

**Maharashtra State Electricity Distribution Co. Ltd.**

**DRAFT PPA**

**FOR PROCUREMENT OF 500 MW WIND-SOLAR HYBRID POWER ON LONG  
TERM BASIS THROUGH COMPETITIVE BIDDING PROCESS (FOLLOWED BY  
REVERSE E- AUCTION) FROM GRID CONNECTED INTER-STATE AND INTRA-  
STATE PROJECTS**

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This Power Purchase Agreement is made and entered into at Mumbai on this day of 2021

Between

M/s \_\_\_\_\_ Company  
having its registered office at \_\_\_\_\_

\_\_\_\_\_ India (hereinafter referred to as "**Wind Solar Hybrid Power Developer**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees) as party of first part.

And

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED incorporated under The Companies Act 1956 (1 of 1956) having its Registered office at **Prakashgad, Plot G 9, Prof. Anant Kanekar Marg, Bandra (East), Mumbai 400 051**, (hereinafter referred to individually, as **MSEDCL** or "**Power Procurer**" or "Procurer", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees) as party of the second part.

WHEREAS:

MSEDCL has a license to operate and maintain a distribution system and supply electric energy to the consumers of Maharashtra except Mumbai area as enumerated in Maharashtra Electricity Regulatory Commission (MERC) Specific conditions of Distribution License.

In order to fulfil MSEDCL's Renewable Purchase Obligation (RPO) and to meet the future power requirements, MSEDCL vide its RfS no. MSEDCL/RE/2021/500 MW/Hybrid/\_\_\_\_\_, had floated tender for Procurement Of 500 MW Wind-Solar Hybrid Power On Long Term Basis Through Competitive Bidding Process (Followed By Reverse E- Auction) and the Hybrid Power Developer ..... (HPD) has been declared Successful Bidder pursuant to Letter of Award (LoA) dated xxx for development of Hybrid Power Project of xxx MW capacity, located at xxx and sale of entire of

electrical energy, so produced, for commercial purposes from such Power Plant to MSEDCL.

MSEDCL agrees to procure power from the HPD and the HPD has agreed to sell power to MSEDCL up to the Contracted Capacity @Rs ...../kWh at Tariff offered by HPD as per the terms of this Agreement.

AND, WHEREAS the HPD has furnished Performance Bank Guarantee no.... dated ..... amounting to Rs. .... as per the RfS No. .... dated .....

AND, WHEREAS the HPD desires to set-up such Hybrid Power Project of xxx MW capacity at Village ..... Taluka ..... District ----- State-----and may change the project location, provided if the location is changed by the Hybrid Power Developer once at the time of achievement of Financial Closure i.e. within 12 months of signing of PPA as per the RfS provisions, by executing supplementary Agreement.

The Hybrid Power Developer has taken responsibility to set up requisite power injection system to inject power upto the delivery point.

AND, WHEREAS, the Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by HPD to MSEDCL.

NOW THEREFORE IN VIEW OF THE FOREGOING PREMISES AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREINAFTER SET FORTH, MSEDCL AND THE HPD, EACH TOGETHER WITH THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS, A PARTY AND COLLECTIVELY THE PARTIES, HEREBY AGREE AS FOLLOWS:

# ARTICLE 1: DEFINITIONS

**1.1 For all purposes of this Agreement, the following words and expressions shall have the respective meanings set forth below:**

Act or Electricity Act, 2003	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time.
Agreement	shall mean this Power Purchase Agreement executed hereof, including the schedules hereto, amendments, modifications and supplements made in writing by the Parties from time to time
AMR	shall mean Automated Meter Reading.
Approvals	means the permits, clearances, licenses and consents as are listed in Schedule 3 hereto and any other statutory approvals.
Bill Dispute Notice	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Energy Bill or a Supplementary Bill issued by the other Party.
Billing Period	means (subject to Article 6.1 of the Agreement) the calendar month ending with the Metering Date. The first Billing Period shall commence from the Commercial Operation Date and end with the Metering Date corresponding to the month in which the Commercial Operation Date occurs.
Billing Date	shall be the first Business Day after the Metering Date of each Billing Period.
Business Day	shall mean with respect to HPD and MSEDCL, a Day other than Sunday or a statutory holiday on which banks remain open for business in Mumbai.
Capacity Utilization Factor or CUF	<p>shall have the same meaning as provided in CERC (Terms and conditions for tariff determination from Renewable Energy Sources) Regulations, 2017 as amended from time to time.</p> <p>For illustration, CUF shall be calculated based on the annual energy injected and metered at the Delivery Point. In any Contract year, if 'X' MWh of energy has been metered out at Delivery Point for 'Y' MW Project capacity,</p>

	<p><math>CUF = (X \text{ MWh}) / (Y \text{ MW} * 8766) \times 100\%</math>.</p> <p>It may be noted that in above illustration, the capacity 'Y' MW shall refer to the Contracted Capacity terms in PPA;</p>
CERC	means Central Electricity Regulatory Commission of India, constituted under sub-section (1) of Section 76 of the Electricity Act, 2003 or its successors.
Change in Law	shall have the meaning ascribed thereto in Article 9 of this Agreement.
Commissioning	with respect to the Project as certified by RLDC/ SLDC/ DISCOM shall mean when all equipment as per rated capacity has been installed and energy has flown into the grid.
Commercial Operation Date (COD)	<p>with respect to the Project shall mean the date on which the full contracted capacity of the Project is commissioned (certified by RLDC/SLDC/DISCOM) and available for commercial operation. The Successful Bidders shall have to provide a written notice to MSEDCL at least 30 days in advance for the same.</p> <p>Provided that in case of the reduced Contracted Capacity due to delay in commissioning as per 3.16.7 of the RfS, the COD shall be the date of commissioning of the last part in line with part commissioning terms of 3.16.5 of the RfS.</p>
Competent Court	means the Supreme Court of India or Bombay High Court, MERC and APTEL.
Contracted Capacity	the xxx MW (AC) contracted capacity of the Project at the generating terminal(s) and contracted with MSEDCL for supply from the Hybrid Power Project.
Contract Year	<p>shall mean the period beginning from the Effective Date of the PPA 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>i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a</p>

	<p>new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and</p> <p>ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of the PPA.;</p>
CTU or Central Transmission Utility	Shall mean the Central Transmission Utility as defined in Sub-Section (10) of section (2) of the Electricity Act, 2003 as amended from time to time
STU	shall mean State Transmission Utility as per Electricity Act, 2003
Delivery Point	<p>shall mean the point(s) of connection(s) at which energy is delivered into the Grid System</p> <p>i) For intra - state projects, at the voltage level of 33 kV or above of STU/MSETCL sub-station. .</p> <p>ii) For inter - state projects, energy settlement and delivery point shall be at Maharashtra STU/MSETCL periphery.</p>
Delivered Energy	<p>means the kilowatt hours of Electricity actually fed and measured by the energy meters at the Delivery Point and as certified by RLDC/DISCOM.</p> <p>In case, the project is installed and connected through CTU Network, then all transmission charges and losses upto delivery point shall be to the account of the HPD. No change in charges / losses of CTU shall be covered under Change in law.</p>
Due Date of Payment	in respect of a Tariff Invoice means the date, which is 30 (thirty) days from the date of receipt of such invoices by the designated official of the MSEDCL.
Effective date	this agreement shall come into effect from (Enter date of signing of Agreement) and such date shall be referred as the effective date.
Electricity Laws	shall mean the Electricity Act, 2003 and the relevant rules, notifications, and amendments issued there under and all other Laws in effect from time to time and applicable to the development, financing, construction, ownership, operation or maintenance or regulation of electric generating companies and Utilities in India, the

	rules, regulations and amendments issued by the MERC/CERC from time to time.
Emergency	means a condition or situation of physical damage to CTU/STU electrical system including the Grid System, which threatens the safe and reliable operation of such system or which is likely to result in disruption of safe, adequate and continuous electric supply by STU/CTU or DISCOM Grid System or could endanger life or property.
Expiry Date	shall mean the date occurring twenty five (25) years from the date of COD or from the date of execution of PPA (for already commissioned projects).
Financing Documents	mean the agreements pursuant to which the HPD has got financing for the power Project including the loan Agreements, 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 MSEDCL;
Financial Closure” or “Project Financing Arrangements	shall mean compliance with the requirements under Clause 3.15 of this Agreement
Financing Parties	means Parties financing the Project, pursuant to Financing Documents/agreements.
Force Majeure Event	shall have the meaning set forth in Article 8 of this agreement.
GoI	means the Government of the Republic of India and any agency, legislative body, department, political subdivision, authority or instrumentality thereof.
GoM	means the Government of Maharashtra and any agency, legislative body, department, political subdivision, authority or instrumentality thereof.
Government Instrumentality	means the GoI, the GOM and their ministries, inspectorate, departments, agencies, bodies, authorities, legislative bodies.
Grid System	means C T U / STU / Discom power transmission / distribution system through which Delivered Energy is evacuated and distributed
Grid Code" / “IEGC” or	shall mean the Grid Code specified by the CERC under Clause (h)of



“State Grid Code	Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the 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.
Interconnection Facilities	in respect of the HPD shall mean all the facilities installed by the HPD to enable MSEDCL to receive the Delivered Energy from the Project at the Delivery Point, including transformers, and associated equipment, relay and switching equipment, protective devices and safety equipment and transmission lines from the Project to nearest sub-station.
Insurances	shall mean the insurance cover to be obtained and maintained by the HPD in accordance with of this Clause 13.2 Agreement.
Interconnection Point	shall mean the point(s) of connection(s) at which the project is connected to the grid:  i) For new intra - state projects, at the voltage level of 33 kV or above of STU/MSETCL sub-station, including the dedicated transmission line connecting the Wind and/or Solar power project.  ii) For inter - state projects, energy settlement and delivery point shall be at Maharashtra STU/MSETCL periphery.
kV	means kilo Volts.
kWh	means kilo Watt hour.
Law	means any valid legislation, statute, rule, regulation, notification, directive or order, issued or promulgated by any Governmental Instrumentality.
Letter of Award (LoA)	shall mean the letter dated . issued by MSEDCL to the HPD for award of the Contract.
MERC	means Maharashtra Electricity Regulatory Commission.
MSETCL /STU	means Maharashtra State Electricity Transmission Company Limited.
Metering Date	for a Billing Period, means the midnight of the last Day of the calendar month.
Metering Point	the metering point will be at

	<p>a) For new intra - state projects, metering shall be at the voltage level of 33 kV or above of STU/MSETCL sub-station including the dedicated transmission line connecting the Hybrid power project.</p> <p>b) For inter - state projects, energy settlement and delivery point shall be at Maharashtra STU/MSETCL periphery.</p> <p>i) All expenses including wheeling charges and losses between the Project and the Metering Point shall be paid by the HPD without any reimbursement by the MSEDCL. All expenses including wheeling charges and losses in relation to the transmission and distribution beyond the Metering Point shall be borne by HPD upto delivery point.</p>
Monthly Charge	shall have the meaning set forth in Article 5
MRI	shall mean Meter Reading Instrument.
MW	means Mega Watts.
O & M Default	shall mean any default on the part of the HPD for a continuous period of ninety (90) days to (i) operate and/or (ii) maintain (in accordance with Prudent Utility Practices), the Project at all times.
Performance Bank Guarantee	shall mean the irrevocable unconditional bank guarantee submitted by the HPD as per the RfS no. MSEDCL/Competitive/500-MW/ Wind Solar Hybrid/ PH III/xxx
Project or Wind Solar Power Project/Power Project	shall mean the Wind-Solar Hybrid Power Project, comprising Solar PV and Wind Power generation facilities having a single point or separate points of injection in to the grid at the Delivery Point/Interconnection Point/Metering Point at STU/CTU sub-station or in case of sharing of transmission lines, by separate injection at STU/CTU sub-station and having control systems and metering. The Project shall include all units/ modules and auxiliaries and associated facilities, 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 power to MSEDCL.
Project Capacity	shall mean the maximum AC capacity (in MW) at the Delivery Point that can be scheduled on which the PPA shall be signed.
Project Developer or Developer or Wind Solar Hybrid Power developer (HPD)	shall mean the Bidding Company or a Bidding Consortium participating in the bid and having been selected and allocated a project capacity by MSEDCL (through a competitive bidding process), including the SPV formed by the selected bidder/ consortium for the purpose of setting up of project and signing of PPA with MSEDCL
Project Site	means any and all parcels of real property, rights-of-way, easements and access roads located at Location No. -----, Survey No.----- ---, Village -----, District-----, State-----, upon which the project and its related infrastructure will be located.
Prudent Utility Practices	means those practices, methods, techniques and standards, that are generally accepted for use in electric utility industries taking into account conditions in India, and commonly used in prudent electric utility engineering and operations to design, engineer, construct, test, operate and maintain equipment lawfully, safely, efficiently and economically as applicable to power stations of the size, service and type of the Project, and that generally conform to the manufacturers' operation and maintenance guidelines.
REA	Regional Energy Account.
RLDC	shall mean relevant Regional Load Dispatch Center established under sub section (1) of Section 27 of Electricity Act 2003.
SBI 1 Year MCLR Rate	means 1 year Marginal Cost of Funds Based Lending Rate (MCLR) fixed by State Bank of India (SBI)/ any replacement thereof by SBI for the time being in effect applicable for 1 year period, as on 1st April of the respective financial year in accordance with regulations and guidelines of Reserve Bank of India. In absence of such rate, any other arrangement that substitutes such rate as mutually agreed to by the Parties.
Scheduled COD or Scheduled Commercial Operation Date Or	means {insert date} (not exceeding 18 (Eighteen) months from the date of execution of PPA).

SCOD	
SEA	means the State Energy Account issued by State Load Dispatch Centre.
SLDC	means the State Load Dispatch Center as notified by the State Government
SNA	shall mean State Nodal Agency
STU or State Transmission Utility	shall mean the State Transmission Utility notified by respective State Government under Sub-section (1) of Section 39 of the Act.
Solar PV Project	means the Solar Photo Voltaic Power Project that uses sunlight for direct conversion into electricity through Photo Voltaic technology.
Tariff	shall have the meaning set forth in Article 5.
Tariff Invoices	shall have the meaning set forth in Article 6.
Technical Limits	means the limits and constraints described in Schedule 2, relating to the operations, maintenance and dispatch of the Project.
Term	means the term of the Agreement as defined in Article 10.
Voltage of Delivery	means the voltage at which the Electricity generated by the Project is required to be delivered to the MSEDCL and shall be kV.
Wind Power Project	means the wind power project that uses wind energy for conversion into electricity through wind turbine generator.
Wind Solar Hybrid Power Project	means the wind solar hybrid power project where the rated power capacity of one resource (wind and Solar) shall be at least 33% of the total contracted capacity.

## 1.2 Interpretation:

Agreement	shall be construed as including a reference to its Schedules and/or Appendices and/or Annexure
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.
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)
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.
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.
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.
Rupee, Rupees, Rs. or rupee symbol “₹”	shall denote Indian Rupees, the lawful currency of India
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.

	Words importing the singular shall include the plural and vice versa.
	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;
	A Law shall be construed as a reference to such Law including its amendments or re- enactments from time to time.
	A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard time.
	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.
	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.
	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.
	The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement.
	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.
	This Agreement and other documents such as Request for Selection Documents, Guidelines including subsequent clarifications, amendments and further clarifications in regard to the tender 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:-

	<ol style="list-style-type: none"><li>1. Power Purchase Agreement</li><li>2. RfS Documents</li></ol>
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## **ARTICLE 2: LICENCES, PERMITS**

The HPD, at its sole cost and expense, shall acquire and maintain in effect all clearances, consents, permits, licenses and approvals required from time to time by all regulatory / statutory competent authority (ies) in order to enable it to perform its obligations under the Agreement.



# ARTICLE 3: OBLIGATIONS

## 3.1 Obligations of the HPD:

- i) The HPD shall obtain all statutory approvals, clearances and permits necessary for the Project at his cost in addition to those Approvals as listed in Schedule 3.
- ii) The HPD shall obtain financial closure within Twelve (12) months from date of execution of this PPA.
- iii) The HPD shall construct, operate and maintain the Project during the term of PPA at his cost and risk including the required Interconnection Facilities in close co- ordination with CTU/STU/DISCOM s feasibility.
- iv) The HPD shall sell all available capacity from identified Hybrid Power Project to the extent of contracted capacity on first priority basis to MSEDCL and not to sell to any third party.
- v) The HPD shall seek approval of CTU/STU/DISCOM in respect of interconnection Facilities and the Sending Station.
- vi) The commencement of supply of power up to the Contracted Capacity to MSEDCL no later than the Scheduled Commercial Operation Date and continuance of the supply of power throughout the Term of the Agreement; and
- vii) Connecting the Power Project switchyard with the Interconnection Facilities at the Metering Point/ Delivery Point/ Designated substation; and
- viii) The HPD shall undertake at its own cost construction/ upgradation of (a) the Interconnection Facilities, (b) the Transmission Lines and (c) Sending Station as per the specifications and requirements of CTU/STU/DISCOM, as notified to the HPD at Schedule 4.
- ix) The HPD shall undertake at its own cost maintenance of the Interconnection Facilities and the Sending Station, excluding the transmission line beyond the Sending Station as per the specifications and requirements of CTU/STU/DISCOM, as notified to the HPD, in accordance with Prudent Utility Practices.
- x) The HPD shall operate and maintain the Project in accordance with Prudent Utility Practices.
- xi) The HPD shall be responsible for all payments on account of any taxes, cesses,

duties or levies imposed by the GoI/State Government or its competent statutory authority on the land, equipment, material or works of the Project or on the Electricity generated or consumed by the Project or by itself or on the income or assets owned by it.

- xii) For evacuation facility and maintenance of the transmission, the HPD shall enter into separate agreement with CTU/STU/DISCOM, if applicable.
- xiii) To apply for startup/auxiliary power required for the plant from relevant utility & make payment for start-up/auxiliary power, reactive power as per applicable Regulations is the sole responsibility of the HPD.
- xiv) Fulfilling all other obligations undertaken by him under this Agreement.
- xv) The HPD shall operate the project, as per prevailing CEA/CERC/MERC Regulations and IEGC/State Grid Code as applicable.
- xvi) All charges pertaining to open access, scheduling charges and any other charges, losses up to the Delivery Point shall be borne by HPD.

### **3.2 Obligations of MSEDCL:**

- i) MSEDCL shall purchase the electricity generated by HPD as per the terms and conditions of this Agreement.
- ii) MSEDCL to open the Letter of Credit as per terms and conditions of this agreement

### **3.3 Liquidated damages for delay in Commissioning the Hybrid Project beyond SCOD**

- i) The Project shall be commissioned within SCOD. The HPD shall have to submit Commissioning Certificate as verified, inspected and certified by RLDC/SLDC/DISCOM.
- ii) In case of failure to achieve this milestone, MSEDCL shall forfeit the Performance Bank Guarantee (PBG) in the following manner:
  - a) Delay upto six (6) months from SCOD MSEDCL will forfeit total Performance Bank Guarantee on per day basis and proportionate to the balance Capacity not commissioned.

In case the commissioning of the Project is delayed beyond Six (6) months from SCOD, For delay in commissioning beyond six months from SCOD, the contracted capacity shall stand reduced to the project capacity commissioned upto SCOD + 6 (six) months. The PPA for the balance capacity not commissioned shall be terminated

# **ARTICLE 4: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION**

## **4.1 Synchronization, Commissioning and Commercial Operation**

- 4.1.1** The HPD shall give at least Thirty (30) days written notice to the RLDC/SLDC/SNA and MSEDCL, of the date on which it intends to synchronize the Hybrid Power Project to the Grid System.
- 4.1.2** Subject to Article 4.1.1, the Power Project may be synchronized by the HPD to the Grid System when it meets all the connection conditions prescribed in the Grid Code and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 4.1.3** The synchronization equipment and all necessary arrangements / equipment including Remote Terminal Unit (RTU) for scheduling of power generated from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the HPD at its generation facility of the Power Project at its own cost. The HPD shall synchronize its system with the Grid System only after the approval of CTU/STU and RLDC/SLDC or DISCOM.
- 4.1.4** The HPD shall immediately after each synchronization / tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected in accordance with applicable Grid Code under intimation to MSEDCL. In addition, the HPD will inject in-firm power to grid time to time to carry out operational/ functional test prior to commercial operation. 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.
- 4.1.5** The HPD shall commission the Project as per procedure detailed in RfS within Eighteen (18) Months from the Effective Date. Declaration of COD shall only be done subject to the demonstration of the compliances as per RfS and subsequent upon the successful visit by the CTU/STU/Discom.
- 4.1.6** There can be part Commissioning of the Project. Part commissioning of the project shall mean that all equipment corresponding to the part capacity have been installed and commissioned and corresponding energy has flown into the grid..

- 4.1.7** The Part commissioning of the project may be accepted by MSEDCL subject to the condition that minimum capacity for acceptance of first part commissioning shall be 50 MW for inter-state project and 25 MW for intra-state project. The project shall be further commissioned in parts of at least 25 MW batch size, with last part could be balance capacity. The part commissioning should not be construed by just installing one source of generation, the HPD shall install both Solar and Wind capacities in proposed ratio on pro-rata basis.
- 4.1.8** In case the HPD wishes add up capacities (Wind +Solar) of multiple locations to meet part commissioning requirements, it is allowed only in case HPD completed entire capacity proposed under such locations.
- 4.1.9** In case of part-commissioning of the Project, land corresponding to the part capacity being commissioned, shall be required to be demonstrate possession of land by the HPD prior to declaration of commissioning of the said part capacity. Irrespective of dates of part commissioning, the PPA will remain in force for a period of 25 years from the SCD or from the date of full commissioning of the projects, whichever is earlier.
- 4.1.10** The HPD shall be permitted for full commissioning as well as part commissioning of the Project even prior to the SCD subject to availability of transmission connectivity and Long-Term Access (LTA). In cases of early part commissioning, the HPD will be free to sell it to any other entity provided first right of refusal will vest with MSEDCL. MSEDCL shall provide refusal within 30 (thirty) days from the receipt of the request, beyond which it would be considered as deemed refusal. Procurement of such early commissioned power, if accepted by the MSEDCL, shall be done at the PPA tariff.

## **4.2 Performance Bank Guarantee**

- 4.2.1** The Performance Bank Guarantee furnished by HPD to MSEDCL as prescribed in the RfS shall be for guaranteeing the commissioning / commercial operation of the Project up to the Contracted Capacity within SCOD.
- 4.2.2** If the Successful Bidder fails to achieve Financial Closure as prescribed in Clause 3.1, the MSEDCL shall encash the Performance Bank Guarantee (PBG) unless the delay caused due to a Force Majeure. An extension for the attainment of the financial closure can however be considered by MSEDCL, on the sole request of the Wind-Solar Hybrid Power Generator, on payment of penalty of Rs.10000/- per day per MW (excluding

18% GST, if applicable). This extension will not have any impact on the Scheduled Commissioning Date (SCOD). However such amount of penalty paid so shall be returned to the Solar Power Generator without any interest within a period of 30 days of achievement of successful commissioning provided such commissioning is within the Scheduled Commissioning Date (SCOD).

**4.2.3** If the Power Producer fails to commission the Project on or before SCOD, MSEDCL shall have the right to forfeit the Performance Bank Guarantee without prejudice to the other rights of the HPD under this Agreement as per Article 3.3.

**4.2.4** MSEDCL shall release the Performance Bank Guarantee upon successful commissioning of full contracted capacity after adjusting liquidated damages (if any) as per Article 3.3.

### **4.3 Dispatch and Scheduling**

**4.3.1** The HPD shall be required to Schedule its power as per the applicable regulations / requirements / guidelines of MERC / CERC or SLDC/RLDC and maintain compliance to the Grid Code requirements and directions, as specified by 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 to the account of the HPD. The HPD shall make arrangements for scheduling of wind and solar power from the respective components of the Project, if required by the MSEDCL/SLDC/RLDC.

**4.3.2** The HPD shall be responsible for coordinating and dealing with the State Load Dispatch Centre's, Regional Power Committees, MSEDCL and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of hybrid Power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the HPD and MSEDCL are the Grid connected entities.

**4.3.3** HPD shall be responsible for deviations made by it from the dispatch schedule and for any resultant liabilities on account of charges for deviation as per applicable regulations.

**4.3.4** Hybrid Power Developer shall be responsible for arrangement of start-up power/auxiliary consumption.

## **ARTICLE 5: RATES AND CHARGES**

5.1 Monthly Energy Charges: The MSEDCL shall pay for the Scheduled /Delivered energy as certified by RLDC/SLDC/ MSEDCL/Appropriate authority through REA/SEA/ Meter Reading (AMR/MRI), for the Term of this Agreement from the Commercial Operation Date, to the HPD every month. The Tariff payable by MSEDCL for energy purchased shall be as per Article below.

5.2 MSEDCL shall pay a fixed rate of Rs. (in words Rs.----) per kWh as discovered under the Competitive Bidding (followed by e-reverse auction) and as agreed by the Parties upon commissioning of Wind-Solar Hybrid power Project (as certified by RLDC/SLDC/DISCOM) for delivered /scheduled energy during the period of PPA as the case may be.

5.3 Provided that in case the commissioning of the project is delayed over Six (6) months from SCOD, The PPA for the balance capacity not commissioned shall be terminated.

Provided further that in case of early part/full commissioning of the Project in accordance with article 4.1.7, rate shall be PPA Tariff .

5.4 For each kVARH drawn from the grid, the HPD shall pay at the rate determined by SERC to their respective Discom from time to time as per prevailing regulations in the State.

5.5 Start-up power: (Applicable for intra state projects):

HPD shall pay to respective DISCOM for start-up power drawn from the grid at prevailing Tariff in force from time to time as determined by respective SERC/CERC, if applicable.

### **5.6 Capacity Utilization Factor (CUF):**

#### **5.6.1 Criteria for generation:**

The HPD has declared -----% CUF of their project at the time of bid submission and will be allowed to revise the same once within first three years of COD. The declared CUF shall in no case be less than 30% over a year for the entire PPA duration

of 25 years either from the date of COD (for proposed or new projects) or from the date of execution of PPA for existing wind power projects. Calculation of CUF will be on yearly basis from 1st April of the year to 31st March of next year. Energy supplied between COD and commencement of first financial year after COD will not be taken into consideration for the purpose of calculation of CUF. Subsequently, the annual CUF will be calculated every year from 1st April of the year to 31st March of next year. The declared CUF shall in no case be less than 30% over a Contract Year. The HPD shall maintain generation so as to achieve annual CUF not less than 90% of the declared value (i. e. minimum CUF) and not more than 120% of the declared CUF value, during the PPA duration of 25 years. The lower limit will, however, be relaxable by MSEDCL to the extent of grid non -availability for evacuation which is beyond the control of the HPD.

#### **5.6.2 Shortfall in minimum generation:**

During PPA, if for any Contract Year, it is found that the HPD has not been able to generate minimum energy corresponding to minimum annual CUF declared by the HPD, such shortfall in performance shall make HPD liable to pay the compensation to MSEDCL. This will, however be relaxed by MSEDCL to the extent of grid non-availability for evacuation, which is beyond the control of the Hybrid power generator. The amount of such penalty shall ensure that the MSEDCL is offset for all potential costs associated with low generation and supply of power under the PPA, subject to 50% (fifty percent) of the PPA tariff for the shortfall in energy terms, in accordance with the terms of the PPA. This compensation shall be applied to the amount of shortfall in generation during the year. However, this compensation shall not be applicable in events of Force Majeure identified under PPA affecting supply of power by HPD.

#### **5.6.3 Excess Generation:**

In case the availability is more than the maximum CUF specified, the Wind Power Generator will be free to sell it to any other entity provided first right of refusal will vest with the MSEDCL.



In case the MSEDCL purchases the excess generation corresponding to the higher limit of CUF declared by the HPD, the same may be done at 75% of the PPA tariff.

#### **5.6.4 Repowering:**

The HPD shall be allowed repowering for a maximum period of six (6) months during the entire PPA term of 25 years. The generator shall not be in default for non-supply of power during this period of repowering.

However, the MSEDCL will be obliged to buy power only within the range of CUF, specified in the PPA. Any excess generation will be dealt as specified in clause 3.12.3 of RfS.

#### **5.6.5 Generation compensation due to Backed Down:**

The HPD shall follow the forecasting and scheduling process as per MERC/CERC regulations as amended from time to time.

The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), encourages a status of “Must Run” to RE developers. Accordingly, Hybrid Power Plant duly commissioned, should be directed to back down by a Discom/ Load Dispatch Centre (LDC). In case such eventuality of Backdown arises, except for the cases where the back down is on account of events like consideration of grid security/ an emergency in CTU / STU s / Discom 's evacuation system for safe operation of its Grid or safety of any personnel or the other such condition, the HPD shall suitably back down their generation.

In case of backing down situation except for the reasons cited above, the HPD will be eligible for generation compensation from Procurer/MSEDCL after receipt of Regional Energy Account /State Energy Account as under:

<b>Duration of Back</b>	<b>Provision for Generation Compensation</b>
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Hours of backdown during monthly billing cycle	Minimum Generation Compensation = 100% of (Average Generation per hour during the Month) (number of lockdown hours during the month) x PPA tariff.
--	--

Generation Compensation as calculated above, will be limited to the extent of shortfall in annual generation corresponding to the maximum CUF permitted as per Clause 5.6 above and the same will be settled on annual basis.

The Generation Compensation is to be paid as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA) / State Energy Accounts.

It is clarified that the above compensation shall not be applicable in case must run status is withdrawn by applicable regulations in future

It is hereby clarified that for the purpose of **Clause 5.6.5**, “generation” shall mean scheduled energy based on Energy Accounts and AMR.

# ARTICLE 6: BILLING AND PAYMENT

## 6.1 Billing Provision:

The Billing will be on monthly basis . MSEDCL will be billed by the HPD based on REA/SEA/ Meter Reading (AMR/MRI) as certified by Maharashtra SLDC/RLDC or MSEDCL authority as may be applicable following the end of each month for the energy supplied and payment will be due on the thirtieth day following the delivery of the billing invoice.

## 6.2 Payment:

MSEDCL shall make payment of the amounts due in Indian Rupees within thirty (30) days from the date of online receipt of the Tariff Invoice through online mode by the designated office of the MSEDCL.

While making such payments to the Tariff invoices, MSEDCL shall deduct amounts equivalent to the penalties levied under Article 3.3(ii)(d) of the the PPA

## 6.3 Late Payment:

For payment of Monthly bill by MSEDCL thirty (30) days beyond its due date, if paid after Due date of Payment, a late Payment charge shall be payable by MSEDCL to the HPD at the rate of 1.25% percent in excess of the SBI, 1 year Marginal Cost of Funds Based Lending Rate (MCLR) per annum / any replacement thereof by SBI.

## 6.4 Rebate:

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the wind power generator to MSEDCL in the following manner:

- i) A rebate of 2% shall be payable to MSEDCL for the payments made within a period of 10 days of the presentation of hard copy of Bill along with required supporting documents at MSEDCL office.
- ii) Any payments made beyond a period of 10 days of the date of presentation of hard

copy of Bill along with required supporting documents at MSEDCL office up to the due date shall be allowed a rebate of 1%.

- iii) 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 MSEDCL.
- iv) No rebate shall be payable on the Bills raised on account of taxes, duties, cess etc.

## **6.5 Payment Security**

### **6.5.1 Revolving Letter of Credit:**

- i) MSEDCL shall establish and maintain irrevocable and unconditional revolving Letter of Credit in favour of, and for the sole benefit of, the HPD for the contracted capacity. All the cost incurred by MSEDCL for opening, maintenance and other cost related to establishment of Letter of Credit shall be borne by the HPD.
- ii) The Letter of Credit shall be established in favour of, and issued to, the HPD on the date hereof and made operational thirty (30) days prior to due date of first invoice and shall be maintained consistent herewith by MSEDCL and all times during the Term of the Agreement.
- iii) Such Letter of Credit shall be in form and substance acceptable to both the Parties and shall be issued by any Scheduled Bank and be provided on the basis that:
  - a) In the event a Tariff Invoice or any other amount due and undisputed amount payable by MSEDCL pursuant to the terms of this Agreement is not paid in full by MSEDCL as and when due, the Letter of Credit may be called by the HPD for payment of undisputed amount.
  - b) The amount of the Letter of Credit shall be equal to one month's projected payments during first contract year and thereafter during each contract year the amount of Letter of Credit shall be an average monthly bill in previous contract year.
  - c) The MSEDCL shall replenish the Letter of Credit to bring it to the original amount within 30 days in case of any valid drawdown.

- iv) The Letter of Credit shall be renewed and / or replaced by MSEDCL not less than 30 days prior to its expiration.
- v) Payment under the Letter of Credit: The drawl under the Letter of Credit in respect of a monthly tariff Invoice (excluding supplementary bills) shall require:
  - a) a copy of the metering statement jointly signed by the official representatives of both the Parties, supporting the payments attributable to the Delivered Energy in respect of such Tariff Invoice.
  - b) a certificate from the HPD stating that the amount payable by MSEDCL in respect of such Tariff Invoice has not been paid and disputed by MSEDCL till the Due Date of Payment of the Tariff Invoice.

#### **6.5.2 Payment Security Fund –**

The Payment Security Fund shall be suitable to support payment for at least 3 (Three) months billing of all the Projects tied up with such fund.

#### **6.6 Disputes:**

In the event of a dispute as to the amount of any Tariff Invoice, MSEDCL shall notify the HPD of the amount in dispute and MSEDCL shall pay the Power Producer 100% of the undisputed amount within the due date, provided either party shall have the right to approach the MERC to effect a higher or lesser payment on the disputed amount. The Parties shall discuss within a week from the date on which MSEDCL notifies the HPD of the amount in dispute and try and settle the dispute amicably.

Where any dispute arising out of or in connection with this agreement is not resolved mutually then such dispute shall be submitted to adjudication by the MERC /under Section 79 or 86 of Electricity Act 2003 and the MERC may refer the matter to Arbitration as provided in the said provision read with Section 158 of Electricity Act 2003. For dispute beyond the power conferred upon MERC, such dispute shall be subject to jurisdiction of the High Court at Mumbai. If the dispute is not settled during such discussion then the payment made by MSEDCL shall be considered as a payment under protest. Upon resolution of the dispute, in case the HPD is subsequently found to have overcharged, then it shall return the overcharged amount with an interest

of SBI 1 year Marginal Cost of Funds Based Lending Rate (MCLR) plus 1.25 % for the period it retained the additional amount. MSEDCL / HPD shall not have the right to challenge any Tariff Invoice, or to bring any court or administrative action of any kind questioning

/ modifying a Tariff Invoice after a period of three years from the date of the Tariff Invoice is due and payable.

# **ARTICLE 7: METERING AND COMMUNICATION**

## **7.1 Reading and Correction of Meters**

- i) The metering point shall be as given below:
  - a) For new intra - state projects, metering shall be at the voltage level of 33 kV or above of STU/MSETCL sub-station including the dedicated transmission line connecting the Hybrid power project.
  - b) For inter - state projects, energy settlement and delivery point shall be at Maharashtra STU/MSETCL periphery.
- ii) For the purpose of energy accounting, the ABT compliant meter shall be installed by HPD at the metering point. Further, For the purpose of energy accounting the Generator shall have to install Availability Based Tariff meter /Special Energy Meter at the metering point as well as on each source i. e. Wind and Solar at CTU/STU substation end. Interface metering shall conform to the Central Electricity Authority (Installation and Operation of Meters) Regulations 2014 and amendment thereto. MSETCL/STU/MSEDCL shall stipulate specifications in this regard.
- iii) In the event that the Main Metering System is not in service as a result of maintenance, repairs or testing, then the Backup Metering/Check metering System shall be used during the period the Main Metering System is not in service and the provisions above shall apply to the reading of the Backup Metering System/Check Metering Systems.
- iv) The HPD shall also maintain records of generation of electrical energy from wind and solar component of the Wind Solar Hybrid Project separately. The same shall be made available by the HPD to MSEDCL as and when required by MSEDCL.

## **7.2 Sealing and Maintenance of Meters.**

- i) The Main Metering System and the Backup Metering System shall be sealed in the presence of representatives of HPD and STU/CTU and DISCOM.

- ii) When the Main Metering System and / or Backup Metering System and / or any component thereof is found to be outside the acceptable limits of accuracy or otherwise not functioning properly, it shall be repaired, re-calibrated or replaced by the HPD and / or CTU/STU/DISCOM at HPD's cost, as soon as possible.
- iii) Any meter seal(s) shall be broken only by CTU/STU/DISCOM representative in the presence of HPD's representative whenever the Main Metering System or the Backup Metering System is to be inspected, tested, adjusted, repaired or replaced.
- iv) All the Main and Check Meters shall be calibrated at least once in a period of one year.
- v) In case, both the Main Meter and Check Meter are found to be beyond permissible limit of error, both the meters shall be calibrated immediately and the correction applicable to main meter shall be applied to the energy registered by the Main Meter at the correct energy for the purpose of energy accounting / billing for the actual period during which inaccurate measurements were made, if such period can be determined or, if not readily determinable, shall be the shorter of:
  - a) the period since immediately preceding test of the relevant Main meter, or
  - b) one hundred and eighty (180) days immediately preceding the test at which the relevant Main Meter was determined to be defective or inaccurate.

### **7.3 Records**

7.3.1 Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement and the operation of the Power Plant. Among such other records and data, the HPD shall maintain an accurate and up-to-date operating log at the Power Plant with records of:-

- i) Fifteen (15) minutes logs of real and reactive power generation, frequency, transformer tap position, bus voltage(s), Main Meter and Back up Meter Readings and any other data mutually agreed;
- ii) any unusual conditions found during operation / inspections;
- iii) chart and printout of event loggers, if any, for system disturbances/ outages;
- iv) All the records will be preserved for a period of 36 months.



- 7.3.2 The HPD shall maintain records of generation of electrical energy from wind and solar component of the Hybrid Project separately. The same shall be made available by the HPD to MSEDCL as and when required by MSEDCL.
- 7.3.3 The grid connected solar PV power plants and wind plants will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the Project.
- 7.3.4 Online arrangement would have to be made by the HPD at its own cost for submission of above data regularly for the entire period of this PPA to the SLDC/RLDC, MSEDCL and the concerned Ministry or concerned agency as per applicable regulation / directions.
- 7.3.5 Reports on above parameters on monthly basis (or as required by regulation / guidelines) shall be submitted by the HPD to RLDC/SLDC and MNRE and inform the same to MSEDCL for entire period of PPA.

# ARTICLE 8: FORCE MAJEURE

## 8.1 Force Majeure Events:

- a) Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:
- b) 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, that wholly or partly prevents or unavoidably delays the performance by the Party [(Power Producer / Power Procurer) (Affected Party)] of its obligations under the relevant Power Purchase Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices.

## 8.2 Categorisation of Force Majeure Events:

### 8.2.1 Natural force Majeure Event:

- 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 it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of Procurer;
- b) 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;

- c) 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; or
- d) any event or circumstances of a nature analogous to any of the foregoing.

#### **8.2.2 Non-Natural Force Majeure Event :**

- a) 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;
- b) nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its contractors;
- c) nationalisation 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 Generator, as a result of which the Generator or its shareholders are deprived (wholly or partly) of their rights or entitlements under the Power Purchase Agreement. 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 Generator or the Generator related parties;
- d) action of a Government Authority having Material Adverse Effect including but not limited to change in law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 9 of this PPA; any unlawful or unauthorised or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the Generator or any of the clearance, licence, authorization to be obtained by the Contractors to perform their respective obligations under the relevant PPA and/or the Project Documents; provided that such delay, modification, denial, refusal or revocation did not result from the Generator's or any Contractors inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, licence, authorization, as the case may be.

### **8.3 Force Majeure Exclusions:**

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

- a) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
- b) Delay in the performance of any contractor, sub-contractor or their agents;
- c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d) Strikes at the facilities of the Affected Party;
- e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f) Non-performance caused by, or connected with, the Affected Party's:
  - i. Negligent or intentional acts, errors or omissions;
  - ii. Failure to comply with an Indian Law; or
  - iii. Breach of, or default under this Agreement

### **8.4 Notification of Force Majeure Event**

**8.4.1** 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 seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure.

If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

**8.4.2** Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under the PPA. 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.

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

## **8.5 Performance Excused**

- 8.5.1** The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the PPA as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.
- 8.5.2** For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the generator shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the PPA period, as the case may be.
- 8.5.3** Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.
- 8.5.4** Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

## **8.6 No Liability for Other Losses:**

Save as otherwise provided in these Guidelines, 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.

## **8.7 Resumption of Performance:**

During the period that a Force Majeure Event is subsisting, the Affected Party shall, in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under the

PPA. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

## **8.8 Termination Due to Force Majeure Event:**

### **8.8.1 Termination due to Natural Force Majeure Event:**

- a) If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Natural Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Natural 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 8.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the PPA, and the termination shall take effect from the date on which such decision is taken.
- b) Without prejudice to the provisions of Article 8.8.1(a) above, the Affected Party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the PPA in its sole discretion by issuing a notice to that effect.
- c) On termination of the PPA pursuant to Article 8.8.1(b):
  - i. no Termination Compensation shall be payable to the generator.
  - ii. the Generator shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event

### **8.8.2 Termination due to Non-Natural Force Majeure Event:**

- a) Upon occurrence of a Non-Natural Force Majeure Event, the Generator shall, at its discretion, have the right to terminate the PPA forthwith after the completion of the period of 180 (one hundred and eighty) Days from the date of the Force Majeure Notice.
- b) Notwithstanding anything in Article 8.6, on termination of the PPA pursuant to Article 8.8.2(a):
  - i. the Procurer shall pay to the Generator, 'Force Majeure Termination

Compensation' equivalent to the amount of the Debt Due and the 110% (one hundred and ten per cent) of the Adjusted Equity, as defined in the Article 10.3.4 of this PPA and takeover the Project assets.

- ii. the Generator shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.”

**8.9 Available Relief for a Force Majeure Event:**

- 8.9.1** 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. However, adjustment in tariff shall not be allowed on account of Force Majeure event.
- 8.9.2** 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.
- 8.9.3** Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Events.

# ARTICLE 9: CHANGE IN LAW

## 9.1 Definitions :

In this Article 9, the following terms shall have the following meanings:

**9.1.1** "Change in Law" means the occurrence of any of the following events after the last date of bid submission resulting into any additional recurring/ non-recurring expenditure by the HPD or any income to the HPD:

- i) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- ii) a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- iii) the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier;
- iv) a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the HPD;
- v) any statutory change in tax structure i.e. change in rates of taxes, duties and cess, or introduction of any new tax made applicable for setting up of Hybrid Power Project and supply of power by the HPD and has direct effect on the Project, shall be treated as per the terms of this Agreement.

**9.1.2** But the above shall not however include any change in taxes on corporate income or any withholding tax on income or dividends distributed to the shareholders of the HPD or any change on account of regulatory measures by the Appropriate Commission.

## 9.2 Relief for Change in Law

**9.2.1** In the event of occurrence of any of events as provided under Article 9.1 which results in any increase/ decrease in the Project Cost (i.e. the cost incurred by the HPD towards supply and services only for the Project concerned, upto the Actual Commissioning Date of the last part capacity or Scheduled Commissioning Date/extended Scheduled



Commissioning Date, whichever is earlier), the HPD /MSEDCL shall be entitled for compensation by the other party, as the case may be, subject to the condition that the such 'Change in Law' is recognized by the Appropriate Commission. 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.

**9.2.2** However, in case of change in rates of safeguard duty, GST and basic customs duty after [Insert last date of bid submission] and resulting in change in Project Cost, then 'such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 9, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on Power producer and MSEDCL. It is clarified that, any introduction of new tax/duty/cess made applicable for setting up the Hybrid power project and supply of power from the Hybrid Power project by the Power producer which have a direct effect on the Project, resulting in change in Project Cost, will also qualify under "Change in Law" as per timeline and procedure indicated under Article-9 of PPA. It is further clarified that, applicability of Safeguard Duty on "Solar Cells whether or not assembled in modules or panels" which is till 29.07.2021, if gets extended and has a direct effect on the Project, resulting in change in Project Cost, such extension will also qualify under "Change in Law" as per timeline and procedure indicated under Article-9 of PPA

**9.2.3** If a Change in Law results in the Power Producer's costs directly attributable to the Project being decreased or increased by one percent (1%), of the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the Power Producer shall be appropriately increased or decreased with due approval of MERC.

**9.2.4** In case of approval of Change in Law by MERC and the same results in any increase or decrease in the cost of generation, the said increase/decrease in cost shall be passed on in tariff in the following manner:

**9.2.5** Formula to calculate adjustment in the monthly tariff due to the impact of Change in Law,

Allowable Change in Law Compensation (P) = Actual per MW variation in expenses on account of Change in Law event x Allowable DC capacity for Change in Law compensation;

Then, the modification in PPA tariff (M.T.) for compensating the financial impact is given by  $M.T. = Y/X$

Where  $X$  = estimated monthly electricity generation (in kWh) =  $(1/12) \times$  [contracted capacity of the RE power plant as per PPA (in MW)  $\times$  Annual CUF declared in PPA (in %)  $\times$  8760 hour  $\times$  10];

and  $Y = [(P \times Mr)\{(1+Mr)^n\}] \div [\{(1+Mr)^n\} - 1]$

where,

$n$  = no. of months over which the financial impact has to be paid; and

$Mr$  = monthly rate of interest =; where  $R$  = annual rate of interest equal to 125 basis points above the average State Bank of India Marginal Cost of Funds based leading rate (MCLR of one year tenor) prevalent during the last available six months for such period.

Further, the M.T. shall be trued up annually based on actual generation of the year so as to ensure that the payment to the Hybrid Power Producer is capped at the yearly Change in Law amount.

- 9.2.6** The Power Procurer / MSEDCL or the Power Producer, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff Payment is directly as a result of the Change in Law and shall provide supporting documents to substantiate the same and such certificate shall correctly reflect the increase or decrease in costs.
- 9.2.7** The revised tariff shall be effective from the date of such Change in Law as approved by MERC, the Parties hereto have caused this Agreement to be executed by their fully authorized officers, and copies delivered to each Party, as of the day and year first above stated.
- 9.2.8** The payment for Change in Law shall be through Supplementary Bill.

### **9.3 Notification of Change in Law**

- 9.3.1** If the Seller is affected by a Change in Law in accordance with Article 9.1 and wishes to claim change in Law under this Article, it shall give notice to MSEDCL of such Change in Law within 7 days after becoming aware of the same or should reasonably have known of the Change in Law.
- 9.3.2** Notwithstanding Article 9.3.1, the Hybrid Power Developer shall be obliged to serve a notice to MSEDCL 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 Procurer contained herein shall be material. Provided that in case MSEDCL has not provided such notice, the Hybrid Power Developer shall have the right to issue such notice to MSEDCL.

**9.3.3** Any notice served pursuant to this Article 9.3.2 shall provide, amongst other thing, precise details of:

- a) The Change in Law: and
- b) The effect on MSEDCL of the matters referred to in Article 9.2

# ARTICLE 10: TERM, TERMINATION AND DEFAULT

## **10.1 Term of the Agreement:**

This Agreement shall become effective upon the execution and delivery thereof by the Parties hereto and unless terminated pursuant to other provisions of the Agreement, shall continue to be in force for such time until the completion of a period of twenty five (25) years from the Commercial Operation Date. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date.

## **10.2 Survival:**

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 8 (Force Majeure), Article 10 (Events of Default and Termination), Article 11 (Dispute Resolution), Article 12 (Indemnity), Article 13 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement

## **10.3 Events of Default and the consequences thereof:**

**10.3.1 HPD s Default:** The occurrence of any of the following events at any time during the Term of this Agreement shall constitute an Event of Default by HPD:

- i) Failure to commission the project by SCOD or fails to supply power in terms of the PPA.
- ii) O&M Default on part of HPD.
- iii) Failure or refusal by HPD to perform any of its material obligations under this

Agreement including but not limited to financial closure.

- iv) HPD fails to make any payment required to be made to MSEDCL under this agreement within three (3) months after the due date of a valid invoice raised by the MSEDCL on the HPD.
- v) If the HPD (i) assigns or purports to assign its assets or rights in violation of this agreement; or (ii) transfers or novates any of its rights and / or obligations under this agreement, in violation of this agreement.
- vi) If the HPD becomes voluntarily or involuntarily the subject of proceeding under any bankruptcy or insolvency laws or goes into liquidation or dissolution or has a receiver appointed over it or liquidator is appointed, pursuant to Law, except where such dissolution of the HPD 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 creditworthiness similar to the HPD and expressly assumes all obligations under this agreement and is in a position to perform them; Or
- vii) The HPD repudiates this agreement.
- viii) Change in controlling shareholding before the specified time frame as mentioned in the RfP.
- ix) Occurrence of any other event which is specified in this Agreement to be a material breach / default of the HPD.

**10.3.2** Upon being in default, the Power Producer shall be liable to pay MSEDCL, damages, as detailed in the clause 3.3 of PPA for failure to commission within stipulated time and Clause 5.6 for failure to supply power in terms of the PPA. For other cases, HPD shall pay to MSEDCL, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity. MSEDCL shall have the right to recover the said damages by way of forfeiture of bank guarantee, if any, without prejudice to resorting to any other legal course or remedy

**10.3.3** In addition to the levy of damages as aforesaid, in the event of a default by the HPD, the lenders shall be entitled to exercise their rights of substitution, in accordance with the substitution agreement provided in the PPA and in concurrence with the Procurers. However, in the event the lenders are unable to

substitute the defaulting Wind Solar Hybrid Power Developer (HPD) within the stipulated period, the Procurer may terminate the PPA and acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.

#### **10.3.4 MSEDCL's Default:**

- i) If MSEDCL is in default on account of reasons including inter alia:
  - a) Default by MSEDCL in performing its obligation under this agreement, (ii) Failure to pay the monthly and / or supplementary bills beyond 90 days,
  - b) If MSEDCL becomes voluntarily or involuntarily the subject of proceeding under any bankruptcy or insolvency laws or goes into liquidation or dissolution or has a receiver appointed over it or liquidator is appointed, pursuant to Law, except where such dissolution of MSEDCL 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 creditworthiness similar to MSEDCL and expressly assumes all obligations under this agreement and is in a position to perform them.
  - c) The defaulting Procurer shall, subject to the prior consent of the HPD, novate its part of the PPA to any third party, including its Affiliates within the stipulated period.
- ii) In the event the aforesaid novation is not acceptable to the HPD, or if no offer of novation is made by the defaulting MSEDCL within the stipulated period, then the WPG may terminate the PPA and at its discretion require the defaulting Procurer to either:
  - a) takeover the project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 110% (one hundred and ten per cent) of the adjusted equity as detailed in the PPA or
  - b) pay to the HPD, damages, equivalent to 6 (six) months, or balance PPA

period whichever is less, of charges for its contracted capacity, with the project assets being retained by the HPD.

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

**Adjusted Equity** means 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 and the Reference Date;

- a) On or before 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;
- b) After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three three per cent) thereof at the commencement of each month following the COD [reduction of 1% (one percent) per quarter of an year] and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date;
- c) An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the 'Base Adjusted Equity').

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 PPA period is extended, but the revision on account of WPI shall continue to be made.

**Debt Due** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- 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 prior to the Transfer Date;

- 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 (i) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year 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 Utility Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost.

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.

#### **10.4 Termination:**

- 10.4.1 Termination for HPD s Default:** Upon the occurrence of an event of default as set out in sub-clause 10.3.1 above, MSEDCL may deliver a Default Notice to the HPD in writing which shall specify in reasonable detail the Event of Default giving rise to the default notice, and calling upon the HPD to remedy the same.

At the expiry of 30 (thirty) days from the delivery of this default notice and unless the Parties have agreed otherwise, or the Event of Default giving rise to the default notice has been remedied, MSEDCL may deliver a Termination Notice to the HPD. MSEDCL may terminate this Agreement by delivering such a Termination



Notice to the HPD and intimate the same to the MERC. Upon delivery of the Termination Notice this Agreement shall stand terminated and MSEDCL shall stand discharged of all its obligations. The HPD shall have liability to make payment within 30 days from the date of termination notice toward compensation to MSEDCL equivalent to three years billing based on normative CUF of 30 %.

Where a Default Notice has been issued with respect to an Event of Default, which requires the co-operation of both MSEDCL and the HPD to remedy, MSEDCL shall render all reasonable co-operation to enable the Event of Default to be remedied without any legal obligations.

#### **10.4.2 Termination for MSEDCL's Default:**

Upon the occurrence of an Event of Default as set out in sub-clause 10.3.4 above, the HPD may deliver a Default Notice to MSEDCL in writing which shall specify in reasonable detail the Event of Default giving rise to the Default Notice, and calling upon MSEDCL to remedy the same.

At the expiry of 30 (thirty) days from the delivery of the Default Notice and unless the Parties have agreed otherwise, or the Event of Default giving rise to the Default Notice has been remedied, the HPD may serve a "Suspension Notice" to MSEDCL for a duration not exceeding one year ("Suspension Period").

During the "Suspension Period" mentioned herein above, MSEDCL shall allow the HPD to sell power from the project, to any HT consumers of the State, in the open market either by finding the said consumers on its own or through any Central / State power trading utilities. In case of wheeling of power to such third parties, the transmission charges, transmission losses, wheeling charges and losses, SLDC charges and cross subsidy surcharge etc. shall be applicable as per MERC's regulation from time to time and paid directly to respective agencies by third party. No banking facility shall be allowed to HPD and third parties.

Till expiry of the Suspension Period, MSEDCL will be entitled to cure its default and buy power from the HPD. In the event MSEDCL fails to cure the default, the

HPD may terminate this Agreement by delivering a Termination Notice to MSEDCL / its successor entity and in such an event MSEDCL shall have liability to make payment within 30 days from the date of termination notice toward compensation to Power Producer equivalent to three years billing on normative CUF of 30%

# ARTICLE 11 : DISPUTE RESOLUTION

- 11.1** All disputes or differences between the Parties arising out of or in connection with this Agreement shall be first tried to be settled through mutual negotiation.
- 11.2** In the event of a dispute as to the amount of any Tariff Invoice, MSEDCL shall notify the HPD of the amount in dispute and MSEDCL shall pay the Power Producer 100% of the undisputed amount within the due date provided either party shall have the right to approach the MERC to effect a higher or lesser payment on the disputed amount.
- 11.3** The Parties shall discuss within a week from the date on which MSEDCL notifies the Power Producer of the amount in dispute and try and settle the dispute amicably.
- 11.4** The Parties hereto agree to attempt to resolve all disputes arising hereunder promptly, equitably and in good faith.
- 11.5** Each Party shall designate in writing and communicate to the other Party its own representative who shall be authorized to resolve any dispute arising under this Agreement in an equitable manner and, unless otherwise expressly provided herein, to exercise the authority of the Parties hereto to make decisions by mutual agreement.
- 11.6** In the event that such differences or disputes between the Parties are not settled through mutual negotiations within sixty (60) days, after such dispute arises, then it shall be adjudicated by MERC in accordance with Law.
- 11.7** Where any dispute arises from a claim made by any change in or determination of Tariff or any matter related to Tariff or claims made by any party which partly or wholly relate to any change in the Tariff or determination of any matter agreed to be referred to the MERC, such dispute shall be submitted to adjudication by the MERC. Appeal against the decision of the MERC shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.
- 11.8** If the Disputes arises out of or in connection with any claims not covered in Article 11 such disputes shall be resolved by arbitration under Indian Arbitration and Conciliation Act, 1996 and any amendments thereto.
- i) The arbitration tribunal shall consist of three arbitrators. Each party shall appoint an arbitrator and the arbitrators so appointed shall appoint the President Arbitrator.
  - ii) The place of the arbitration shall be Mumbai, India. The language of the arbitration shall be English.
  - iii) The arbitration tribunal's award shall be sustained in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceeding and the allocation thereof.
  - iv) Courts in Mumbai shall have exclusive jurisdiction to enforce any award under this agreement, subject to the applicable Laws.
  - v) The provisions of this clause shall survive the termination of this PPA for any reason whatsoever

**11.9** The disputes beyond the jurisdiction of MERC shall be filed before the Bombay High Court, Mumbai.

## **ARTICLE 12 : INDEMNITY**

**12.1** HPD s Indemnity: The HPD agrees to defend, indemnify and hold harmless MSEDCL, its officers, directors, agents, employees and affiliates (and their respective officers, directors, agents and employees) from and against any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses, suits, actions and damages arising by reason of bodily injury, death or damage to property sustained by third parties that are caused by an act of negligence or the willful misconduct of the Power Producer, or by an officer, director, sub-contractor, agent or employee of the Power Producer except to the extent of such injury, death or damage as is attributable to the willful misconduct or negligence of, or breach of this Agreement by, MSEDCL, or by an officer, director, sub-contractor, agent or employee of the MSEDCL.

**12.2** MSEDCL s Indemnity: MSEDCL agrees to defend, indemnify and hold harmless the HPD, its officers, directors, agents, employees and affiliates (and their respective officers, directors, agents and employees) from and against any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses, suits, actions and damages arising by reason of bodily injury, death or damage to property sustained by third parties that are caused by an act of negligence or the willful misconduct of MSEDCL, or by an officer, director, sub-contractor, agent or employee of MSEDCL except to the extent of such injury, death or damage as is attributable to the willful misconduct or negligence of, or breach of this Agreement by, the Power Producer, or by an officer, director, sub-contractor, agent or employee of the HPD.

## **ARTICLE 13 : MISCELLANEOUS PROVISIONS**

**13.1** Governing Law: This Agreement shall be interpreted, construed and governed by the Laws of India.

**13.2** Insurance: The HPD shall obtain and maintain necessary policies of insurance during the Term of this Agreement consistent with Prudent Utility Practice.

**13.3** Books and Records: The HPD shall maintain books of account relating to the Project in accordance with generally accepted Indian accounting principles.

**13.4** Waivers: Any failure on the part of a Party to exercise, and any delay in exercising, exceeding three years, any right hereunder shall operate as a waiver thereof. No waiver by a Party of any right hereunder with respect to any matter or default arising in connection with this Agreement shall be considered a waiver with respect to any subsequent matter or default.

**13.5** Limitation Remedies and Damages: Neither Party shall be liable to the other for any consequential, indirect or special damages to persons or property whether arising in tort, contract or otherwise, by reason of this Agreement or any services performed or undertaken to be performed hereunder.

**13.6** Notices: Any notice, communication, demand, or request required or authorized by this Agreement shall be in writing and shall be deemed properly given upon date of receipt if delivered by hand or sent by courier, if mailed by registered or certified mail at the time of posting, if sent by fax when dispatched (provided if the sender's transmission report shows the entire fax to have been received by the recipient and only if the transmission was received in legible form), to :

In case of the HPD:

Name:

Designation: \_\_\_\_ Address : \_\_\_\_

Ph. Nos.: \_\_\_\_\_ Fax No.: \_\_\_\_

In case of MSEDCL

Chief Engineer (renewable Energy),  
Prakashgad, 5<sup>th</sup> floor,  
Plot G 9, Prof. Anant Kanekar Marg,  
Bandra (East), Mumbai 400 051,

**13.7 Severability:**

Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity, enforceability or legality of such provision in any other jurisdiction.

**13.8 Amendments:**

This Agreement shall not be amended, changed, altered, or modified except by a written instrument duly executed by an authorized representative of both Parties. However, MSEDCL may consider any amendment or change that the Lenders may require to be made to this Agreement.

**13.9 Assignment:** Neither Party shall assign this Agreement or any portion hereof without the prior written consent of the other Party, provided further that any assignee shall expressly assume the assignor's obligations thereafter arising under this Agreement pursuant to documentation satisfactory to such other Party. However, such assignment shall be permissible only for entire contracted capacity.

Provided however, no approval is required from MSEDCL for the assignment by the HPD of its rights herein to the Financing Parties and their successors and assigns in connection with any financing or refinancing related to the construction, operation and maintenance of the Project.

In furtherance of the foregoing, MSEDCL acknowledges that the Financing Documents may provide that upon an event of default by the Power Producer under the Financing Documents, the Financing Parties may cause the HPD to assign to a third party the interests, rights and obligations of the HPD thereafter arising under this Agreement. MSEDCL further acknowledges that the Financing Parties, may, in addition to the exercise of their rights as set forth in this Section, cause the HPD to sell or lease the Project and cause any new lessee or purchaser of the Project to assume all of the interests, rights and obligations of the HPD thereafter arising under this Agreement.

**13.10 Entire Agreement, Appendices:** This Agreement constitutes the entire agreement between MSEDCL and the Power Producer, concerning the subject matter hereof. All previous documents, undertakings, and agreements, whether oral, written, or otherwise, between the Parties concerning the subject matter hereof are hereby cancelled and shall be of no further force or effect and shall not affect or modify any of the terms or obligations set forth in this Agreement, except as the same may be made part of this Agreement in accordance with its terms, including the terms of any of the appendices, attachments or exhibits. The appendices, attachments and exhibits are hereby made an integral part of this Agreement and shall be fully binding upon the Parties.

In the event of any inconsistency between the text of the Articles of this Agreement and the appendices, attachments or exhibits hereto or in the event of any inconsistency between the provisions and particulars of one appendix, attachment or exhibit and those of any other appendix, attachment or exhibit MSEDCL and the HPD shall consult to resolve the inconsistency.

#### **13.11 Taxes and Duties**

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



terms of this Agreement.

- ii) MSEDCL shall be indemnified and held harmless by the HPD against any claims that may be made against MSEDCL in relation to the matters set out in Article 17.9.1.
- iii) MSEDCL shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the HPD by MSEDCL on behalf of HPD.

#### **13.12 Independent Entity**

- i) The HPD shall be an independent entity performing its obligations pursuant to the Agreement.
- ii) Subject to the provisions of the Agreement, the HPD shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the HPD or contractors engaged by the HPD in connection with the performance of the Agreement shall be under the complete control of the HPD and shall not be deemed to be employees, representatives, contractors of MSEDCL and nothing contained in the Agreement or in any Agreement or Contract awarded by the HPD shall be construed to create any contractual relationship between any such employees, representatives or contractors and MSEDCL.

#### **13.13 Compliance with Law**

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

#### **13.14 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.

- 13.15 Further Acts and Assurances:** Each of the Parties after convincing itself agrees to execute and deliver all such further agreements, documents and instruments, and to do and perform all such further acts and things, as shall be necessary or convenient to carry

out the provisions of this Agreement and to consummate the transactions contemplated hereby.

<p>IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their fully authorized officers, and copies delivered to each Party, as of the day and year first above stated.</p> <p><b>FOR AND ON BEHALF OF HPD M/S</b></p> <p><b>AUTHORISED SIGNATORY</b></p> <p>_____</p> <p><b>WITNESSES</b></p> <p><b>1.</b></p> <p><b>3.</b></p>	<p><b>FOR AND ON BEHALF OF</b></p> <p><b>MSEDCL</b></p> <p>_____</p> <p><b>WITNESSES</b></p>
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# **SCHEDULE 1: PARAMETERS AND TECHNICAL LIMITS OF SUPPLY**

## **1. Electrical characteristics**

- ☐ Three phase alternating current
- ☐ Nominal declared frequency : 50.0 Hz
- ☐ Final Voltage at Delivery Point: ----- kV

Short circuit rating: \_\_\_\_\_ (As a part of the detailed design process, the HPD shall calculate the short circuit rating (minimum and maximum), and supply this information to the MSEDCL).

Note: The tolerances & Electrical characteristics variations and basic insulation level will be as per relevant grid code CEA Standards.

## **2. Quality of Service**

The Power Producer shall be responsible for the delivery of energy conforming Performance Standards for Transmission and Bulk Supply as approved by MERC.

The maximum current and voltage waveform distortion shall be in accordance with the limits prescribed under Central Electricity Authority (Grid Standards) Regulations 2010, as amended from time to time.

## **3. Power Factor**

The Generator shall maintain the Power Factor as per the prevailing MERC regulations and as may be stipulated / specified by MSEDCL/MSETCL from time to time. The HPD shall provide suitable protection devices, so that the Electric Generators could be isolated automatically when grid supply fails.

Connectivity criteria like short circuit level (for switchgear), neutral Grounding, fault clearance time, current unbalance (including negative and zero sequence currents), limit of harmonics etc. shall be as per Grid Code.

## **SCHEDULE 2: TECHNICAL LIMITS**

1. The nominal steady state electrical characteristics of the system are as follows:
  - a) three phase alternating current at 50 Hertz plus or minus 0.5 Hertz
  - b) nominal voltage of \_\_\_\_\_ KV with +10% to \_\_\_\_\_ 12.5% variation.  
—
2. The Project shall be designed and capable of being synchronized and operated within a frequency range as per relevant Grid Code and voltage of \_\_\_\_\_ KV and \_\_\_\_\_KV

Operation of the Project outside the nominal voltage and frequency specified above will result in reduction of power output consistent with generator capability curves.

## **SCHEDULE 3: APPROVALS**

1. Consent from the STU / CTU/MSEDCL for the evacuation scheme for evacuation of the power generated by the Hybrid power projects.
2. Approval of the Electrical Inspectorate, Government of Maharashtra/other applicable state for commissioning of the transmission line and the wind energy converters installed at the Hybrid Project Site.
3. Certificate of Commissioning of the Wind Farm Project issued by CTU/STU/MSEDCL/SLDC/MEDA/SNA as applicable.
4. SNA/MEDA registration certificate.
4. Permission from all other statutory and non-statutory bodies required for the Project.
5. Clearance from the Airport Authority of India, if required.
6. Clearance from the Department of Forest, Ecology and Environment, if required.

## **SCHEDULE 4: SPECIFICATION OF ELECTRICAL ENERGY DELIVERY**

1. The generation voltage from the windmill power project of M/s. KV. It uses unit connection of generator, generator transformer and unit transformer.

is \_\_\_\_\_

2. The generated power at \_\_\_\_\_KV will be stepped up to \_\_\_\_\_KV at the Project Site and further stepped up to \_\_\_\_\_ KV at the Sending Station for the purpose of interconnection with the Grid System