

VGf SECURITIZATION AGREEMENT

NO. SECI / JNNSM / SPV / P II B I / VGfSA/13-14/[...] _____ DATE

NAME OF SOLAR POWER DEVELOPER : -----

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

PROJECT NAME /LOCATION : -----

PROJECT CAPACITY : -----MW

PROJECT ADDRESS : -----

VGf AMOUNT : Rs. _____ Crores

: ()

**M/s. Solar Energy Corporation India
NBCC Plaza, 4th Floor, Tower-1, Pushp Vihar,
Sector-V, Saket, New Delhi-110017
Tel No. 011-29563835 Fax No. 011-29563834,
Email – _____**

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VGF SECURITIZATION AGREEMENT

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

AND

Solar Energy Corporation of India, a Company incorporated under Section-25 of the Companies Act, 1956, having its registered office at NBCC Plaza, Tower 1, 4th Floor, Pushp Vihar, Sector-V, Saket, New Delhi-110017 (hereinafter referred to as "SECI", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) as a Party of the **Second Part**.

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

Whereas:

- A. Whereas Government of India (GOI) through Ministry of New and Renewable Energy (MNRE) has notified Guidelines to select Solar Power Developers for 750 MW Grid connected solar power projects under Phase-II Batch-I of the JNNSM (hereinafter referred to as Guidelines). The Guidelines inter alia provides for implementing the Projects through "Viability Gap Funding" support to the SPD in order to minimize the impact of tariff on State Utilities / Discoms;
- B. Whereas, SECI has been designated by the Government of India as the implementation agency for the aforesaid Phase-II Batch-I of JNNSM;
- C. Whereas, pursuant to the above, SECI had invited project proposals from the eligible bidders for installation of Solar Power Projects on Build-Own-Operate (BOO) basis and generate power and sell to SECI as per the terms and conditions of RFS No. SECI/JNNSM/SPV/P-2/B-1/RfS/102013 dated 28.10.2013;
- D. Whereas the SPD has been declared as a Successful Bidder in the bid process against the above mentioned RFS and have been issued a Letter of Intent (LOI) No.....dated..... for setting up a Solar Power Project based on Photo Voltaic technology of [Insert Capacity] MW capacity at.....[Insert Location] in the state of [Insert State]. (hereinafter referred to as Project) at an estimated cost of Rs.....Crores (in words.....);
- E. Whereas the SPD and SECI have also signed a Power Purchase Agreement (PPA) dated.....to supply power by SPD to SECI from the Project for a period of 25 years as per terms and conditions specified in the PPA and

- F. Whereas pursuant to the issuance of LOI and signing of PPA and upon successful commissioning of the Project, the SPD would be eligible to receive VGF support amounting to maximum Rs. **[Insert VGF Amount in Cr.]** Crores, which shall be released by SECI subject to funds made available by MNRE, provided the Project meets the generation requirements (CUF within specified range) & the SPD fulfils other terms & conditions as indicated hereinafter and in LoI and PPA.

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

ARTICLE 1: DEFINITION AND INTERPRETATION

1.1. Definitions:

In this Agreement unless the context otherwise requires:

- (a) “Commissioning” shall mean commissioning as defined in the PPA;
- (b) “Commercial Operation Date” or “COD” shall mean the actual commissioning date of the full capacity of the Power Project where upon the SPD starts injecting power from the Power Project to the Delivery Point;
- (c) “Chartered Accountant” shall mean a person practicing in India or a firm whereof all the partners practicing in India as a Chartered Accountant(s) within the meaning of the Chartered Accountants Act 1949;
- (d) “Company Secretary” shall mean a person who is a member of the Institute of Company Secretaries of India either in whole time employment or in practice within the meaning of the Company Secretaries Act, 1980;
- (e) “Contracted Capacity” shall mean[Insert capacity] MW contracted with SECI for supply by the SPD to SECI at the Delivery Point from the Solar Power Project;
- (f) “CUF” means Capacity Utilization Factor as defined in the PPA;
- (g) “Guidelines” shall mean “JNNM Guidelines for selection of 750 MW New Grid Connected Solar PV Power Projects under Phase-II Batch-I”;
- (h) “LOI” means Letter No. _____ dated _____ issued by SECI to the SPD for award of the Project;
- (i) “Lender” or “Lending Institution” means banks, financial institution or any other financial institution who borrow funds to the SPD for execution and development of the Project;

- (j) "MNRE" means the Ministry of New and Renewable Energy, Government of India, New Delhi;
- (k) "Preliminary Estimated Project Cost" means the project cost of Rs. _____ Crores for the project indicated by SPD as part of the bid submitted by SPD vide Ref no-----;
- (l) "Project" or "Power Project" shall mean the solar power generation facility of Installed Capacity of[Insert capacity] MW, located at [Insert name of the place] in [Insert name of the District and State] having separate points of injection into the grid at inter-connection/metering point or in case of sharing of transmission lines by separate injection at pooling point and having a separate boundary, control systems and metering. This includes all units and auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, dedicated transmission line upto the delivery point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per the PPA;
- (m) "Power Purchase Agreement" or "PPA" shall mean the Power Purchase Agreement signed between SECI and the SPD for procurement of -----MW [Insert Capacity] Solar Power by SECI from the SPD and annexed hereto as Schedule 1 of this Agreement;
- (n) "RfS" or "Request for Selection" means the bidding document -----[Insert RfS No.] issued by the SECI to prospective bidders;
- (o) "Unit" shall mean 10 MW AC Solar PV Capacity at the Project bus-bar located within the project premise;
- (p) "VGF" means the Viability Gap Funding amount specified in Article 2.1 of this Agreement;
- (q) "Agreement" or "VGF Securitization Agreement" or "Agreement" means this particular VGF Securitization Agreement and includes all schedules and all amendments and documents supplemental or incidental to the VGF Securitization Agreement entered by SECI with the SPD for creation of charges on the Power Project of the SPD;
- (r) "VGF disbursement schedule" means the VGF disbursement schedule provided for in Article 2.4 of the Agreement;

1.2. Interpretation:

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

- (a) All the terms and expressions in capitalized form not defined herein in this Agreement shall have meaning as provided therein in the Guidelines, RfS documents and PPA.
- (b) "Agreement" this Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented; And shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- (c) An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- (d) A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- (e) An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- (f) "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (g) A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- (h) "Rupee", "Rupees", "Rs" or rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;
- (i) The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company

- or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (j) Words importing singular number shall be deemed to include plural number and vice versa.
 - (k) A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
 - (l) A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
 - (m) Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
 - (n) The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
 - (o) All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;
 - (p) The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
 - (q) The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
 - (r) In case of any conflict between this Agreement and said Guidelines issued by MNRE, the clause(s) given in Guidelines shall prevail.

ARTICLE 2: AGREEMENT AND TERMS OF VGF

2.1 Amount and Disbursement of VGF:

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

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

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

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

2.2 Conditions to be Fulfilled for Disbursement of VGF:

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

- iii) Any other condition, provided by SECI which in the interest of scheme may deem fit and proper.
 - iv) The SPD shall furnish financing documents (including financing agreements) to SECI;
- b) Balance 50% of the VGF, progressively over the next 5 years as indicated in Article 2.1 above subject to the plant meeting requirements of the Plant Performance in line with Clause 2.2 (c) provided that no event of default as per terms and conditions of the PPA, VGF Agreement and RfS documents unless waived by SECI, have occurred.
- c) For the purpose of determination of annual CUF, the SPD will declare the annual CUF of the Project at the time of commissioning and will be allowed to revise the same only once within 1 year of commissioning. The declared annual CUF shall in no case be less than 17% over a year. The SPD shall maintain generation so as to achieve annual CUF within minus (-)15% and plus (+)10% of the declared value till the end of 10 years subject to the annual CUF remaining over minimum of 15%. For remaining term of the PPA, the SPD shall maintain generation so as to achieve annual CUF within minus (-) 20% and plus (+) 10% of the declared annual CUF. The lower limit will, however, be relaxable by SECI to the extent of grid non-availability for evacuation which is beyond the control of the SPD. For the purpose of release of VGF, CUF will be calculated every year from the COD up to completion of 1 year from the COD. The upper limit will not be applicable for the purpose of payment of VGF.
- d) **VGF Disbursement Procedure:**
- i) The SPD shall deliver to SECI a request for release of VGF Disbursement not less than (15) days from the proposed VGF disbursement date and confirming that all the conditions precedent to VGF Disbursement has been fulfilled;
 - ii) The SPD shall provide the Project commissioning certificate issued by the committee duly constituted for the purpose;
 - iii) The SPD shall provide a Chartered Accountant's Certificate regarding the completed Project Costs;
 - iv) The SPD shall provide a Chartered Accountant's Certificate regarding the sources and deployment of the funds towards the Project Implementation;
 - v) The SPD shall provide a Chartered Accountant's Certificate towards equity commitment certifying that the minimum required equity contribution has been made and the proposed VGF disbursement shall not make total VGF contribution after giving effect to the proposed VGF disbursement to exceed 30% of the Project Cost;
 - vi) At the time of First Tranche of VGF Disbursement, the SPD shall furnish (i) a certificate by the concerned and competent revenue / registration authority for

the acquisition / ownership / vesting of the land in the name of the SPD and the land is suitable for industrial use (ii) a certified English translation from an approved translator in case the certificate is in other than English and Hindi Languages;

- vii) At the time of First and Second Tranche of VGF Disbursement, the SPD shall provide a Certificate from Company Secretary; indicating share holding pattern of the company to establish maintenance of the controlling shareholding in the Company/Consortium developing the Project. The controlling shareholding shall mean not less than 51% of the voting rights and paid-up share capital (including fully, compulsory and mandatory convertible Preference shares/Debentures);
- viii) The SPD, at the time of all subsequent VGF Disbursements except the First VGF Disbursement, shall furnish self declaration towards meeting of the Plant Performance as per Clause 2.2 (c) along with consolidated audited annual energy account.

ARTICLE 3: CREATION OF CHARGE TO SECURITIZE VGF

3.1 SPD shall create a charge in favour of SECI in following manner:-

- a) A mortgage and charge in favour of SECI in a form satisfactory to SECI of all the SPD's immovable properties pertaining to the Project including land measuring approx.....[Insert the Area of the Land] located at _____, in the State of _____ and elsewhere, both present and future;
- b) a charge by way of hypothecation in favour of SECI of all the SPD's movables, pertaining to the Project including situated at _____ and elsewhere (save and except book debts) including movable plant and machinery, machinery, spares, tools implements and accessories, cars, trucks, vehicles, tractors, computers etc., both present and future subject to the prior charges created and/or to be created in favour of the SPD's Bank, on such of the movables, as may be agreed to by SECI;
- c) any other security as the Term Lender/s of the Project may stipulate;
- d) irrevocable and unconditional personal guarantee of a) Shri / Smt. _____ and b) Shri / Smt. _____, Promoters/Directors of M/s. _____ Limited.

3.2 Notwithstanding, the SPD taking Loans from any Lender/Lending Institution subject to the SPD bringing minimum Rs.1.5 Cr. per MW as Equity contribution, the mortgage and hypothecation and all other securities/charges stipulated above, shall suitably rank the charges created/to be created in favour of SECI along with other term loan Lending Institutions/Banks.

3.3 The SPD shall make out a good title to its immovable properties to the satisfaction of SECI and comply with all such formalities as may be necessary or required by SECI for the said purposes. SPD shall file all necessary documents and forms to register a charge for the movable and immovable properties, with the relevant Registrar of Companies.

3.4 If at any time during the subsistence of this Agreement, SECI is of the opinion that the security provided by the SPD has become inadequate to cover the outstanding VGF then, upon SECI's advising the SPD to that effect, the SPD shall provide and furnish to SECI, such additional security, as may be acceptable to SECI to cover such deficiency.

3.5 SPD shall notify SECI in writing of all its acquisitions of immovable properties for the Project and as soon as practicable thereafter, make out a good title to the satisfaction of SECI and shall mortgage the same in favour of SECI by way of mortgage in such form and manner as may be decided by SECI.

ARTICLE 4: EVENTS OF DEFAULT AND TERMINATION

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

- a) If the Project fails to generate any power continuously for 1 year any time during the term of the PPA or
- b) If the Project is dismantled and / or its major assets (the Project components such as Solar PV modules, Inverters, Power Conditioning Units, Module Mounting Structures, Grid Interconnecting Transformers, Control, Protection and Metering equipment including switchgear equipment etc.) are sold by SPD during the tenure of the Project or
- c) If it is found at any stage that the SPD has misrepresented the facts/ information to meet the eligibility conditions stipulated in RfS document issued by SECI or
- d) If the SPD defaults any terms and conditions of Loan documents and the Lender takes any step for recovery, including for winding up of the SPD or
- e) If (i) the SPD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (ii) any winding up or bankruptcy or insolvency order is passed against the SPD, or (iii) the SPD goes into liquidation or dissolution or has a receiver or any similar officer appointed to manage its affairs pursuant to Law or
- f) Change in the controlling shareholding or change in the shareholding pattern resulting into change in controlling shareholding pattern of the SPD without prior written intimation to SECI or
- g) If SPD fails to maintain its Controlling Shareholding represented to SECI at the time of signing of PPA up to a period of one (1) year after Commercial Operation Date of the last Unit of the Project in violation of PPA or
- h) If the property given as mortgage depreciates in value or is rendered inadequate to such an extent that in the opinion of SECI further additional security to the satisfaction of SECI should be given and such security is not given, in spite of being called upon to do so or
- i) If the SPD's property which is given as mortgage for the loan is sold, disposed of, charged, encumbered or alienated without the prior approval of SECI or
- j) If any attachment or distraint is levied on the mortgaged/charged property or any thereof and/or proceedings are taken or commenced for recovery of any dues from the SPD or

- k) If SPD formed by successful consortium as a special purpose vehicle for execution of the Project is engaged in any business or activities either alone or in partnership or joint venture other than execution of the Project, without the prior written consent of SECI.

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

- a) Upon occurrence of any Event of Default mentioned in Article 4.1 herein above, SECI shall have the right to refund of VGF and if not paid by the SPD, then a claim on assets (irrespective of the book value of the assets available in SPD's book of accounts) equal to the value of VGF released on pro-rata basis as specified hereunder:
- i) Up to end of 5th years from the COD- amount equal to the full value of VGF paid shall be recovered;
- ii) From 6th year and up to 25th year (20 years) from the COD - amount equal to the following percentage of full VGF paid shall be recovered-

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

- b) In case the lending institution exercises its right to step in or take over the Project, SECI will also have right to step in along with the lending institution to reclaim VGF in accordance with sub-clause 4.2 (a) above or handover the Project to another party for operation.

4.3 Consequences and Procedure for cases of SPD Event of Default

- a) Upon the occurrence and continuation of any SPD Event of Default under Clause 4.1, SECI shall have the right to deliver to the SPD, with a copy to the representative of the lenders to the SPD with whom the SPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (SECI Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- b) Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the SPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, SECI may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the SPD.
- c) Subject to the terms of this Agreement, upon occurrence of a SPD Event of Default under this Agreement, SECI, by a written notice to the SPD, will declare a percentage of the amount of the VGF released to the SPD, depending on the year in which such Event of Default occurs after the COD, as detailed in Clause 4.2, and other monies to be payable by the SPD and upon such declaration, the same shall become due and payable to SECI by the SPD with the period prescribed in the Notice.
- d) Upon failure of the SPD to pay the entire declared due amount, within the period prescribed by SECI in its notice, SECI shall enforce the mortgage created in terms of Article 3.0 hereof for the entire amount so declared (or the outstanding balance thereof). Notwithstanding anything to the contrary contained in the Agreement, remainder VGF, if any to be paid /released by SECI shall automatically stand cancelled.

ARTICLE 5: INSPECTION OF SITE / WORKS AND PROGRESS REPORTING

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

ARTICLE 6: INSURANCE OF MORTGAGED PROPERTIES

- 6.1** The SPD shall at its own expense keep the mortgaged/charged properties in good condition and insure the same against any loss or damage by theft, fire, lightning, earthquake, explosion, riot, strike, civil commotion, tempest, flood, marine risk, erection risk, war risk and other risks by taking comprehensive all risk policy. The SPD shall deliver copy of the relevant policy of insurance to SECI, and maintain such insurance throughout the term of the Agreement. The policy shall be taken with Agreed Banker's clause providing SECI as charge holder.

ARTICLE 7: INSPECTION OF BOOKS OF ACCOUNTS ETC.

- 7.1) a) The SPD shall make available for the inspection of the Comptroller and Auditor General or any other Agency/officer(s) authorized by SECI, all its books of accounts and other books and documents maintained by it and / or required to be maintained under any law, bye-law or rules of the SPD at their own cost and under the provisions of Article 3.1 above in respect of VGF and provide all facilities to the said inspecting authority/officers for the purpose of carrying out such inspection and render such explanation or elucidation as may be required by inspecting authority/officer(s) and allow the taking of any copies of / or extracts therefrom. The Comptroller and Auditor General or any other Agency/officer(s) authorized by SECI shall have the right to inspect any and all locations of the said project and all the books of accounts, records and documents relating thereto at any time.
- b) SECI shall have the right to appoint, whenever it considers necessary, any person, firm, Company or association of persons engaged in technical, management or any other consultancy business at the cost of the SPD to inspect and examine the working of the SPD and its Project and to report to SECI. SECI shall also have the right to appoint, whenever it considers necessary, any Chartered Accountants / Cost Accountants as auditors for carrying out any specific assignment(s) or to examine the financial or cost accounting system and procedures adopted by the SPD at SPD's cost for its working or as concurrent or for conducting a special audit of the SPD.
- c) The SPD agrees and undertakes that it shall not to sell, gift, lease, rent, transfer or dispose off in any other manner, the Project during the tenure of the PPA for which VGF is being granted.

ARTICLE 8: SPD'S WARRANTIES / GUARANTEES

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

a) Title to the charged properties:

The SPD has good title free from any encumbrances to the properties to be mortgaged/charged in favor of SECI save any charge created with Lenders for the this Project.

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

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

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

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

ARTICLE 9: WAIVER

9.1 Waiver not to impair the rights of SECI:

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

ARTICLE 10: MISCELLANEOUS

10.1 Governing Law and Jurisdiction

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

10.2 Amicable Settlement and Dispute Resolution

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

- 10.3** All monies due and payable to SECI under this Agreement shall be paid and remitted by the SPD to SECI at its Registered Office at 4th Floor, Tower-1, NBCC Plaza, Pushp Vihar, Sector V, Saket, New Delhi-110017 (unless otherwise directed by SECI) in proper time and the SPD shall so arrange that the amount(s) in question is/are realizable by SECI at par in New Delhi.
- 10.4** This Agreement may only be amended or supplemented by a written agreement between the Parties.
- 10.5** The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement. The Parties herein further agree that in the event any provision is so held to be invalid, illegal or unenforceable they shall substitute the same with a valid, legal and/or enforceable provision as close in intent as possible to that held. In case the provision so affected is fundamental to the Agreement, the Agreement may be terminated with mutual consent in writing of both the Parties.
- 10.6** All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.
- 10.7** If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.
- 10.8 Service of Notice:**
- i) Any notice to be served on the SPD shall for the purpose of these presents be deemed to be sufficiently served, if it is left at Registered Office or Principal Office of the SPD or the project site as mentioned in the preamble of the Agreement or at such other place where the Registered Office or Principal Office of the SPD may for the time being be, and such notice shall also be deemed to be properly and duly served if it is sent by registered post to the SPD at such address as aforesaid, and such service shall be deemed to have been made at the time at which the Registered letter would in the ordinary course be delivered even though returned unserved on account of refusal of the SPD to accept such notice or any other reason whatsoever.
 - ii) Any notice required to be served on SECI/MNRE shall for the purpose of these presents be deemed to be sufficiently served if it is delivered to SECI at its Registered Office at 4th Floor, Tower-1, NBCC Plaza, Pushp Vihar, Sector V, Saket, New Delhi-110017 and to MNRE at Block-4, CGO Complex, Lodi Road, New Delhi-110 003. Such notice shall also be deemed to be properly and duly served if it is sent by

registered post to SECI at such address as aforesaid, and such service shall be deemed to have been made at the time at which the Registered letter would in the ordinary course be delivered even though returned unserved on account of refusal of the SECI to accept such notice or any other reason whatsoever.

10.9 Documentation Charges:

The Documentation charges paid by the SPD, if any at the time of submission of bid document to SECI/MNRE or this Agreement with SECI are not refundable under any circumstances. The SPD shall have to bear the cost of stamp duty, registration charges and the cost, if any, incurred by SECI for title investigation in respect of the properties to be mortgaged / charged to SECI, as security for the loan. SECI shall be indemnified and held harmless by the SPD against any claims that may be made against SECI in relation to the matters set out hereinabove and also shall not be held liable for any payment of, taxes, duties, levies and cess that are required to be paid by the SPD as per the Law in relation to the execution of the Agreement.

10.10 The Agreement is executed at New Delhi, and the VGF will be advanced by SECI to the SPD and refunded by the SPD to SECI in New Delhi, and civil courts in Delhi alone shall have jurisdiction to entertain any suit or other Legal proceedings arising out of the Agreement.

ARTICLE 11 - SPECIAL CONDITIONS

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

- a) This agreement has been executed in duplicate and custody of the original Agreement shall be with SECI.
- b) The SPD shall arrange to display a notice board at a prominent place at the Project site indicating that the Project has been financially supported by MNRE.

ARTICLE 12 - EFFECTIVE DATE OF AGREEMENT

12.1 Agreement to become effective from the Date of Execution:

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

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

THE COMMON SEAL OF THE M/s. _____ Limited has pursuant to the Resolutions of its Board of Directors passed in that behalf on the _____ day of _____, 2013 hereunto been affixed in the presence of Shri _____, and Shri _____, Directors and Shri _____, Authorized Person of the Borrower who have signed these presents in token thereof.

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