and adjustment of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

12.3.2 Any notice service pursuant to this Article 12, shall provide, amongst other things, precise details of the Change in Law and its effect on the Project Cost and computation of change in Tariff which shall be supported by documentary evidences including Statutory Auditor Certificate to this effect so as to establish one to one correlation and its impact on the Project Cost.

12.3.3 "Project Cost" wherever applicable under this Article, shall mean the cost incurred by the HPD towards supply and services only for the Project concerned, upto the Actual Commissioning Date of the last part capacity or Scheduled Commissioning Date or extended Scheduled Commissioning Date, whichever is earlier. For example, in case the Actual Commissioning Date of the last part capacity is 15.04.2025, Scheduled Commissioning Date is 15.03.2025 and extended Scheduled Commissioning Date is 01.04.2025, the Project Cost shall be determined as the cost incurred by the HPD upto 01.04.2025.

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

### **13.1 HPD / HPG Event of Default**

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

(i) the failure to commence supply of power to SJVN upto the Contracted Capacity by the end of the period specified in Article 4, or failure to continue supply of Contracted Capacity to SJVN after Commencement of Supply Date (CSD), or if

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

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

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

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

(ii) if (a) the HPD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the HPD, or (c) the HPD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the HPD will not be a HPD Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the HPD and expressly assumes all obligations of the HPD under this Agreement and is in a position to perform them; or

(iii) the HPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from SJVN in this regard; or

(iv) except where due to any SJVN's failure to comply with its material obligations, the HPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the HPD within thirty (30) days of receipt of first notice in this regard given by SJVN.

(v) change in shareholding of the HPD before the specified time frame as mentioned in Article 4.1.1 of this Agreement, without prior consent of SJVN; or ceding of control by the promoters of by M/s..... [insert name of the bidding company which was issued LoA by SJVN under the RfS] within 01 year of Commencement of Supply of Power Date (CSD), without prior consent of SJVN.

(vi) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the HPD.

(vii) except where due to any SJVN's failure to comply with its material obligations, the HPD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the HPD within thirty (30) days of receipt of first notice in this regard given by SJVN.

(viii) Revoking of connectivity of the HPD on account of non-compliance by the HPD.

### **13.2 SJVN Event of Default**

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

(i) SJVN fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the HPD is unable to recover the amount outstanding to the HPD through the Letter of Credit,

(ii) SJVN repudiates this Agreement and does not rectify such breach even within period of sixty (60) days from a notice from the HPD in this regard; or

(iii) except where due to any HPD's failure to comply with its obligations, SJVN is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by SJVN within sixty (60) days of receipt of notice in this regard from the HPD to SJVN; or

(iv) if

- SJVN 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 SJVN, or

- SJVN 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 SJVN Event of Default, where such dissolution or liquidation of Buyer or SJVN 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 SJVN and expressly assumes all obligations of SJVN and is in a position to perform them; or;

(v) If Buying Entity(ies) are subject to any of the above defaults and SJVN does not designate another or other Buying Entity(ies) for purchase of power.

(vi) Occurrence of any other event which is specified in this Agreement to be a material breach or default of SJVN.

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

13.3.1 Upon the occurrence and continuation of any HPD Event of Default under Article 13.1, SJVN shall have the right to deliver to the HPD, with a copy to the representative of the lenders to the HPD with whom the HPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (SJVN 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 SJVN Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as HPD and SJVN may agree, shall apply and it shall be the responsibility of HPD and SJVN to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

13.3.3 During the Consultation Period, HPD and SJVN 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 HPD or SJVN shall have otherwise agreed to the contrary or the HPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, SJVN may terminate this Agreement under intimation to the Buying Entities by giving a written Termination Notice of sixty (60) days to the HPD.

13.3.5 Subject to the terms of this Agreement, upon occurrence of an HPD Event of Default under this Agreement, the HPD shall be liable to pay to SJVN, liquidated damages, as provided in Article 4.6 of the PPA for failure to commence supply of power of contracted capacity within stipulated time and Article 4.4.1 for failure to supply power in terms of the PPA. For other cases, the HPD shall be liable to pay to Buying Entity(ies), damages, equivalent to 24 (twenty-four) months, or balance PPA period whichever is less, of charges calculated at Applicable Tariff for its Contracted Capacity with stipulated availability.

SJVN shall have the right to recover the said damages by way of forfeiture of bank guarantee/POI, if any, without prejudice to resorting to any other legal course or remedy

In addition to the levy of damages as aforesaid, in the event of a default by the HPD, the lenders shall be entitled to exercise their rights of substitution, in accordance with the substitution provisions provided in the PPA and in concurrence with the Procurers. However, in the event the lenders are unable to substitute the defaulting HPD within the stipulated period, SJVN may terminate the PPA.

13.3.6 The lenders in concurrence with the Buying Utility and SJVN, may seek to exercise right of substitution under Article 13.3.5 by an amendment or novation of the PPA in favour of the selectee. The HPD shall cooperate with SJVN/ Lenders to carry out such substitution and shall have the duty and obligation to continue to operate the Power Project in accordance with this PPA till such time as the substitution is finalized. In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh PPA with a new entity, an amount of Rs. 10 Lakh per Project+ 18% GST per transaction as facilitation fee (non-refundable) shall be deposited by the HPD to SJVN.

13.3.7 Not Used

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

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

13.4.2 Following the issue of a HPD Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the HPD and SJVN may agree, shall apply and it shall be the responsibility of the HPD and SJVN 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 HPD and SJVN 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 RPD/REPG and SJVN shall have otherwise agreed to the contrary or SJVN Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, SJVN under intimation to the Buying Entity and the RPD/REPG shall, subject to the prior consent of the RPD/REPG, 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 RPD/REPG, or if no offer of novation is made by SJVN within the stipulated period, then the RPD/REPG may terminate the PPA and at its discretion require Buying Entity to pay the damages, equivalent to 24 (twenty-four) months, or balance PPA period whichever is less, of charges for its

## SJVN - HPD PPA

contracted capacity within the stipulated availability, with the RE Project assets being retained by the RPD/REPG. 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 RPD/REPG. 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 entity whose failure/default triggered the termination of this Agreement

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

### **14.1 Indemnity**

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

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

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

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

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

#### **14.2.1 Third party claims**

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

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

- i) SJVN or HPD choose to refer the dispute in accordance with Article 16.3.2; and

ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

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

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

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

### **14.3 Indemnifiable Losses**

14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of nonpayment of such losses after a valid notice under this Article 14.3, such event shall constitute a payment default under Article 13.

### **14.4 Limitation on Liability**

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

claims are based upon breach of warranty, tort (including negligence, whether of Buying Entity(ies), the HPD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

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

#### **14.5 SJVN's Liability**

14.5.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and accept that the SJVN is an Intermediary Company to purchase and resell the electricity to the Buying Utility(ies) to enable them to fulfil the Renewable Purchase Obligations (RPO) and power demand, therefore, the performance of the obligations of SJVN under this Agreement shall be subject to the ability of SJVN to enforce the corresponding obligations assumed by the Buying Utility(ies) on re-sale under the Power Sale Agreement to be entered into by the Buying Utility(ies) with SJVN. It is however, specifically agreed that in the event of the Buying Entity(ies) defaulting or delaying the payment of the amount becoming due to SJVN to enable SJVN to effectively pay the amount to the HPD, the payment of money becoming due from the SJVN to the HPD under this Agreement for supply of power to the extent of the Contracted Capacity shall be as per:

- (i) the recourse under the Payment Security Mechanism provided in the PPA and PSA, as follows:
  - a) Letter of Credit;
  - (b) State Government Guarantee/ Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government of the Buying Entity, covering security for payment of energy charges, as applicable;
  - (c) Payment Security Fund provided by the Buying Entity, and
- (ii) Payment security fund as referred in Article 10.1.1 of the PPA.

SJVN shall discharge the tariff payment obligation in terms of the provisions of this Agreement.

14.5.2 The parties agree that in respect of the obligations other than the tariff payment obligation specifically mentioned herein above, in the event the HPD has any claim against the SJVN in regard to the performance of any obligation of SJVN under this Agreement or enforcement of any right of the HPD against the SJVN under this Agreement, the same shall be subject to the ability of the SJVN to enforce the corresponding obligations assumed by the

Buying Utility(ies) under the Power Sale Agreement to be entered into between the SJVN and the Buying Utility(ies) on resale on mutatis mutandis basis and not otherwise.

**14.6 Duty to Mitigate**

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

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

### **15.1 Assignments**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party, except to the Project Lenders or Lender's Representative as security for their debt under the Financing Agreements, other than by mutual consent between HPD and SJVN to be evidenced in writing. Such assignment shall be agreed to by SJVN 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 SCSD. Provided that, SJVN shall permit assignment of any of HPD's rights and obligations under this Agreement in favour of the lenders to the HPD, if required under the Financing Agreements.

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

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

Provided further that any successor(s) or permitted assign(s) identified after mutual agreement between HPD and SJVN may be required to execute a new agreement on the same terms and conditions as are included in this Agreement. An amount of Rs. 15 Lakh per Transaction as Facilitation Fee (non-refundable) shall be deposited by the HPD to SJVN. Provided further that, such consent shall not be withheld by the HPD if SJVN seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

### **15.2 Permitted Charges**

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

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

### **16.1 Governing Law**

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

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

#### **16.2.1 Amicable Settlement**

i. SJVN or the HPD as the case maybe 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 (“Noticee”), 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 Notice 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 the Party issuing the Notice pursuant to Article 16

- (i) if the Noticee 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 Noticee, both the Parties to the Dispute shall meet to settle such Dispute amicably. If SJVN and HPD fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 16.2.1.

(iii) the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

### **16.3 Dispute Resolution**

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

i) In the event, CERC is the Appropriate Commission, any dispute that arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such dispute shall be adjudicated by the CERC. All other disputes shall be resolved by the Dispute Resolution Committee set up by the Government, failing which by arbitration under the Indian Arbitration and Conciliation Act, 1996. In the event

SERC/JERC is the Appropriate Commission, then all disputes shall be adjudicated by the SERC/JERC or shall be referred for arbitration by the SERC / JERC.

ii) SJVN shall be entitled to co-opt the Buying Entity(ies) and/or the lenders (if any) as a supporting party in such proceedings before the Appropriate Commission.

**16.3.2** MNRE vide its Order No.283/56/2019-GRID SOLAR/Pt. dated 07.06.2023 has set up a Dispute Resolution Mechanism (**DRM**). The HPD may approach DRM for resolving disputes as per provisions notified by MNRE in regard to DRM.

#### **16.4 Parties to Perform Obligations**

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

## **ARTICLE 17: MISCELLANEOUS PROVISIONS**

### **17.1 Amendment**

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

### **17.2 Third Party Beneficiaries**

17.2.1 Subject to provisions contained in this agreement relating to back-to-back implications of the PPA as well as PSA, this Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

### **17.3 Waiver**

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

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

### **17.4 Confidentiality**

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

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

### **17.5 Severability**

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

### **17.6 Notices**

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

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

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

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

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

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

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

### **17.7 Language**

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

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

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

17.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto

shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder(s) of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 2013.

### **17.9 Taxes and Duties**

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

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

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

### **17.10 Independent Entity**

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

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

### **17.11 Compliance with Law**

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

**17.12** The duly executed Power Sale Agreement between SJVN and Buying entity(s) as attached

to this Agreement shall be read along with this Agreement as a composite back-to-back agreement for Generation and supply of electricity to the Buying entity(ies), particularly, to fulfil the Renewable Purchase Obligations under the provisions of the Electricity Act, 2003 and the Regulations notified thereunder.

**17.13 Breach of Obligations**

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

**17.14 Order of priority in application**

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

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

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  
[SJVN]  
Name, Designation and Address

For and on behalf of  
[HPD / HPG ]  
Name, Designation and Address

Signature with seal

Signature with seal

Witness

Witness

- 1.
- 2.

- 1.
- 2.

**Schedule-A:**

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

The amount of the impact of change in law to be adjusted and recovered, shall be calculated in accordance with the formula given here under to calculate adjustment in the monthly tariff due to impact of change in law, which is non-recurring in nature.

Let financial impact of change in law=P

Then the modification in the monthly tariff (MT) for compensating the financial impact is given by  
 $MT=(Y/X)$

Where X= estimated monthly electricity generation in kWh = (1/12) x [Contracted Capacity of the power plant as per the Agreement (in MW) x Capacity Utilisation Factor (CUF), as per the Agreement (in %) x 8760 hours x 10];

(\*in case 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.)

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

Where,

n=No. of months over which the financial impact has to be paid (subject to 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);

$M_r$  =monthly rate of interest= $R/(12 \times 100)$  and

R = annual rate of interest on loan component (in %) as considered by the CERC in its order for Tariff Determination from Renewable Energy Sources for the year in which the Project is commissioned. In absence of relevant orders of CERC 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.

Any such change, shall be considered upto three digits after the decimal point, and remaining digits, if any, shall be ignored.

For e.g. in case the change in tariff payable is calculated as Rs. 0.14678/kWh, it shall be modified as Rs. 0.146/kWh

**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 RE Power Developer' or 'HPD' or 'HPG') submitting the response to RfS inter alia for selection of the Project of the capacity of ..... MW, at .....[Insert name of the place] under

.....[Insert name of the RfS], for supply of power there from on long term basis, in response to the RfS dated .....issued by SJVN Ltd. (hereinafter referred to as SJVN) and SJVN considering such response to the RfS of ..... [insert the name of the selected Hybrid Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Hybrid RE Power project of the Hybrid Power Developer and issuing Letter of Award No ----- to (Insert Name of selected RE Power Developer) as per terms of RfS and the same having been accepted by the selected HPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected RE 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 SJVN at [Insert Name of the Place from the address of the SJVN] without demure forthwith on demand in writing from SJVN 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 RE 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..... SJVN shall be e n t i t l e d to invoke this Guarantee till ..... The Guarantor Bank hereby agrees and acknowledges that SJVN shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit.

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

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by [Insert name of the selected RE Power Developer / Project Company as applicable] and/or any other person. The Guarantor Bank shall not require SJVN to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against SJVN 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 SJVN shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the selected RE Power Developer / Project Company, to make any claim against or any demand on the selected RE Power Developer / Project Company or to give any notice to the selected RE Power Developer / Project Company or to enforce any security held by SJVN or to exercise, levy or enforce any distress, diligence or other process against the selected RE Power Developer / Project Company.

This BANK GUARANTEE shall be effective only when the Bank Guarantee issuance message is transmitted by the issuing Bank through SFMS to State Bank of India, CAG Branch, 5th Floor, Parsvanatha Capital Tower, Bhai Veer Singh Marg, Gol Market, New Delhi-110001 IFSC code: SBIN0017313, Client Name: SJVN Ltd.

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

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

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

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

E-mail ID of the bank:

Banker's Stamp and Full Address. Dated this \_\_\_ day of \_\_\_\_, 20\_\_\_\_\_

Witness:

1. ....

Signature

Name and Address

2. ....

Signature

Name and Address

Notes:

1. The Stamp Paper should be in the name of the Executing Bank and of appropriate value.
2. The Performance Bank Guarantee shall be executed by any of the Scheduled Commercial Banks as listed on the website of Reserve Bank of India (RBI) and amended as on the date of issuance of Bank Guarantee. Bank Guarantee issued by foreign branch of a Scheduled Commercial Bank is to be endorsed by the Indian branch of the same bank or State Bank of India (SBI).

**SCHEDULE 2: FORMAT OF THE PAYMENT ON ORDER INSTRUMENT TO BE ISSUED BY IREDA/REC/PFC**

No.

Date

SJVN,

**Registered**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Reg:** M/s \_\_\_\_\_ (insert name of the Bidder) – Issuance of Payment on Order Instrument for an amount of Rs.....

Dear Sir,

1. The Ministry of New and Renewable Energy, Government of India vide its letter dated 12<sup>th</sup> March 2020 has decided that to facilitate the promotion of solar and wind power development and implementation of the project by the Solar and Wind Power Developers who have entered into financing and funding agreements with IREDA/REC/PFC, the security by way of PBG in the form of Performance Bank Guarantee given by the Developers be allowed to be substituted by Letter of Undertaking/ Payment on Order Instrument issued by Non-Banking Finance Companies under the control of the Ministry of New and Renewable Energy and Ministry of Power. SJVN and other nodal agencies appointed by the Government of India with whom the power developers have entered into Power Purchase Agreement may accept the same in place of PBG. The Ministry of New and Renewable Energy vide letter dated 12.03.2020 has, inter-alia, decided asunder: After carefully examining the matter, the Ministry have decided as follows:
  - i) SECI or NTPC or any other implementing agency on behalf of MNRE (henceforth called implementing agencies) may release the Performance Bank Guarantee (PBG) of any project if RE developers are able to replace the same with Letter(s) of Undertaking to pay in case situation of default of RE developer in terms of Power Purchase Agreement (PPA) arises, from Indian Renewable Energy Development Agency Limited (IREDA) or Power Finance Corporation Limited (PFC) or REC Limited (REC), the three non-banking financial institutions under Ministry of New & Renewable Energy (MNRE)/ Ministry of Power (MoP). These three financial institutions - IREDA or PFC or REC may issue such Letter(s) of Undertaking to pay only after securing their financial interests taking into account the security(ies) available with them as per their policy and after due diligence. These non-banking financial institutions would ensure that the security(ies) available with them are enough to cover full risk/ or exposure, which may arise on account of issue of such Letter(s) of Undertaking. Such Letter(s) may be termed as "Payment on Order instrument" and will have same effect as that of a Bank Guarantee issued by any public sector bank. This "Payment on Order instrument" would have terms & conditions similar to that of any Bank Guarantee given by any public sector bank and would promise to pay the implementing agencies on demand within stipulated time.
  - ii) RE developers can seek such Letters(s) by offering due security to the above mentioned three non-banking financial institutions mentioned above (IREDA, PFC & REC) for seeking replacement of their Bank Guarantees already pledged with the implementing agencies.
  - iii) For future projects, RE developers would be at liberty to either pledge Bank Guarantee(s)

or Letter(s) of Undertaking as stated above towards Performance Bank Guarantee.

- iv)* The above decisions may be treated as amendments to the respective Standard Bidding Guidelines (SBG) (Wind and notified accordingly).
- v)* Implementing agencies shall not accept the instrument of 'Letter of Undertaking' as described above or in any other form, from any other non- banking financial institutions or bank, except IREDA, PFC & REC.

2. It is to be noted that M/s. \_\_\_\_\_ [insert name of the POI issuing Agency) (**IREDA/REC/PFC**) has sanctioned a non-fund-based limit loan of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) to M/s \_\_\_\_\_ under the Loan Agreement executed on \_\_\_\_\_ to execute Renewable Energy Projects.

3. At the request of M/s \_\_\_\_\_, on behalf of \_\_\_\_\_ (insert name of the SPV), it is now intended and proposed to issue this Payment on Order Instrument (POI) for an amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ (in words)).

4. In consideration of the [Insert name of the Bidder] (hereinafter referred to as selected RE 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 \_\_\_\_\_, for supply of power there from on long term basis, in response to the RfS dated \_\_\_\_\_ issued by SJVN Ltd (hereinafter referred to as SJVN) and SJVN considering such response to the RfS of \_\_\_\_\_ insert the name of the selected RE Power Developer] (which expression shall unless repugnant to the context or meaning thereof include its executors, administrators, successors and assignees) and selecting the Hybrid RE Power project of the RE Power Developer and issuing Letter of Award No \_\_\_\_\_ to (Insert Name of selected Hybrid Power Developer) as per terms of RfS and the same having been accepted by the selected HPD resulting in a Power Purchase Agreement (PPA) to be entered into, for purchase of Power [from selected RE 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 IREDA/PFC/REC] hereby agrees unequivocally, irrevocably and unconditionally to pay to SJVN at [Insert Name of the Place from the address of the SJVN] forthwith on demand in writing from SJVN 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 RE Power Developer / Project Company].

5. In consideration of the above facts, IREDA/REC/PFC, having its registered office at \_\_\_\_\_, agrees to make payment for the sum of Rs. \_\_\_\_\_ lakhs.....(in words \_\_\_\_\_ ) to SJVN on the following conditions: -

(a) IREDA/REC/PFC agrees to make payment of the above said amount unconditionally, without demur and without protest within a period of \_\_\_\_\_ days of receipt of request from SJVN within the validity period of this letter as specified herein;

(b) The commitment of IREDA/REC/PFC, under this Payment on Order Instrument will have the same effect as that of the commitment under the Bank Guarantee issued by any Public Sector Bank and shall be enforceable in the same manner as in the case of a Bank Guarantee issued by a Bank and the same shall be irrevocable and shall be honoured irrespective of any agreement or its

breach between IREDA/REC/PFC or its constituents notwithstanding any dispute that may be raised by them against SJVN;

(c) The liability of IREDA/REC/PFC continues to be valid and binding on IREDA/REC/PFC and shall not be terminated, impaired and discharged, by virtue of change in its constitution and specific liability under letter of undertaking shall be binding on its successors or assignors;

(d) The liability of IREDA/REC/PFC shall continue to be valid and binding on IREDA/REC/PFC and shall not be terminated/ impaired/ discharged by any extension of time or variation and alternation made given or agreed with or without knowledge or consent of the parties (SJVN and Bidding Party), subject to the however to the maximum extent of amount stated herein and IREDA/REC/PFC is not liable to any interest or costs etc;

(e) This Payment of Order Instrument can be invoked either partially or fully, till the date of validity;

(f) IREDA/REC/PFC agrees that it shall not require any proof in addition to the written demand by SJVN made in any format within the validity period. IREDA/REC/PFC shall not require SJVN to justify the invocation of the POI against the SPV/HPD, to make any claim against or any demand against the SPV/HPD or to give any notice to the SPV/HPD;

(g) The POI shall be the primary obligation of IREDA/REC/PFC and SJVN shall not be obliged before enforcing the POI to take any action in any court or arbitral proceedings against the SPV/HPD;

(h) Neither SJVN is required to justify the invocation of this POI nor shall IREDA/REC/PFC have any recourse against SJVN in respect of the payment made under letter of undertaking;

6. Notwithstanding anything contrary contained anywhere in this POI or in any other documents, this POI is and shall \_\_\_\_\_ remain valid upto \_\_\_\_\_ and IREDA/REC/PFC shall make payment thereunder only if a written demand or request is raised within the said date and to the maximum extent of \_\_\_\_\_ Rs. \_\_\_\_\_ and IREDA/REC/PFC shall in no case, be liable for any interest, costs, charges and expenses and IREDA's/REC's/PFC's liability in no case will exceed more than the above amount stipulated.

7. In pursuance of the above, IREDA/REC/PFC and SJVN have signed an Umbrella Agreement dated setting out the terms and conditions for issue of letter of undertaking by IREDA/REC/PFC to SJVN and the said terms and conditions shall be read as a part of this letter of undertaking issued for the project of the project of PP mentioned above.

Thanking you,

Yours faithfully For and on behalf of

M/s

(Name of the POI issuing Agency)

( )

General Manager (TS)

SJVN - HPD PPA

Copy to:-

M/s. \_\_\_ pp \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ As per their request

( \_\_\_\_\_ )

General Manager (TS)

**SCHEDULE 3: COMMISSIONING PROCEDURE:**

To be notified within 90 days (of signing of this Agreement) or any extended date but not later than 60 days prior to the SCSD

**SCHEDULE 4: ILLUSTRATION (Please refer Article 4.4.3)**

❖ **Assumptions**

- i) Total contracted capacity = 500 MW
- ii) Annual CUF declared by HPD = 35 %
- iii) Permissible lower limit of annual CUF=35 % - 3.5 % =31.5 %
- iv) Applicable Tariff: Rs. 3.00 / kWh

Shortfall in annual offering of energy from Hybrid sources:

1) Total Hybrid RE power offered (MWh) for the corresponding month = 1,08,000 MWh (Considering tentative CUF of 30.00 %)

Total Hybrid RE power offered (MWh) for the year = (Summation of Power (MWh) offered for each month) = 1,08,000 x 12 = 12,96,000 MWh

2) Minimum annual energy from Hybrid power sources committed at the time of bid submission = 500 x 8766 x 0.315 = 13,80,645 MWh (at 31.50% availability)

3) Thus, Annual Shortfall in energy offered through Hybrid RE power in the year = 1380645-1296000 = 84,645 MWh

4) Damages due to shortfall in Hybrid RE power offered for the year = (Annual shortfall x Applicable RE Tariff x 1000) = 84645 x 3.00 x 1.5 x 1000 = **Rs. 38,09,02,500/-**

As per the provisions of the RfS and PPA, damages will be levied on the developer for the corresponding Contract Year.

**Note:** The above illustration has been provided for a sample monthly data, based on assumptions as indicated. Actual calculations for liquidated damages will be made for the yearly data as per REA/tender conditions of RfS.

**SCHEDULE 5: POWER SALE AGREEMENT(S)**