

**BATTERY ENERGY STORAGE PURCHASE AGREEMENT (BESPA)**

**FOR**

**PROCUREMENT OF 265 MW/ 530 MWh  
ON LONG TERM BASIS**

**BETWEEN**

.....  
**(INSERT NAME OF BATTERY ENERGY STORAGE SYSTEM DEVELOPER**

**(BESSD)**

**AND**

**SJVN LIMITED**

This Battery Energy Storage Purchase Agreement is made on the ..... Day of 2026 at New Delhi.

Between

..... (Insert name of the Battery Energy Storage System Developer), a

Company incorporated under the Companies Act 1956 or the Companies Act 2013, having its registered office at ..... (hereinafter referred to as “**Battery Energy Storage System Developer**” or “**Storage Project Developer**” or “**BESSD**”, 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 Shakti Sadan, CHQ, Shanan, Shimla-171006 (HP) and Liaison Office / Expediting office at office Block, Tower-1, 6<sup>th</sup> Floor, NBCC Complex, East Kidwai Nagar, New Delhi- 110023 (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 BESSD and SJVN are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

#### **WHEREAS:**

- A. The Ministry of Power, Government of India has issued Viability Gap Funding (VGF) Scheme for development of Battery Energy Storage Systems (BESS) supported through Power System Development Fund (PSDF) along with its Operational Guidelines, vide Office Memorandum F. No. 48/15/07/2025-NRE SECTION dated 9th June, 2025 and subsequent amendments issued by Ministry of Power. Vide the above Scheme, VGF has been provided to the state of Haryana @ Rs. 18 Lakh/MWh for development of 500 MWh BESS capacity as per the Operational Guidelines of the Scheme (**VGF Scheme supported through PSDF**).
- B. The Ministry of Power, Government of India has issued State Component of Scheme for Viability Gap Funding (VGF) for development of Battery Energy Storage Systems (BESS) along with its Operational Guidelines, vide Office Memorandum F. No. 42-26/1/2022-NRE (Pt III) dated 9<sup>th</sup> October, 2024 and subsequent amendments issued by Ministry of Power. Under the above Scheme, VGF has been provided to the state of Haryana @ Rs. 18 Lakh/MWh for development of 30 MWh BESS capacity as per the Operational Guidelines of the Scheme (**State Component of Scheme for VGF**).
- C. The State of Haryana, through **Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL)** has appointed SJVN Limited as Implementing Agency/Intermediator Procurer for implementation of 265 MW/530 MWh Standalone Battery Energy Storage Systems

(BESS) in the state of Haryana, comprising 250 MW/500 MWh capacity of BESS under **VGF Scheme supported through PSDF** and 15 MW/30 MWh capacity under **State Component of Scheme for VGF** for the complete tenure of the project i.e. 12 years.

- D. The Ministry of Power (MoP), Government of India has issued “Guidelines for Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services” vide Gazette Notification CG-DL-E-11032022-234077 dated 10<sup>th</sup> March,2022.
- E. SJVN had initiated a Tariff Based Competitive Bid Process for “**Selection of BESS Developer for setting up of 265 MW/530 MWh Standalone Battery Energy Storage Systems (BESS) in the state of Haryana under Viability Gap Funding (VGF) Schemes under Tariff-Based Competitive Bidding**” as per the terms and conditions contained in the Request for Selection (hereinafter referred to as ‘**RfS**’) issued by SJVN vide RfS No. SJVN/CC-Delhi/REIA/2026/ BESS-2 dated 24.07.2026 including its subsequent amendments and clarifications;
- F. SJVN Ltd. has issued the Letter of Award No..... dated.....in favor of the \_\_\_\_\_[Insert name of the Bidding Company] for development and establishment of the \_\_\_\_MW/\_\_\_\_\_MWh of “Project” or “BESS” at a location provided at ..... [insert the name of the S/s selected for], S/s in the State of Haryana as per the terms and conditions contained in the RfS, this Battery Energy Storage Purchase Agreement (BESPA) and other bidding documents as well as the conditions contained in the Letter of Award.
- G. [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 .....[Insert Name of the SPV](Hereinafter referred to as ‘BESSD’), for development, and supply of BESS Capacity from the..... MW/ \_\_\_\_\_MWh of the BESS Capacity to be established by BESSD in..... [Insert the name of the S/s selected for], S/s in the State of Haryana and for making available of such Battery Energy Storage Capacity by SJVN Ltd. as an Intermediary Agency to the Buying Entity [as defined] under a Battery Energy Storage Sale Agreement (BESSA) to be entered into between SJVN Ltd. and such Buying Entity.
- F. SJVN Ltd. has agreed to purchase such Battery Energy Storage Capacity from the BESSD as an Intermediary Procurer and sell it to the Buying Entity/End Procurer on back-to-back basis as per the provisions of the RfS. Accordingly, SJVN has agreed to sign/has signed a Battery Energy Storage Sale Agreement (BESSA) with the Buying

Entity/End Procurer to sell such Battery Energy Storage Capacity as per the provisions of the above said Guidelines and RfS.

- G. In terms of the RfS, the BESSD has furnished the Performance Bank Guarantee/ Payment on Order Instrument/Insurance Surety Bond, as the case may be, in the sum \_\_\_\_\_ of \_\_\_\_\_ INR

.....  
/-

(Rupees ..... Only) 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/Insurance Surety Bond as per RfS, as applicable) provided in the RfS;

- H. BESSD has fulfilled the terms of the RfS Documents and the terms of the Letter of Award for signing this Battery Energy Storage Purchase Agreement as a definitive agreement for developing the “Project” (or “BESS”) of.....MW/ .....MWh at .....UHBVNL

.....Substation [insert the name of the S/s selected for] S/S in the State of Haryana for making available Battery Energy Storage Capacity by the BESSD to SJVN to enable SJVN to make available such Battery Energy Storage Capacity to the Buying Entity/End Procurer, as SJVN may consider appropriate, under a Battery Energy Storage Sale Agreement (BESSA) and on a back-to-back basis to the Battery Energy Storage Purchase Agreement to be entered into with the BESSD;

- I. **Viability Gap Funding (VGF) Schemes:** The Projects selected under this RfS shall be eligible for grant of Viability Grant Funding (VGF), to be released as per provisions contained in the RfS and provisions under the following Schemes:

i) **Project-1: 250 MW/500 MWh:** Viability Gap Funding (VGF) shall be provided under **VGF Scheme supported through PSDF**. The VGF support has been earmarked for a cumulative BESS capacity of 500 MWh (allocated capacity to the state of Haryana). VGF amount eligible for each Developer shall be limited to Rs. 18,00,000/-/MWh (Rupees Eighteen Lakhs per MWh) for 500 MWh BESS capacity. The VGF shall be a non-recurring expenditure and shall be fully funded from Power System Development Fund (PSDF).

ii) **Project-2: 15 MW/30 MWh:** Viability Gap Funding (VGF) shall be provided under **State Component of Scheme for VGF**. The VGF support has been earmarked for a cumulative BESS capacity of 30 MWh (allocated capacity to the state of Haryana). VGF amount eligible for each Developer shall be limited to Rs. 18,00,000/-/MWh (Rupees Eighteen Lakhs per MWh) or 30 % of the capital cost for 30 MWh BESS capacity. The VGF shall be a non-recurring expenditure and shall be fully funded and shall be fully funded by Central Grant under State Component of Scheme for VGF.

J. The Parties have agreed to execute this Battery Energy Storage 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 of the project at ..... [In  
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name of state and region] on Build, Own Operate and for making available such Battery Energy Storage Capacity by the BESSD to SJVN for onward sale to the Buying Entity on back to back basis under respective Battery Energy Storage 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.

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| "Act" or "Electricity Act, 2003" | shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| "Adjusted Equity"                | <p>shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the "Reference Date"), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date;</p> <p>a) On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date;</p> <p>b) An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "Base Adjusted Equity");</p> <p>c) After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by X% (wherein <math>X=100\% / (12 * \text{Term of BESPA})</math>) thereof at the commencement of each month following the COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date;</p> <p>For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the BSPA period is extended, but the revision on account of WPI shall continue to be made.</p> |

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| “Agreement” or “Battery Energy Storage Purchase Agreement” or “Storage Capacity Agreement” or “BESPA” | shall mean this Battery Energy Storage Purchase Agreement including its recitals and Schedules amended or modified from time to time in accordance with the terms hereof;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| “Appropriate Commission”                                                                              | Appropriate Commission” shall mean the State Electricity Regulatory Commission / HERC referred to in section 82 of the Electricity Act 2003                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| “Annual Availability”                                                                                 | For a particular Contract Year, “Annual Availability” shall be the average availability of the Contracted BESS capacity during that particular Contract Year, calculated as per the RfS;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Battery Energy Storage Systems or “BESS”                                                              | <p>Shall mean the system(s)/projects utilizing methods and technologies such as electrochemical batteries (Lead Acid, Li-ion, solid state batteries, flow batteries, etc.), providing a facility that can store chemical energy and deliver the stored energy in the form of electricity, including but not limited to ancillary facilities (grid support, for example).</p> <p>It also includes all units and auxiliaries, Battery Energy Management System including associated applications / software; bay/s for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of above mentioned Battery Energy Storage Capacity as per this Agreement;</p> |
| Battery Energy Storage Sale Agreement (BESSA)                                                         | shall mean the Battery Energy Storage Sale Agreement (BESSA) entered between the Buying Entity and SJVN for onward sale of Battery Energy Storage Capacity being procured under this Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| "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 BESSD and SJVN, a day other than Saturday, Sunday or a statutory holiday, on which the banks remain open for business in Delhi & ..... [insert name of State where BESSD Registered Office is located] both;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

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| Buying Entity                                                            | Shall mean <b>Uttar Haryana Bijli Vitran Nigam Limited</b> (UHBVNL) or its authorized agency directly or through SJVN, utilizes the BESS for meeting its power on demand/merchant sale requirements.                                                           |
| “CERC”                                                                   | shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act,2003, or its successors;                                                                                           |
| “CTU” or “Central Transmission Utility”                                  | shall mean the Government Company notified by the Central Government under Sub-Section (1) of Section 38 of the Electricity Act,2003.                                                                                                                          |
| “Change in Law”                                                          | shall have the meaning ascribed thereto in Article 12 of this Agreement;                                                                                                                                                                                       |
| “Commissioning”                                                          | The Project will be considered as commissioned if all equipment as per rated Project Capacity has been installed, synchronized with Grid in line with the Grid Code and demonstrated all required parameters as per procedure in Schedule 5 of this Agreement. |
| “Commercial Operation Date (COD)”                                        | shall mean the date of next day on which the Project Capacity or the last part capacity of the Project (as the case may be) has achieved successful commissioning (as per provisions of this Agreement and RfS Documents)                                      |
| “Competent Court of Law”                                                 | shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;                                                                                           |
| Commercial Operation Date (COD)/<br>“Scheduled Commissioning Date (SCD)” | shall mean the date of next day on which the Project Capacity or the last part capacity of the Project (as the case may be) has achieved successful commissioning (as per provisions of this Agreement and RfS Documents).                                     |

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| “Consents, Clearances and Permits” | shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;                                                                                                                                                                                                                                                                                                                                                                                                                             |
| “Consultation Period”              | shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a BESSD 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;                                                                                                                                                                                                                                                                                                                                         |
| “Contract Year”                    | <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:</p> <p>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> |
| “Contracted Capacity”              | <p>shall mean ..... [Insert the Project Capacity] MW/.....MWh, which is the Energy Storage Capacity contracted with SJVN for supply by the BESSD to SJVN at the Delivery Point from the Project.</p> <p>It is clarified that the Project Capacity shall not be capacity demonstrated under any other tender concluded by any Central or State Agency as on the last date of bid submission of the RfS.</p>                                                                                                                                                                                                                                                                                                                        |
| “Day”                              | shall mean a day, if not a Business Day, the immediately succeeding Business Day.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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| <p>“Debt Due”</p> | <p>shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:</p> <ul style="list-style-type: none"> <li>a) The principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the ‘Principal’) but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;</li> <li>b) All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (a) above until the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due 2 (two) years prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Procurer Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by equity investors or their Affiliates for financing the Total Project Cost.</li> </ul> <p>Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken. Provided further that the Debt Due, on or after COD, shall in no case exceed 80% (eighty percent) of the Total Project Cost.</p> |
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| <p>“Delivery Point”</p> | <p>“shall mean the interconnection point at the voltage level of ..... [insert the name of the s/s selected for] PS, Haryana Grid Interconnecting Sub-station including the dedicated transmission line (if any) connecting the Project with the substation system as specified in the RfS document.</p> <p>Metering shall be done at this interconnection point where the power is injected into / drawn. For interconnection with grid and metering, the BESSD shall abide by the relevant and applicable regulations, Grid Code notified by the CERC/SERC or (and)CEA (Installation and Operation of Meters) Regulations or equivalent CEIG regulations as amended and revised from time to time, or orders passed thereunder by the appropriate commission or CEA or CEIG.</p> <p>Subject to provisions of this Agreement, for the Contracted Capacity, all charges and losses for charging, storing of energy and offtake of power shall be to the account of the Buying Entities. However, any charges / losses (if any) as per extant regulations / guidelines which are to be borne by the BESSD shall be borne by the BESSD. Moreover, any penalty or cost like deviation settlement mechanism etc. upto delivery point which is not attributable to Buying Entity shall be borne by the BESSD. In case it is paid by SJVN on behalf of Buying Utilities / BESSD, the same shall be recovered from the Buying Utilities / BESSD (as applicable);</p> |
| <p>“DISCOMs”</p>        | <p>shall mean the Buying Entity(ies) or the distribution utilities who have signed/will sign the BESSA (s) with SJVN for purchase of Battery Energy Storage Capacity;</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>“Dispute”</p>        | <p>shall mean any dispute or difference of any kind between SJVN and the BESSD, 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>Due Date shall mean the fifty (50th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hard copy and duly acknowledged by the SJVN or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the SJVN.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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| "Effective Date"                         | shall have the meaning ascribed thereto in Article 2.1 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                |
| "Electricity Laws"                       | shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;                                                                                                                                                                                     |
| "Energy Accounts"                        | shall mean the regional energy accounts/state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof                                                                                                                                                                                                                        |
| "Event of Default"                       | shall mean the events as defined in Article 13 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                        |
| "Expiry Date"                            | Shall mean the date occurring twenty (20) years from the Scheduled Commissioning Date (SCD) or the date of full commissioning of the Project, whichever is later, subject to the condition that the storage capacity shall be made available to SJVN for a period up to 20 years from the Scheduled Commissioning Date (SCD) or the date of full commissioning of the Project, 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 BESSD has sought financing for the 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 "Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services" issued by the Ministry of Power vide Gazette Resolution dated 10th March 2022, including subsequent amendments and clarifications, issued until the last date of bid submission of the referred RfS;                                                            |

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| "Grid Code" / "IEGC" or "State Grid Code"                                                | shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub- section (1) of Section 86 of the Electricity Act 2003, as applicable;                                                                                                                                                                                                     |
| "Indian Governmental Instrumentality"                                                    | shall mean the Government of India, Governments of State(s)..... [Insert the name(s) of the state(s) in India, where the Power Project, SJVN and BESSD 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;                                |
| "Insurance"                                                                              | shall mean the insurance cover to be obtained and maintained by the BESSD in accordance with Article 8 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                     |
| "Interconnection Facilities"                                                             | shall mean the facilities on BESSD's side of the Delivery Point for scheduling, transmitting and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement; |
| "Intermediary agency" or "Intermediary nodal agency" or "Intermediary Procurer" or "BIA" | shall mean SJVN Limited (SJVN);                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| "Invoice" or "Bill"                                                                      | shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;                                                                                                                                                                                                                                                                                                                                                                                                               |
| "Joint Control"                                                                          | shall have same meaning as defined in RfS Document;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| "Late Payment Surcharge"                                                                 | shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

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| "Law"                                  | shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions; |
| "Letter of Credit" or "L/C"            | shall have the meaning ascribed thereto in Article 10.4 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| "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;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| "Payment Security Mechanism"           | shall have the meaning ascribed thereto in Article 10.4 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| "Performance Bank Guarantee" or "PBG"  | shall mean the irrevocable unconditional bank guarantee, submitted by the BESSD to SJVN in the form attached given in RfS;                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| "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, as an alternative to submission of Performance Bank Guarantee by the BESSD to SJVN in the format provided in the RfS;                                                                                                                                                                                                                                                   |

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| Project                      | Shall mean the system(s)/project of .....[Insert capacity] MW/____MWh, located at ..... [Insert name of the place] in .... [Insert name of the District and State] having a separate control system, metering and single point of injection into the grid at Delivery/Interconnection/Metering point at STU substation and utilizing methods and technologies such as electrochemical batteries (Lead Acid, Li-ion, solid state batteries, flow batteries etc.), providing a facility that can store energy and deliver the stored energy in the form of electricity, including ancillary facilities (grid support, for example).It also includes all units and auxiliaries, Battery Energy Management System including associated applications / software; bay/s for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of above mentioned Battery Energy Storage Capacity as per this Agreement; |
| “Project Capacity”           | Shall mean [Insert the capacity] ____MW/____MWh [as per LoA] of BESS, which [Insert name of BESSD] is required to Build Own Operate and supply such Battery Energy Storage Capacity as per provisions of this Agreement read harmoniously with RfS documents and LoA.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| “Preliminary Default Notice” | shall have the meaning ascribed thereto in Article 13 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

|                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Prudent Utility Practices"                                                                 | <p>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:</p> <p>operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project;</p> <p>the requirements of Indian Law; and the physical conditions at the site of the Power Project.</p> |
| "RBI"                                                                                       | shall mean the Reserve Bank of India;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| "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 ..... including 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 Commissioning Date (SCD)/ Scheduled Date of Commissioning (SCOD) of the Project" | Scheduled Commissioning Date (SCD)/SCOD in relation to the contracted capacity shall mean the date corresponding to the date of commissioning of project i.e. 18 Months from Effective Date of BESPA i.e..... [Insert Date];                                                                                                                                                                                                                                                                                                                                                                                                                           |
| "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 RE Power Project is located;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| "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 the next day of commissioning of the respective part(s) of the Battery Energy Storage Project subsequent to the demonstration of the compliance of commissioning as per this Agreement and witnessed by the Committee (as applicable) duly constituted and also start of injection / drawl and scheduling of power from the BESS at 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;                                                                                                          |
| "Viability Gap Funding" or "VGF"        | <p>The Projects selected under this RfS shall be eligible for grant of Viability Grant Funding (VGF), to be released as per provisions contained in the RfS and provisions under the following Schemes:</p> <p><b>i) Project-1: 250 MW/500 MWh:</b> Viability Gap Funding (VGF) shall be provided under <b>VGF Scheme supported through PSDF</b>. The VGF support has been earmarked for a cumulative BESS capacity of 500 MWh (allocated capacity to the state of Haryana). VGF amount eligible for each Developer shall be limited to Rs. 18,00,000/-/MWh (Rupees Eighteen Lakhs per MWh) for 500 MWh BESS capacity. The VGF shall be a non-recurring expenditure and shall be fully funded from Power System</p> |

|        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        | <p>Development Fund (PSDF).</p> <p><b>ii) Project-2: 15 MW/30 MWh:</b> Viability Gap Funding (VGF) shall be provided under <b>State Component of Scheme for VGF</b>. The VGF support has been earmarked for a cumulative BESS capacity of 30 MWh (allocated capacity to the state of Haryana). VGF amount eligible for each Developer shall be limited to Rs. 18,00,000/-/MWh (Rupees Eighteen Lakhs per MWh) or 30 % of the capital cost for 30 MWh BESS capacity. The VGF shall be a non-recurring expenditure and shall be fully funded and shall be fully funded by Central Grant under State Component of Scheme for VGF.</p> |
| "Week" | shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

## **1.2 INTERPRETATION:**

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

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees", "Rs" or 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 Not Used

1.2.19 This Agreement and other documents such as Request for Selection Documents,

1.2.20 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. Battery Energy Storage Purchase Agreement / Battery Energy Storage Sale Agreement
2. RfS Documents

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

### **2.1 EFFECTIVE DATE:**

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

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 that, within 120 days after the Effective Date of the BESPAs, SJVN and/or the Buying Entity(ies) shall obtain adoption of tariff from Appropriate Commission, on the terms and conditions contained in this Agreement read with the terms and conditions contained in the BESSA entered into between SJVN and the Buying Entity (ies). The Parties agree that in the event the order of adoption of tariff as mentioned above is not issued by the Appropriate Commission within the time specified above, this shall entail a corresponding extension in Scheduled Commissioning Date (SCD) of the Projects for equal number of days for which the Appropriate Commission order has been delayed beyond the above deadline.

Provided further that in case, the order of adoption of Tariff and/or procurement approval from CERC and/or SERC 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.

2.1.4 Not used

### **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 of 12 years from the Effective Date until the Expiry Date. The Expiry Date of the Agreement may be further extended 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 BESSD is free to operate their plants beyond the Expiry Date, only with explicit written sanction from UHBVNL, 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 (as the case may be) shall not be obligated to procure power beyond the Expiry Date. If the BESSD, UHBVNL and SJVN mutually agree for extension of the BESPA, the same shall be subject to approval of Appropriate Commission as per terms and conditions of the RfS.

## **2.3 EARLY TERMINATION:**

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

2.3.2 In case the SJVN-Buying Entity BESSA 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 BESSD, after deducting SJVN's costs, if any.

2.3.3 Not used

## **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 BESSD:**

The BESSD agrees and undertakes to duly perform and complete all of the following activities at its own cost and risk unless such completion is affected by any Force Majeure event, or for the activities specifically waived off in writing by SJVN:

- i) BESSD shall sign Right-to-Use/ Right of Use (ROU) Agreement with UHBVNL in addition to signing of BESPAs. The land area will be given to the BESSD by UHBVNL / HVPNL for Right of Use (ROU) within 60 days from the signing of the BESPAs as per provisions of RfS.
- ii) BESSD's own cost and risk by..... [Enter the date as on Six(06) Months after the Effective Date] BESSD shall make Project financing arrangements (i.e. arrangement of necessary funds by the Battery Energy Storage System Developer towards 100 % project cost either by way of commitment of funds by the Company from its internal resources (by a resolution passed by the Board of Directors) and/or tie up of funds through a bank/financial institution by way of sanction of a loan or firm commitment letter agreeing to finance)for Projects(s)and shall provide necessary certificates to SJVN in this regard;
- iii) Detailed Project Report (DPR) of the Project, detailing out project configuration and proposed commissioning schedule of the Project.
- iv) The BESSD shall also submit to SJVN the relevant documents as stated above, complying with the Conditions Subsequent, within 06 (six) months from the Effective Date of BESPAs.
- v) The BESSD will have to submit the required documents to SJVN at least 14 days prior to the scheduled Financial Closure date. In case of delay in submission of documents mentioned above, SJVN shall not be liable for delay in verification of documents and subsequent delay in Financial Closure.
- vi) Any other details sought as per the checklist communicated by SJVN in line with Annexure-C of the RfS.

### **3.2 CONSEQUENCES OF NON-FULFILLMENT OF CONDITIONS SUBSEQUENT AND FINANCIAL CLOSURE:**

- 3.2.1 In case of a failure on the part of BESSD to fulfill 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/ Insurance Surety Bond submitted by the BESSD, terminate this Agreement and remove the Project from the list of the selected Projects by giving a notice to the BESSD in writing of at least seven

(7) days, unless the delay (subject to the conditions that BESSD has made / is making all possible efforts) is solely on account of delay in allotment of land by the UHBVNL and not owing to any action or inaction on the part of the BESSD 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 7<sup>th</sup> day of the above Notice.

3.2.2 (i) An extension, without any impact on the Scheduled Commissioning Date (SCD), may however be considered by SJVN, on the request of BESSD (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 BESSD to SJVN in advance, for the period of extension sought for. In case of any delay in depositing the extension charge, BESSD 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 7<sup>th</sup> day. This amount will go into the Payment Security Mechanism.

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

(iii) The extension given in terms of this Article will not have any impact on the obligation of the BESSD to achieve successful commissioning within the Scheduled Commissioning Date. Any extension charges paid so by the BESSD, shall be returned to the BESSD without any interest on achievement of successful commissioning within the Scheduled Commissioning Date, on pro-rata basis, based on the project capacity commissioned as on Scheduled Commissioned Date. However, in case the BESSD fails to commission the Contract Capacity by Scheduled Commissioning Date, the extension charges deposited by the BESSD shall not be refunded 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 BESSD to fulfil the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment 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 Commissioning Date (SCD).

### **3.3 PERFORMANCE GUARANTEE:**

- 3.3.1 The Performance Guarantee in the form of Performance Bank Guarantee (PBG) / Payment on Order Instrument (POI) / Insurance surety bond having validity from the date of submission of PBG/POI/ISB until ....., submitted for a value of..... i.e. INR ..... Lakh/MWh under this Agreement, shall be for guaranteeing the commencement of the supply (injection / drawl) of power / energy up to the Contracted Capacity within the time specified in this Agreement as per format provided in the RfS.
- 3.3.2 The failure on the part of the BESSD to furnish and maintain the Performance Bank Guarantee / Payment on Order Instrument / Insurance surety bond shall be a material breach of the term of this Agreement on the part of the BESSD.
- 3.3.3 If the BESSD fails to commence supply of power from the Scheduled Commissioning 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 / Insurance surety bond 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/ISB, upon the default of the BESSD under the BESPA, shall be credited to the payment security fund maintained by SJVN.

### **3.4 RETURN OF PERFORMANCE BANK GUARANTEE / PAYMENT ON ORDER INSTRUMENT/ INSURANCE SURETY BOND:**

- 3.4.1 Subject to Article 3.3, SJVN shall return / release the Performance Bank Guarantee / Payment on Order Instrument / Insurance surety bond within 45 days after the successful commissioning of the project after taking into account any liquidated damages due to delays in Commissioning as per provisions stipulated in this Agreement.
- 3.4.2 The return / release of the Performance Bank Guarantee / Payment on Order Instrument / Insurance surety bond shall be without prejudice to other rights of SJVN under this Agreement.

## ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

### 4.1 BESSD's OBLIGATIONS:

4.1.1 The BESSD Obligation: BESSD undertakes to be responsible, at BESSD own cost and risk, for the following:

- a) The BESSD shall be offered land on Right to Use / Lease / Sub-lease / licensing arrangement (as applicable) not later than 60 days from the Effective Date of BESPA. BESSD shall promptly comply with all the statutory / non-statutory, legal requirements including but not limited to signing of any agreement, payment of considerations etc. as per the offer made for the land.

The BESSD shall submit duly executed documents/Agreements to establish possession/right to use the required land area in the name of the BESSD for a period not less than the complete term of the BESPA, on or before the SCD failing which Commissioning of the Project will not be allowed.

- b) The BESSD shall be solely responsible and make arrangements for associated infrastructure for development of the Project and for Connectivity with the STU till Delivery Point for confirming the evacuation of power by the Scheduled Commissioning date and all clearances related thereto. However, it is clarified that the Project shall be interconnected to the ...220kV Bus of 400/220kV Substation, ..... [Insert the name of the S/s selected for] substation in Haryana. Connectivity has been assured to be provided to the BESSD, and necessary applications in this regard, will be required to be made by the BESSD. All the requisite costs associated including fees with obtaining connectivity shall be borne by the BESSD.
- 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. Except for Land and Connectivity for the Project, SJVN shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the Project. The BESSD shall, on his own, obtain permissions/ sanctions from Government authorities, if any required for establishing and operating (including for Charging and Discharging from BESS) 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 BESSD shall only be a voluntary endeavour with no intention of being bound by any legal or binding obligation.
- d) Designing, constructing, erecting, commissioning, completing and testing the

Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.

- e) The commencement of supply of power / energy up to the Contracted Capacity to SJVN no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement;
- f) Connecting the Project switchyard with the Interconnection Facilities at the Delivery Point; the BESSD shall make adequate arrangements to connect the Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point.
- g) Owning the Power Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15;
- h) 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 ..... [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 the COD, except with the prior approval of SJVN; or

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 the Successful Bidder i.e..... [enter name of the successful bidder which has been awarded LoA by SJVN] being a single company, shall ensure that its shareholding in the SPV/ Project Company i.e .....[enter name of the SPV Company] executing the BESPA shall not fall below 51% at any time prior to the COD, except with the prior approval of SJVN. Further, the successful bidder shall ensure that its promoters shall not cede control of the bidding company till the COD, except with the prior approval of SJVN.;

- i) Fulfilling all other obligations required to be undertaken by the BESSD under this Agreement for development of Project in Build, Own, Operate basis and supply of BESS Capacity during Term of this Agreement and as per provisions of this Agreement, RfS and LOA.
- j) The BESSD 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 BESSD the any other source Generator(s) and the corresponding Buying Utility(ies) are the Grid connected entities and SJVN as an Intermediary Procurer/ BIA is not a Grid connected entity in respect of the Power contracted under this Agreement.

- k) The BESSD shall fulfil the technical requirements according to criteria mentioned under Annexure A–Technical requirement for Project under the Guidelines and RfS.
- l) BESSD 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, or equivalent SERC/CEIG Regulations and subsequent amendments and clarifications thereof,
- m) As part of scheduling of power /energy from/to the Project for charging/discharging, the BESSD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interfaces of all the SLDCs concerned for the corridor of power flow, including the SLDC of the Buying Entity(ies)/Discom, as per the Regulations in force, under intimation to SJVN and in consultation with the Buying Entity. SJVN may facilitate in identification of any discrepancy and assist the BESSD for its early rectification without any liability on SJVN. The BESSD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices / Penalty.
- n) Making a payment of Rs. \_\_\_\_\_ [Insert amount @ Rs 5 Lakhs / MWh] to the designated account as intimated by the SJVN towards Payment Security Fund as per clause 6.11.2 of the RfS, which states that, “Prior to declaration of commissioning of first part capacity of the Project, the BESSD shall furnish a @ INR 5,00,000/MWh (Rupees Five Lakhs/MWh) to SJVN through DD/NEFT/RTGS. This fund shall form part of the Payment Security Fund maintained by SJVN for the Projects. Modalities of operationalization of the Payment Security Deposit will be notified by SJVN at appropriate stage, through necessary guidelines/orders. The above amount shall be credited to SJVN pro-rata to the part capacity being commissioned at that stage.”
- o) Not used.
- p) BESSD will have to comply with the Charging and Discharging Schedule as

intimated by SLDC/ UHBVNL. Frequent deviations from schedule by BESSD on account of commercial gain shall be considered under the material breach of this agreement.

- q) After signing of BESPAs, the BESSD shall apply for drawl NOC(s) from the respective STU of the State as per the extent regulation in this regard.
- r) BESSD shall ensure signing of BESPAs with SJVN within 30 days from the signing of the BESSAs with Buying Entity(ies).
- s) For the Project being implemented under this Agreement, the BESSD shall submit a detailed completion Schedule for the Project prior to the signing of BESPAs. Broad details to be captured in the Schedule are the Land Lease Agreement, grid connectivity; order, supply and erection status of various Project components; financial arrangement/ tie up etc. The BESSD shall also submit the progress report to SJVN with copy to UHBVNL 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 BESSD shall be required to submit the progress status of Project to SJVN as and when requested by SJVN, strictly within the timelines provided by SJVN. In case of failure to comply with the same, SJVN at its discretion, may or may not consider the SCD extension request of the BESSD, if any.

## **4.2 INFORMATION REGARDING INTERCONNECTION FACILITIES:**

- 4.2.1 The BESSD shall be required to obtain all information from the STU/concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection facilities on the BESSD's side of the Delivery Point to enable injection / drawl of electricity at the Delivery Point. The transmission of power / energy to / from up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the BESSD at its own cost.
- 4.2.2 Penalties, fines and charges etc. imposed by the STU under any statute or / guidelines in relation to delay in commissioning of Project shall be payable by the BESSD to the extent the delay is attributable to the BESSD.
- 4.2.3 The responsibility of getting connectivity with the transmission system up to the Interconnection Point / Delivery point, will lie with the BESSD. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the BESSD at his own cost. The maintenance of Transmission system up to the designated point as per the applicable terms and conditions shall be the responsibility of the BESSD. All costs, charges and losses up to and including at the Interconnection Point associated with

this arrangement will also be borne by the BESSD.

- 4.2.4 The BESSD shall be responsible for obtaining Connectivity and executing connectivity agreement as per provision of latest Grid Connectivity and Intrastate Open Access Regulations issued by SERC/HERC, for evacuation of the Contracted Capacity and maintaining it throughout the term of the Agreement. It is further clarified that the Entities (BESSD and Buying Entity) as indicated in the Detailed Procedure issued subsequently under the HERC's relevant Grid Connectivity and Intra-state Open Access Regulations (As amended from time to time), will be responsible for their respective obligation as notified in the Detailed Procedure irrespective of the provisions of the RfS, BESPAs and BESSAs.
- 4.2.5 The arrangement of connectivity shall be made by the BESSD through a transmission line, if applicable. 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 BESSD.
- 4.2.6 Treatment of Intra-State Transmission System Charges (if any) shall be as per the extent regulation / orders / guidelines.
- 4.2.7 BESSD needs to carry out inter-device interaction studies for BESS with RE generation (Wind/Solar) and STATCOMs in nearby substations.
- 4.2.8 Following studies may be conducted (not limited to below) by BESS Developer(s) in this regard:
- i) Harmonic studies considering network and BESS system along with flicker studies
  - ii) Transient and dynamic studies
  - iii) Small signal stability studies
  - iv) Sub-Synchronous Oscillations/ Sub-Synchronous Resonance / Sub-Synchronous Torsional Interaction studies
  - v) Sub-synchronous control interactions studies between different converters based equipment.
- 4.2.9 In addition, BESS system shall need comply to requirements/performance parameters stipulated in CEA (Technical Standards for Connectivity to the Grid) Regulations, 2007 and its amendments or equivalent HERC Regulations.

#### **4.3 COMMUNICATION EQUIPMENT REQUIREMENT AT BESS END:**

BESSD will provide UGFO/Approach cable (having minimum 12 Fibers) from BESS end to the..... [Insert the name of the s/s selected for] PS control room. BESSD will provide FOTE (STM-16) terminal equipment, FODP and PMU at the BESS end.

#### **4.4 COMMUNICATION EQUIPMENT REQUIREMENT AT STU END**

BESSD will provide communication equipment's as per Regulations on Communication System for transmission of electricity and other Regulations/Procedures (as amended from time to time) issued by Appropriate Commissions and CEIG/CEA.

#### **4.5 PURCHASE AND SALE OF CONTRACTED CAPACITY:**

4.5.1 Subject to the terms and conditions of this Agreement, the BESSD undertakes to sell the Storage Capacity to SJVN for onward sale to Buying Entity(ies) under BESSA and SJVN undertakes to pay Applicable Tariff as per this Agreement for the Battery Energy Storage Capacity upto the Contracted Capacity at the Delivery Point.

4.5.2 Not Used.

#### **4.6 RIGHT TO PROJECT CAPACITY:**

4.6.1 SJVN, in any Contract Year except for the Contract Year ending on 31st March immediately after COD of the Project, shall not be obliged to off-take any capacity beyond / over and above Contracted Capacity.

Moreover, during a day in any Contract year, BESSD shall not be asked as well as BESSD shall not be allowed to schedule for more than 2 Operational Cycles / day. For the purpose of this Agreement, Operational Cycle shall mean charging of the BESS upto the Contracted capacity followed by discharge including any intervening resting period as specified in the RfS Document. The BESSD shall not use the Contracted Capacity for any purpose other than that specified in this Agreement.

Provided that, UHBVNL may, at its discretion, utilize the BESS by splitting each discharge cycle in maximum two sessions at rated power with minimum continuous duration of one hour in one session, subject to condition that total scheduled discharge of energy from BESS as demanded by the Buying Entity shall be limited to 85% of the energy supplied by the Buying Entity.

4.6.2 Subsequent to commissioning of the Project, for any Contract Year, the BESSD shall be required to maintain and demonstrate the following performance parameters:

i) **Minimum Annual Average Availability of 95%:** During any Contract Year for the Contracted Capacity, BESSD shall be required to maintain minimum system availability of 95% on monthly basis. Annual Average Availability shall be calculated as per methodology given in the RfS.

In case of shortfall in meeting the above criteria, the BESSD shall be levied liquidated damages for such shortfall and shall duly pay such damages to

SJVN. Amount of such liquidated damages shall be twice the Capacity Charges (Capacity Charges shall mean Applicable Tariff as defined under Article 9 of the BESPA) for the capacity not made available.

The Minimum Annual Average Availability as specified above, shall however be relaxable by Buyer to the extent of grid non-availability for evacuation which is beyond the control of the BESSD (as certified by the SLDC/RLDC) and / or upon occurrence of Force Majeure event as identified in BESPA (and occurrence of such Force Majeure event(s) has been mutually agreed) and affecting availability and supply of Contracted Capacity.

- ii) **Round Trip Efficiency:** The BESSD shall maintain AC to AC roundtrip efficiency (RtE) of 85% for the system on monthly basis. Calculation of Round-Trip Efficiency shall be as per the methodology specified in RfS. The BESSD shall be liable for Liquidated Damages to the off-taker, if any, on account of excess conversion losses, based on the following conditions:
- a) For  $RtE < 70\%$ , there shall be a liquidated damage levied @ 1.5 times of the APPC tariff of last financial year applicable to the Buying Entity, levied upon excess conversion losses considering system  $RtE = 85\%$ ;
  - b) For  $70\% \leq RtE < 85\%$ , there shall be a liquidated damage levied @ the APPC tariff of last financial year applicable to the Buying Entity, levied upon excess conversion losses considering system  $RtE = 85\%$ .
- iii) Taking into consideration capacity degradation, the minimum dispatchable capacity to be made available by the BESSD at the end of a given year shall be as follows:

| <b>Contract Year</b> | <b>Min. Dispatchable Capacity at the end of Contract Year (as a % of Capacity at the Beginning of Life/COD)</b> |
|----------------------|-----------------------------------------------------------------------------------------------------------------|
| 1                    | 97.5%                                                                                                           |
| 2                    | 95.00%                                                                                                          |
| 3                    | 92.5%                                                                                                           |
| 4                    | 90.0%                                                                                                           |
| 5                    | 87.5%                                                                                                           |
| 6                    | 85.0%                                                                                                           |
| 7                    | 82.5%                                                                                                           |
| 8                    | 80.0%                                                                                                           |
| 9                    | 77.5%                                                                                                           |
| 10                   | 75.0%                                                                                                           |
| 11                   | 72.5%                                                                                                           |
| 12                   | 70.0%                                                                                                           |

- iv) Performance criteria to be demonstrated by the Project have been detailed out in Clause 6.7.1 of the RfS Document.

#### 4.6.3 Shortfall in meeting Performance Criteria

Subsequent to COD of full Project Capacity, in case the Monthly Availability demonstrated by the BESSD is less than the minimum as specified above, such shortfall in performance shall make the BESSD liable to pay the liquidated damages provided in the BESSA as payable by SJVN to Buying Entity and shall duly pay such damages to SJVN to enable SJVN to remit the amount to Buying Entity.

Liquidated damages on account of shortfall in meeting the minimum Availability criteria as per Article 4.6.2 (i) will be computed as follows:

$$\text{Liquidated damages} = (A - B) \times C \times D \times 2$$

where,

A is Guaranteed Monthly Availability as per Clause 4.6.2.(i). above;

B is Actual Monthly System Availability, as calculated as per Clause 4.6.2 above;

C is BESS Power Capacity;

D is Capacity Charges/MW/month as discovered through bidding process;

In case the BESSD fails to meet the monthly RtE demonstration as per Clause 4.6.2

(ii) above, additional Liquidated Damages for the unavailability of the required minimum RtE shall be applicable for the entire month.

For avoidance of any doubt, liquidated damages as specified above are mutually exclusive and independent, therefore, in case of levying of liquidated damages against Monthly Average Availability and Round-Trip Efficiency, both damages shall be payable by the BESSD. Illustrations regarding calculation of liquidated damages are provided at Annexure-D of RfS.

#### 4.7 EXTENSIONS OF TIME:

4.7.1 In the event that the BESSD is prevented from performing its obligations under Article

4.1 by the Scheduled Commissioning 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 BESSD,

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

- 4.7.2 Any delay beyond 120 days from the Effective Date of BESPA in issuance of Order for the adoption of tariff by Appropriate Commission, shall entail a corresponding extension in Scheduled Financial Closure and the Scheduled Commissioning Date for equal number of days for which the Appropriate Commission order has been delayed beyond such period of 120 days from the Effective Date of BESPA.
- 4.7.3 In case of extension due to reasons specified in Article 4.7.1(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, any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.10. In case neither party terminates the Agreement under this clause, the Agreement shall stand terminated on the expiry of twelve (12) months of the continuation of the Force Majeure event unless the parties mutually agree to extend the Agreement for the further period.
- 4.7.4 If the Parties have not agreed within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred, either Party may raise the Dispute to be resolved in accordance with Article 16.
- 4.7.5 As a result of such extension on account of Article 4.7.1 or Article 4.7.2, the newly determined Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.
- 4.7.6 Subsequent to grant of connectivity, in case there is a delay in readiness of the STU substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the STU network until SCD of the Project, or delay in grant/operationalization of Grid Access, and it is established that:
- (i) The BESSD has complied with the complete application formalities as per Article 4.2.4 of this Agreement,
  - (ii) The BESSD has adhered to the applicable Regulations/Procedures in this regard as notified by the SERC/CERC/STU (As applicable), and
  - (iii) The delay in grant of connectivity by the STU and/or delay in readiness of the

STU substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the STU network, is a factor attributable to the STU/transmission licensee and is beyond the control of the BESSD;

The above shall be treated as delays beyond the control of the BESSD and SCD for such Projects shall be revised as the date as on 30 days subsequent to the readiness of the Delivery Point and power evacuation infrastructure and/or operationalization of the Grid Access. Decision on requisite extension on account of the above factor shall be taken jointly by Buying Entity & SJVN.

In case of delay in commissioning of Project due to reasons beyond the reasonable control of the BESSD, SJVN may extend the SCD after examining the issue on a case-to-case basis.

- 4.7.7 Delay in commissioning of the project beyond the scheduled commissioning date for reasons other than those specified in Article 4.7.1 & Article 4.7.2 shall be an event of default on part of the BESSD and shall be subject to the consequences specified in the Article 4.8.

#### **4.8 LIQUIDATED DAMAGES NOT AMOUNTING TO PENALTY FOR DELAY IN COMMISSIONING:**

- 4.8.1 The Project shall be fully commissioned within the Scheduled Commissioning Date as defined in this Agreement. If the BESSD is unable to commission the Project by the Scheduled Commissioning Date for the reasons other than those specified in Article 4.7.1, the BESSD shall pay to SJVN, to enable SJVN to remit the amount to the Buying Entity(ies) damages for the delay in such commissioning and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:

- a) Delay beyond the Scheduled Commissioning Date up to (& including) the date as on 6 months after the Scheduled Commissioning Date, as part of the liquidated damages, the total PBG/POI/Insurance Surety Bond (ISB) amount for the Project shall be encashed on per-day basis and proportionate to the balance capacity not commissioned. For the purpose of calculations of the liquidated damages, 'month' shall be considered consisting of 30 days. As an alternative to the above encashment of PBG/POI/ISB, the BESSD may choose to make a payment of the amount corresponding to the liquidated damages, directly to SJVN. The BESSD shall intimate to SJVN, its chosen alternative out of the two options, within 10 business days of intimation of the liquidated damages to the BESSD, as calculated by SJVN. In case no response is

received from the BESSD until the lapse of the above deadline, SJVN shall encash the PBG/POI/ISB for the amount as per the liquidated damages. In case the BESSD chooses to make necessary payments in lieu of the liquidated damages, the said payment shall be credited to SJVN account through NEFT payment, no later than 5 business days from the above intimation by the BESSD. In case of non-payment by the BESSD within the above deadline, the PBG will be encashed by SJVN on the next business day.

- b) **Delay beyond Six (6) Months from SCD:** The BESPAs capacity shall stand reduced/amended to the Project Capacity commissioned, the entire PBG/POI/Insurance Surety Bond will be encashed by SJVN, and the BESPAs for the Project shall stand terminated for the balance un-commissioned capacity. Accordingly, Contracted Capacity will also stand reduced to Project Capacity commissioned as of six months from the SCD.
- c) For avoidance of doubt it is clarified that provisions of Article 4.8.1 will be applicable even in cases where no capacity (**i.e. 0 MW**) is commissioned.

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

- 4.8.2 The BESSD further acknowledges and accepts that the amount of the liquidated damages as specified above is a fixed, genuine and reasonable pre-estimate of the damages that may be suffered by SJVN/Buying entity(s).

#### **4.9 ACCEPTANCE/PERFORMANCE TEST:**

- 4.9.1 Prior to synchronization of the Project, the BESSD shall be required to get the Project certified for the requisite test including for safety as may be laid down by CEIG or an agency identified by the State government to carry out testing and certification for the Battery Energy Storage projects. Further, BESSD shall ensure that all technical, acceptance and performance criteria as specified in RfS Documents and Guidelines are also complied and maintained.

- 4.9.2 Not Used.

#### **4.10 THIRD PARTY VERIFICATION:**

- 4.10.1 The BESSD shall be further required to provide entry to the site of the Project free of all encumbrances at all times during the Term of the Agreement to UHBVNL / SJVN (or its authorized representatives) and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being

carried out by the BESSD at the site of the Project. The BESSD shall provide full support to UHBVNL / SJVN and/or the third party in this regard..

- 4.10.2 The third party may verify the construction works/operation of the Project being carried out by the BESSD 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 BESSD or require the works to be stopped or to comply with the instructions of such third party

#### **4.11 BREACH OF OBLIGATIONS:**

- 4.11.1 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 BESSD would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity 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.

## **ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION**

### **5.1 SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION:**

- 5.1.1 The BESSD 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 Project to the Grid System.
- 5.1.2 Subject to Article 5.1.1, the Project may be synchronized by the BESSD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.1.3 The synchronization equipment and all necessary arrangements / equipment including RTU / any other equipment for charge and discharge of power from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the BESSD at its facility of the Project at its own cost. The BESSD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/Grid System and checking/verification is made by the concerned authorities of the Grid System and RLDC, in line with the provisions of the Grid Code.
- 5.1.4 The BESSD shall immediately after each synchronization/tripping of system, inform the sub-station of the Grid System to which the Project is electrically connected in accordance with applicable Grid Code under intimation to SJVN and the buying entity. In addition, the BESSD at its own risk and cost, will be required to arrange for the charging and discharging of power for carrying out operational/functional test prior to commercial operation as well as for commissioning of the Project. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.
- 5.1.5 The BESSD shall commission the Project as detailed in "Commissioning Procedure mentioned in RfS" within Eighteen (18) Months from the Effective Date of BESPA. Declaration of COD / UCOD shall only be done subject to the demonstration of the compliances as per Commissioning Procedure.

**5.1.6 Part-commissioning of the Project**, without imposition of any liquidated damages in terms of the BESPA, shall be accepted by SJVN subject to the condition that the minimum part commissioning capacity for the 1st part will be 50% of MWh capacity of the project or 100 MWh, whichever is lower. The total number of instalments in which a Project can be commissioned will be not more than 3, i.e., 1<sup>st</sup> initial instalment and the subsequent two instalments.

However, the SCD will not get altered due to part commissioning. Irrespective of dates of part commissioning or full commissioning, the BESPA will remain in force for the Term as defined in this Agreement.

In case of part-commissioning, payments as per the BESPA may be made on pro-rata basis, proportionate to the capacity commissioned. The procurement of part commissioned capacity shall be done by UHBVNL /Buying Entity at the BESPA tariff plus SJVN's facilitation charges in the form of trading margin.

**5.1.7** The Parties agree that for the purpose of commencement of the BESS capacity by the BESSD to SJVN, liquidated damages for delay etc., the Scheduled Commissioning Date (or extended Scheduled Commissioning Date) as defined in this Agreement shall be the relevant date.

**5.1.8** The BESSD shall submit requisite documents At least 30 days prior to trial run of the Project:

- i) Intimation regarding the timeline for commissioning of the Project
- ii) Installation report duly signed by the authorized signatory as per Annexure-C of the RfS. The BESSD is advised to take due care in furnishing such Installation Report.
- iii) CEI/CEIG (as applicable) report containing approval for all the components, including Batteries, inverters, transformers and protection system, along with all annexures / attachments. It would be the responsibility of the BESSD to obtain the certificate.
- iv) Approval of Metering arrangement/scheme from STU/ any other concerned authority as applicable
- v) Plant Layout, Plant (AC & DC) SLD.
- vi) Documents pertaining connectivity of the Project.
- vii) Affidavit certifying that the BESSD has obtained all the necessary approvals for commissioning of the Project, and indemnifying SJVN against any discrepancies in the above details.
- viii) Affidavit from the BESSD 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.

- ix) Documents to establish the compliance of technical requirement as per BESPA/RfS.
- x) Invoices against purchase of the Batteries, Inverters/PCUs, SCADA and BMS along with the summary sheet containing the list of all the invoices, inverters including details and number of items. Lorry Receipts for delivery of Project components at site along with certified summary sheet by the authorized signatory.
- xi) Any other document as deemed necessary by SJVN for the purpose of commissioning.

It is clarified that SJVN shall bear no responsibility in declaration of commissioning/COD of the Project. However, on the basis of above documents, the BESSD shall be required to obtain No-objection certificate (NOC)/BESPA Compliance Certificate from SJVN prior to declaration of commissioning/SCD of the Project.

SJVN's scope will be limited to verifying the installation of rated capacity (ies) of the Project, as per the COD certificate submitted by the BESSD. This verification will be at SJVN's discretion and shall not constitute any certification/confirmation of commissioning/COD of the Project by SJVN. Prior to declaration of commencement of power supply, the BESSD shall submit COD certificate for the corresponding Installed Capacity which has commenced power supply to SJVN as part of the requisite documents.

#### **5.1.9 Early Commissioning**

The BESSD shall be permitted for full commissioning as well as part commissioning of the Project even prior to the Scheduled Commissioning Date.

Early commissioning of the Project will be allowed solely at the risk and cost of the BESSD, and SJVN may purchase the BESS capacity from such early commissioned Project at BESPA tariff, only in the case UHBVNL / Buying Entity agrees to purchase BESS Capacity at an earlier date at BESPA tariff plus facilitation charges in the form of trading margin under BESSA.

Such intimation for early commissioning shall be provided to SJVN at least 15 days before the proposed early commissioning date as per the Commissioning procedure. Such intimation for early commissioning shall be provided to SJVN at least 15 days before the proposed early commissioning date as per the Commissioning Procedure. In case there is no response provided by SJVN within 15days from the receipt of such intimation, such early commissioned capacity shall be deemed to have been rejected by SJVN. In case SJVN does not agree to purchase such capacity, early part/full commissioning of the Project shall still be allowed and the BESSD will be free to sell such capacity to a third party at its own risk and cost; subject to the first right of refusal of UHBVNL until SCD or the date of

commencement of procurement of BESS Capacity notified by SJVN, whichever is earlier. In such cases, a Provisional Commissioning Certificate will be issued to BESSD for period up to SCD or date of commencement of Power Procurement (whichever is earlier), along with a NOC for sale of Power to 3rd Party for such period. UCOD/COD of the Project under the BESPAs will be the date on which the commissioning certificate is issued upon successful commissioning of the part/full capacity of the Project. Subject to the provisions of this Agreement, in case of early commissioning, if BESSD sells any capacity to a third party, the BESSD will have to again demonstrate 100% of Contracted Capacity (as per the Commissioning Procedure) to UHBVNL, the Procurer from the date of commencement of off-take of capacity by the Procurer.

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

### **6.1 DISPATCH AND SCHEDULING:**

- 6.1.1 The BESSD in consultation with UHBVNL, the Buying Entity(ies), shall be required to charge/discharge the Battery System as per the applicable regulations / requirements / guidelines of CERC / SERC / SLDC / RLDC/ NLDC or any other competent agency and same being recognized by the SLDC/NLDC 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 BESSD.
- 6.1.2 The BESSD shall be responsible for directly coordinating and dealing with UHBVNL, the Buying Entity(ies), RLDCs, SLDCs, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of charging and discharging power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the BESSD and UHBVNL, Buying Entities are the Grid connected entities and SJVN as an intermediary procurer/ trading licensee is not a Grid connected entity in respect of the Battery Storage Capacity contracted under this Agreement..
- 6.1.3 DSM penalties, if any, shall be levied separately on the BESSD and the Buying Entity as applicable, at their respective ends for the charging and discharging activities. UI charges on this account shall be directly paid by the BESSD or the Buying Entity as per applicable regulations.
- Reactive power charges shall be on account of the Buying Entity/BESSD at their respective ends during charging and discharging, as per CERC/SERC regulations.
- 6.1.4 The BESSD shall take separate, metered connection for the Auxiliary Power load of BESS. Cost of Auxiliary power shall be borne by the BESSD as per the concerned Central/State regulations.
- 6.1.5 Capacity procured from the Project awarded under this RfS shall be allocated on back- to-back basis to UHBVNL, the Buying Entities at the discretion of SJVN, in consultation with UHBVNL /Buying Entity.
- 6.1.6 Further, in case of any difference in scheduled energy at the interfaces of the RLDC of the Buying Entity concerned for the corridor of the power flow, SJVN will make payments corresponding to the lowest of the individual energy values to the BESSD, until rectification of the above error.

### **6.2 SUPPLY OBLIGATION OF THE BESSD:**

In case the BESSD 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 BESSD, 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 shall increase to six months for second default and shall be one year for each successive default. Such debarment of the BESSD shall be without prejudice to the rights of SJVN/Buying Entity for seeking compensation for the default by the BESSD 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 BESSD 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 or equivalent SERC regulations (as applicable).
- 7.1.2 The BESSD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at BESSD side of Delivery Point for injection and drawl of power from the Grid during discharging and charging of BESS.
- 7.1.3 In addition to ensuring compliance of the applicable codes, the BESSD shall install Main & Check meters at the Delivery Point for both Charging and Discharging, along with Stand-by meter(s) as per the applicable State regulations and a Back-Up Meter shall be required to be installed at generation side.
- 7.1.4 Not used.

### **7.2 REPORTING OF METERED DATA AND PARAMETERS:**

- 7.2.1 Online arrangement would have to be made by the BESSD for submission of metering data regularly for the entire period of this Agreement to the SLDC, UHBVNL, SJVN and the concerned Ministry or concerned agency as per applicable regulation / directions.
- 7.2.2 Reports on metering parameters on monthly basis, and/or as required by regulation / Guidelines, shall be submitted by the BESSD to UHBVNL through SJVN for entire Term of the BESPA.

## **ARTICLE 8: INSURANCES**

### **8.1 INSURANCE:**

- 8.1.1 The BESSD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of BESPA, 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 BESSD 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.
- 8.1.2 The BESSD shall submit the Insurance copy to SJVN, at the time of commissioning of project.

### **8.2 APPLICATION OF INSURANCE PROCEEDS:**

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

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

- 8.2.2 If a Force Majeure Event renders the 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 BESSA entered into and any other dues of the Buying Utility(ies) against BESSD.

### **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 BESSD can claim compensation, under any Insurance shall not be charged to or payable by SJVN or Buying Entity(ies). It is for the BESSD 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 BESSD shall be entitled to receive the Tariff of INR\_\_\_\_\_/MW/Month [Insert the Tariff discovered through the bidding process conducted by SJVN], fixed for the entire term of this Agreement, with effect from the SCD, the Contracted Capacity made available to UHBVNL,, the Buying Entity during BESPA Period, as per the provision of this agreement
- 9.2 GST/taxes levied on the energy storage facility provided by the BESSD, if any, shall be passed on through to the Buying Entity.
- 9.3 In case of early part/full commissioning of the project, till SCD, the BESSD will be free to sell the electricity generated/ battery capacity, to any entity other than the SJVN/ Buying Entity(ies), only after giving the first right of refusal to the SJVN/Buying Entity(ies) by giving 15 days advance notice to both SJVN and Buying Entity. SJVN/Buying Entity shall provide refusal within 15 (fifteen) days from the receipt of the request for early part/full commissioning of the Project, beyond which it would be considered as deemed refusal. Provided that in case both the Buying Entity and SJVN give their acceptance to battery capacity, the Buying Entity will be accorded priority in availing such battery capacity. In case the designated Buying Entity does not give its acceptance, then SJVN can use such battery capacity directly or designate another potential buyer/entity to use such battery capacity. In case SJVN/Buying Entity agree to use the battery capacity from a date prior to the SCD, such capacity shall be purchased at the Applicable Tariff (as per Article 9.1). Any energy generated/ battery capacity used before SCD shall not be at the cost of SJVN.

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

### **10.1 GENERAL:**

- 10.1.1 Pursuant to Article 4.1.1 (n), SJVN shall set up a payment security fund in order to ensure timely payment, which shall be suitable to support payment of at least 3 (three) months' billing.
- 10.1.2 From the commencement of availability of BESS capacity, SJVN shall pay to the BESSD 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 BESSD(s), in case Energy Account is published on cumulative basis, payment to the BESSD(s) for the energy delivered shall be apportioned based on REA/SEA/JMR taken for the BESSD's Project at the Pooling substation/metering Point.
- 10.1.4 The BESSD 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 The obligation of SJVN shall be to pay the Applicable Tariff to BESSD and it shall be entirely for the BESSD to deal with and discharge the charges payable to the any other source generator(s).
- 10.1.6 The Parties acknowledge and accept that the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, and amendments made from time to time notified 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 BESSD, 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 BESSA. The Rules referred to hereinabove being statutory shall, to the extent applicable, supersede any provisions in this Agreement and the BESSA which are inconsistent or contrary to the provisions of the Rules.

#### 10.1.7 Not Used

### **10.2 DELIVERY AND CONTENT OF MONTHLY BILLS/SUPPLEMENTARY BILLS:**

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

### **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 BESSD, as shall have been previously notified by the BESSD 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 BESSD, 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 BESSD shall open a bank account (the "BESSD's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by SJVN to the BESSD 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 BESSD to SJVN, if any, and notify the BESSD of the details of such account

ninety (90) Days before the Scheduled Commissioning Date. SJVN and the BESSD shall instruct their respective bankers to make all payments under this Agreement to the BESSD'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 BESSD 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 BESSD 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 BESSA 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 UCOD, and BESSD 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 BESSD, 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 BESSD 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.
- 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.

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

#### **10.4 PAYMENT SECURITY MECHANISM**

##### **LETTER OF CREDIT (LC):**

10.4.1 SJVN shall provide to the BESSD, 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 BESSD 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 BESSD, 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 BESSD 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 BESSD, 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 BESSD 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 BESSD and;
  - ii) a certificate from the BESSD 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;
- 10.4.9 **Payment Security Fund:** SJVN shall maintain Payment Security Fund. To be eligible for coverage from this fund, BESSD shall pay Rs [Insert amount @ Rs 5 Lakhs / MWh] to the designated account as intimated by the SJVN towards Payment Security Fund through DD/NEFT/RTGS prior to declaration of commissioning of first part capacity of the Project. Modalities of operationalization of the Payment Security
- Deposit will be notified by SJVN at appropriate stage and the same shall be as per the guidelines issued / to be issued by MoP/MNRE from time to time. The above amount shall be credited to SJVN pro-rata to the part capacity being commissioned at that stage.

## **10.5 DISPUTED BILL:**

10.5.1 If the SJVN does not dispute a Monthly Bill or a Supplementary Bill raised by the BESSD 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 100 % of the undisputed invoice amount and 75% of the disputed amount within fifteen (15) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

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

10.5.3 If the BESSD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the BESSD 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 BESSD 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 BESSD shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

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

10.5.7 For the avoidance of doubt, it is clarified the despite a Dispute regarding an invoice, SJVN shall, without prejudice to its right to Dispute, be under an obligation to make payment of 100 % of the undisputed invoice amount and 75% of the disputed amount in the Monthly Bill.

## **10.6 QUARTERLY AND ANNUAL RECONCILIATION:**

10.6.1 BESSD 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 BESSD 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 BESSD and SJVN shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the BESSD shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

## **10.7 PAYMENT OF SUPPLEMENTARY BILL:**

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

- i) Adjustments required by the Energy Accounts (if applicable); or
- ii) Change in Law as provided in Article 12, or
- iii) 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 BESSD to the BESSD '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.

## **10.8 Viability Gap Funding (VGF):**

**10.8.1 Viability Gap Funding (VGF) Schemes:** The Projects selected under this RfS

shall be eligible for grant of Viability Grant Funding (VGF) and will be disbursed through UHBVNL or its authorized agency, as per provisions contained under the following Schemes:

- i) **Project-1: 250 MW/500 MWh:** Viability Gap Funding (VGF) shall be provided under **VGF Scheme supported through PSDF**. The VGF support has been earmarked for a cumulative BESS capacity of 500 MWh (allocated capacity to the state of Haryana). VGF amount eligible for each Developer shall be limited to Rs. 18,00,000/-/MWh (Rupees Eighteen Lakhs per MWh) for the 500 MWh BESS capacity. The VGF shall be a non-recurring expenditure and shall be fully funded from Power System Development Fund (PSDF).

The disbursement of VGF will be carried out in 3 tranches, as follows:

| Milestone                                                                                                         | % VGF disbursed |
|-------------------------------------------------------------------------------------------------------------------|-----------------|
| On Financial Closure as per the BESPA, subject to submission of Bank Guarantee to UHBVNL or its authorized agency | 20              |
| Upon achieving commercial Operation Date (COD) of the Project                                                     | 50              |
| Upon completion of 1st Year after COD of the Project                                                              | 30              |
| Total VGF amount                                                                                                  | 100             |

- ii) **Project-2: 25 MW/30 MWh:** Viability Gap Funding (VGF) shall be provided under **State Component of Scheme for VGF**. The VGF support has been earmarked for a cumulative BESS capacity of 30 MWh (allocated capacity to the state of Haryana). VGF amount eligible for each Developer shall be limited to Rs. 18,00,000/-/MWh (Rupees Eighteen Lakhs per MWh) or 30 % of the Capital Cost for the 30 MWh BESS capacity. The VGF shall be a non-recurring expenditure and shall be fully funded and shall be fully funded by Central Grant under State Component of Scheme for VGF.

The disbursement of VGF will be carried out in 05 tranches, as follows:

| Milestone                                                                                                                                                                                            | % VGF disbursed |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| On Financial Closure as per the BESPA, subject to submission of Bank Guarantee to UHBVNL or its authorized agency and possession of 90 % of the total land required for the project by the developer | 10              |

|                                                                  |     |
|------------------------------------------------------------------|-----|
| Upon achieving commercial Operation Date (COD) of the Project    | 45  |
| Upon completion of 1 <sup>st</sup> Year after COD of the Project | 15  |
| Upon completion of 2 <sup>nd</sup> Year after COD of the Project | 15  |
| Upon completion of 3 <sup>rd</sup> Year after COD of the Project | 15  |
| Total VGF amount                                                 | 100 |

- 10.8.2 BESS Developer shall submit certificate for the capital cost incurred for the Project awarded capacity, duly certified by the Statutory Auditors, within six months from the COD.
- 10.8.3 VGF will be sanctioned based on the Project Capacity as defined in the BESPA.
- 10.8.4 In compliance of the MoP, GoI OM No-No.48-1512112025 - NRE, Government of India Ministry of Power dt 24/12/2025, the first tranche of VGF shall be released after submission of an Undertaking by the BESSD as per Format 7.15 of RfS Document. Further, the second tranche of VGF shall be released after submission of documentary evidence of minimum local content of 20% of the total project cost in BESS as per the above OM No-No.48-1512112025 - NRE, Government of India Ministry of Power dt 24/12/2025.
- 10.8.5 The VGF for each project shall be disbursed to the BESSD, once UHBVN/CEA/authorized agency certifies the achievement of the disbursement schedule milestone and submission of the required Bank Guarantee by BESSD. UHBVN/its authorized agency shall disburse the tranche wise VGF to BESSD only after receipt of the same from the Govt. of India and Submission of BG by BESSD as per Clause 6.9.6 below:
- 10.8.6 Bank Guarantee/ISB:**
- i) Each tranche of VGF will be disbursed only after submission of Bank Guarantees (BG)/ Insurance Surety Bond (ISB) for the amount equal to the VGF amount to be disbursed to the BESSD in that tranche and these BGs/ Insurance Surety Bond (ISB) are in addition to the Performance Bank Guarantee provided by the developer as per clause 6.10 of this RfS. These BGs/ISBs shall be liable for encashment to recover the VGF amount in the event of non-fulfilment of scheme conditions specified in the RfS and BESPA documents.

ii) **Release of Bank Guarantee/ISB:**

**Project-1: 250 MW/500 MWh:** The BGs/ISBs for the VGF sanctioned up to COD will be retained by the UHBVNL/Its Authorized Agency for a period of 1 year starting from the COD and will be returned after the end of 1 year from COD, taking into account recovery of VGF, if any.

No BG is required against the disbursement of the last tranche of VGF post completion of one year of operation, after taking into account recovery of VGF, if any.

**Project-2: 15 MW/30 MWh:** The BGs/ISBs for the VGF sanctioned up to COD will be retained by the UHBVNL/Its Authorized Agency for a period of 03 year starting from the COD and will be returned after the end of 03 years from COD, taking into account recovery of VGF, if any.

No BG is required against the disbursement of the last tranche of VGF post completion of 03 years of operation, after taking into account recovery of VGF, if any.

- 10.8.7 If the BESSD fails to commission the project in the timeline provided in this BESPA, and project got terminated after disbursement of the quantum of VGF, UHBVNL/its authorized agency will have full right to recover the total amount of VGF being disbursed till the date of termination of BESPA plus interest @ SBI-MCLR (1 Year) plus five percent, as existing on the date of disbursement, accrued from the date of disbursement on the disbursed amount. In case Project capacity is being reduced as per Article 4.6.1(b) of this BESPA, recovery of VGF amount shall be made on pro-rata basis corresponding to the capacity being terminated.
- 10.8.8 UHBVNL/its authorized will have the right to recover the VGF disbursed through encashment of BG, if the BESPA gets terminated within the first year after COD of the Project, on account of reason(s) solely attributable to the BESSD. Irrespective of the time of termination within the first year after COD, the VGF amount to be recovered will be fixed as the amount disbursed until COD plus interest @ SBI-MCLR (1 Year) plus 5 percent, as existing on the date of disbursement, accrued from the date of disbursement on the disbursed amount.
- 10.8.9 If the Project is transferred or sold to a third party during the above tenure, the BG will be re-issued by the new entity, corresponding to the amount applicable. The sale/transfer of the Project shall be effective only on submission of BG by new entity. However, this will be subject to prior approval of sanctioning authority of Grants-in-Aid {Rule230(9)}, in view of the asset being acquired substantially out of Government Grants.

- 10.8.10 BESS Project acquired wholly or substantially out of Central Government Grants shall not be disposed of during the contract period without obtaining the prior approval of the sanctioning authority of Grants-in-Aid {Rule 230(9)}. Shareholding of the bidding entity in the SPV/ project company executing the BESS project shall not fall below fifty-one per cent at any time prior to Commercial Operation Date (COD).
- 10.8.11 The VGF amount (Grant-in-Aid) is also subject to the Chapter 9 of the General Financial Rules, 2017, as amended from time to time, read with the Government of India's decisions incorporated there-under, and any other guidelines which may be issued in this regard.

## **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 this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices. An Affected Party means SJVN or the BESSD 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) or verified to the satisfaction of Procurer;
- 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 or Industry wide strikes and labour disturbances, having a nationwide impact in India, 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) The discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land and/or as per prudent industry practices.
- e) Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.
- f) Nationalization or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the BESSD, as a result of which the BESSD

or its shareholders are deprived (wholly or partly) of their rights or entitlements under this BESPA. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the BESSD or the BESSD related parties.

- g) An event of Force Majeure identified under SJVN-Buying Entity(ies) BESSA, thereby affecting delivery of power from BESSD 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, or lack of due diligence expected from any prudent and rational human being;
  - ii) Failure to comply with an Indian Law/ Applicable Law; or
  - iii) Breach of, or default under this Agreement.

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 Majeure as soon as reasonably practicable, but not later than fifteen (15) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. The Party who receives the Force Majeure Notification, shall take a decision on the claim of occurrence of Force Majeure Event, within 30 days of the receipt of the intimation,

accompanied with supporting documents available with the Affected Party.

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 BESPA, 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 BESPA 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 BESSD shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the BESPA period, as the case may be.

The Term of this Agreement will be suitably extended upon extension of term of BESSA. However, adjustment in tariff shall not be allowed on account of Force Majeure event.

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

11.5.4 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 BESPA. 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 a 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 BESPAs, 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 BESPAs in its sole discretion by issuing a notice to that effect.
- c) On termination of the BESPAs pursuant to Article 11.10.(b):
  - i. no Termination Compensation shall be payable to the BESSD.
  - ii. the BESSD 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 .....[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. the enactment of any new law; or
- iii. 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
- iv. 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 with holding 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.
- iii. Any event occurring after the SCD/extended SCD, which would not have affected the Project had the Project been commissioned before the SCD/extended SCD.

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 BESSD/Procurer then, in order to ensure that the BESSD/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 BESSD/

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 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 commissioning of 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. BESSD 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 In case of Change in Law taking place subsequent to commissioning of the Project capacity, and changes in taxes/duties/cess etc. are defined as a percentage or the ratio of the tariff, the changes will be automatically passed on as appropriate increment/decrement in the tariff, and will be paid through monthly energy billing. BESSD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 12.
- 12.2.3 For the purposes of 12.1.2 above, the affected party / BESSD, which intends to adjust and recover/pass on the costs due to change in law, shall give a 21 days' prior notice to SJVN/Buying Entity about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

The BESSD shall be obliged to serve a notice to SJVN/Buying Utility under this Article 12.2.3 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the SJVN/Buying Entity contained herein shall be material. Provided that in case the BESSD has not provided such notice, SJVN/Buying entity shall have the right to issue such notice to BESSD.

The BESSD shall furnish to SJVN/Buying Entity, the computation of impact in tariff or charges to be adjusted and recovered/ passed on, within thirty days of the occurrence of the change in law or on the expiry of 21 days from the date of the notice referred to in 12.2.2 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.

It is clarified that carrying cost (on simple interest basis) at the rate of actual interest rate paid by the BESSD for arranging funds (supported by Auditor's Certificate) or

the Rate of Interest on Working Capital as per the applicable CERC/HERC Tariff Regulations or the Late Payment Surcharge Rate as per the BESPA, whichever is the lowest shall be payable on the Change in Law claims. It is further clarified that no carrying cost for those events shall be payable where there has been delays and laches on the part of the BESSD to approach the SJVN /Buying Entity/ Appropriate Commission.

- 12.2.4 Within 30 days of coming into effect of such relief of Change in Law, the BESSD 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.
- 12.2.5 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.
- 12.2.6 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.
- 12.2.7 If the event of any decrease in the project cost by the BESSD or any income to the BESSD on account of any of the events as indicated above, BESSD, 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 BESSD failing to comply with the aforementioned requirement, SJVN shall make such deductions in the monthly tariff payments on immediate basis.
- 12.2.8 After the adjustment of the amount of the impact in the tariff, the BESSD, 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.

12.2.9 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 BESSD 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. BESSD, 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 BESSD 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 15.04.2022, Scheduled Commissioning Date is 15.03.2022 and extended Scheduled Commissioning Date is 01.04.2022, the Project Cost shall be determined as the cost incurred by the BESSD upto 01.04.2022.

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

### **13.1 BESSD 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 BESSD Event of Default:

- (i) the failure to commence availability of BESS for providing Energy Storage capacity to SJVN up to the Contracted Capacity, by the end of the period specified in Article 4, or failure to demonstrate guaranteed availability of such energy storage capacity to SJVN within six months from the identification of reduced annual availability during the term of this Agreement, or  
if
  - a) the BESSD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project as applicable in contravention of the provisions of this Agreement; or
  - b) the BESSD 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 BESSD 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 BESSD , or (c) the BESSD 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 BESSD will not be a BESSD 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 BESSD and expressly assumes all obligations of the BESSD under this Agreement and is in a position to perform them; or
- (iii) the BESSD 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 BESSD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the BESSD within thirty (30) days of receipt of first notice in this regard given by SJVN.
- (v) change in shareholding of the BESSD 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 ..... [name of the bidding company which was issued LoA by SJVN under the RfS] within 01 year of CoD, 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 BESSD.
- (vii) except where due to any SJVN's failure to comply with its material obligations, the BESSD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the BESSD within thirty (30) days of receipt of first notice in this regard given by SJVN.
- (viii) Revoking of connectivity of the BESSD on account of non-compliance by the BESSD.

## **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 BESSD 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 BESSD is unable to recover the amount outstanding to the BESSD through the Letter of Credit,
- (ii) SJVN repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the BESSD in this regard; or
- (iii) except where due to any BESSD'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 BESSD 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 BESSD EVENT OF DEFAULT:**

13.3.1 Upon the occurrence and continuation of any BESSD Event of Default under Article 13.1, SJVN shall have the right to deliver to the BESSD, with a copy to the representative of the lenders to the BESSD with whom the BESSD 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 BESSD and SJVN may agree, shall apply and it shall be the responsibility of BESSD 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, BESSD 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 BESSD or SJVN shall have otherwise agreed to the contrary or the BESSD 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 the Buying Entities by giving a written Termination Notice of sixty (60) days to the BESSD.

13.3.5 Subject to the terms of this Agreement, upon occurrence of an BESSD Event of Default under this Agreement, the BESSD shall be liable to pay to SJVN, liquidated damages, as provided in Article 4.6 of the BESPAs for failure to commission within stipulated time and Article 4.8 for failure to supply power in terms of the BESPAs. For other cases, the BESSD shall be liable to pay to SJVN, damages, equivalent to 6 (six) months, or balance BESPAs period whichever is less, of charges for its contracted capacity.

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

In addition to the levy of damages as aforesaid, the lenders in concurrence with the Buying Entity and SJVN, may exercise their rights, if any, under Financing Agreements, to seek substitution of the BESSD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the BESSD and performing the obligations of the BESSD.

However, in the event the lenders are unable to substitute the defaulting BESSD within the stipulated period, and if the Buying Entity desires to acquire the Project assets, it may do so, by paying to the BESSD, a compensation as mutually decided by the Buying Entity and the lender. In case the Buying Entity chooses not to exercise the above option, or the Buying Entity and the lender are unable to come to an agreement, the lenders may liquidate the Project assets and recover their dues, as the last resort. Provided that any substitution under this Agreement can only be made with the prior consent of SJVN including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by SJVN and accepts the terms and conditions of this Agreement.

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 BESPAs in favour of the selectee. The BESSD 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 BESPAs 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 BESPAs

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 BESSD 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 BESSD shall have the right to deliver to SJVN, a BESSD 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 BESSD Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the BESSD and SJVN may agree, shall apply and it shall be the responsibility of the BESSD 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 BESSD 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 Parties 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 BESSD shall, subject to the prior consent of the BESSD, novate its part of the BESPA to any third party, including its Affiliates, within the stipulated period. In this case, SJVN shall pay amount equivalent to 3 (three) months of energy billing based on the declared availability, or balance Term of the BESPA, whichever is less, for its Contracted Capacity, with the Project assets being retained by the BESSD, and exit from the BESPA. In the event the aforesaid novation is not acceptable to the BESSD, or if no offer of novation is made by SJVN within the stipulated period, then the BESSD may terminate the BESPA and choose to either continue operating the Project by itself finding an alternate procurer or to discontinue the operation of the Project. If the BESSD chooses to continue operating the project, SJVN will pay to the BESSD, 'termination compensation' equivalent to 6 (six) months of energy billing corresponding to the declared availability, or balance Term of the BESPA, whichever is less, for its Contracted Capacity. In case SJVN's Event of Default is triggered by a default on the part of the Buying Entity, the above amount will be recovered by SJVN from the Buying Entity.

If the BESSD decides to discontinue the operation of the Project, it may require SJVN to make a payment of the 'termination compensation' which will be

equivalent to the amount of the Debt due and 110% (one hundred and ten per cent) of the Adjusted Equity, less Insurance Cover if any.

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 BESSD.

In the event of termination of BESP/BESEA, on account of Event of Default by the SJVN/Buying Entity, any damages or charges payable to the STU, for the connectivity of the plant, shall be borne by the by the entity due to whose failure, the termination was triggered.

### **13.5 Termination due to Force Majeure:**

If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.7.3, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice without any further liability to either Party from the date of such termination.

- 13.6** In all cases, the lenders may also step in where appropriate as provided in the financing documents. Further, in all cases, the defaulting Party will be required to pay the applicable compensation including VGF disbursed by SJVN within 3 months from the due date of such payment, subsequent to which, the defaulting Party will be required to pay a monthly interest @1% of the compensation.

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

### **14.1 INDEMNITY:**

14.1.1 The BESSD 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 BESSD of any of its obligations under this Agreement or due to the BESSD's willful misconduct, gross negligence or fraudulent behavior or violations of Applicable Law; 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 BESSD of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the BESSD, 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 BESSD harmless against:

- a) any and all third party claims against the BESSD, 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 BESSD 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 BESSA for the above obligations of Buying Entity(ies). In so far as indemnity to BESSD 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 BESSD 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 BESSD 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 BESSD 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 BESSD or any Affiliate of the BESSD or any of its officers, directors or shareholders for such claims excluded under this Article. The BESSD 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 fulfill 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 BESSD, the payment of money becoming due from the SJVN to the BESSD 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 BESPAs and BESSAs, 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;

(ii) Payment security fund as referred in Article 10.1.1 of the BESPA.

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 BESSD 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 BESSD 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 BESSD 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 COD.

Notwithstanding above, this Agreement may be assigned to the Project Lenders or Lender's Representative under the Financing Agreements, under intimation to SJVN.

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 BESSD and the Buying Utility (ies) provided in this Agreement and in the BESSA 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 BESSD 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 BESSD to SJVN. Provided further that, such consent shall not be withheld by the BESSD if SJVN seeks to transfer to any affiliate all of its rights and obligations under this Agreement.

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

### **15.2 PERMITTED CHARGES:**

15.2.1 The BESSD 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 BESSD 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 Noticee 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
  - (a) if the Noticee does not furnish any counter claim or defence under Article 16
  - (b) 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 BESSD fail to resolve the Dispute amicably within thirty  
(30) days from the later of the dates mentioned in this Article 16.2.1.
  - (c) 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) All Dispute or differences arising in relation to this agreement of any nature whatsoever including the construction, interpretation or implementation of the provisions of this agreement, shall be referred to adjudication by the Central Electricity Regulatory Commission. Appeal against the decisions of the Central Electricity Regulatory Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.
- 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.

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

### **17.3 WAIVER:**

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

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

### **17.4 CONFIDENTIALITY:**

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

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

## 17.5 SEVERABILITY:

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

## 17.6 NOTICES:

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

17.6.2 If to the BESSD, 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:

Name : .....  
Designation : .....  
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:

Name : .....  
Designation : .....  
  
Address : SJVN LTD, 6th Floor, Tower-1, NBCC Office Complex,  
East Kidwai Nagar, New Delhi- 110023  
Attention : Head (REIA)  
Email : [sjvn.reia@sjvn.nic.in](mailto:sjvn.reia@sjvn.nic.in)  
Fax. No. : 011-61901915  
Telephone No. : 011-61901969

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.

17.6.6 Notwithstanding the above, SJVN shall not be required to give any Notice to the other ESS Generator (tied up for ESS capacity, if any) in regard to any matter and the Notice given by SJVN to the BESSD shall be sufficient. It shall be for the BESSD to deal with the ESS Generator in regard to any matter for which SJVN has sent the Notice to the BESSD. Further, the ESS Generator shall not be entitled to send any Notice to SJVN and all matters in relation to this Agreement shall be entertained by SJVN only as per a Notice received from BESSD.

#### **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 BESSD shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the BESSD, contractors or their employees that are required to be paid by the BESSD 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 BESSD 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 BESSD by SJVN on behalf of BESSD.

#### **17.10 INDEPENDENT ENTITY:**

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

17.10.2 Subject to the provisions of the Agreement, the BESSD shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the BESSD or contractors engaged by the BESSD in connection with the performance of the Agreement shall be under the complete control of the BESSD 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 BESSD 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 BESSA 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 fulfill the Renewable Purchase Obligations/power demand 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<br>[SJVN]                       | For and on behalf of<br>[.....]                      |
| Name, Designation and Address<br>Signature with seal | Name, Designation and Address<br>Signature with seal |
| 1. Witness                                           | 1. Witness                                           |
| 2. Witness                                           | 2. Witness                                           |

## **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 =  $(1/12) \times [\text{Contracted Capacity of the power plant as per the Agreement (in MW)} \times \text{Capacity Utilization Factor (CUF), as per the Agreement (in \%)} \times 8760 \text{ hours} \times 10]$ ;

(\*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.)

$$Y=\{(P \times Mr)(1 + Mr)^n\} / \{(1 + Mr)^n - 1\}$$

Where,

e, -

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);

Mr =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- B: Battery Energy Storage Sale Agreement**