

**MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY
LIMITED**

**DRAFT POWER PURCHASE
AGREEMENT**

**FOR PURCHASE OF 250 MW FLEXIBLE AND SCHEDULABLE POWER THROUGH
COMPETITIVE BIDDING PROCESS FOLLOWED BY E-REVERSE AUCTION FROM
GRID CONNECTED RENEWABLE ENERGY PROJECT SOURCES WITH
ENERGY STORAGE FACILITY ON LONG TERM BASIS WITH GREEN SHOE
OPTION**

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This Power Purchase Agreement is made and entered into at Mumbai on this day of ---- 2022 between M/s----- Company having its registered office -----at -----India (hereinafter referred to as "Renewable Energy Project 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, Bandra (East), Mumbai – 400 051, (hereinafter referred to individually, as “MSEDCL” or "Power Procurer", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees) as party of the second part.

MAHARASHTRA 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", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees) as party of the second part.

In order to fulfil the renewable power purchase obligation (RPO) and to cater to the power demand of the State experiencing intra-day variations, MSEDCL intends to procure flexible power which can be supplied to meet peak demand/varying Demand requirements at any time during the day. With the objective to promote the renewable energy with energy storage technology for optimal and efficient utilization of transmission infrastructure and land, reducing the variability in renewable power generation and achieving better grid stability, MSEDCL envisage to procure 250 MW Flexible and Schedulable Power through Competitive Bidding Process followed by E-Reverse Auction from Grid Connected Renewable Energy Sources with Energy Storage Facility on Long Term Basis with Green Shoe Option [conducted online on <https://www.bharat-electronictender.com/>]. MSEDCL invited proposals for procurement of 250 MW Flexible and Schedulable Power through Competitive Bidding Process followed by E-Reverse Auction from Grid Connected Renewable Energy Sources with Energy Storage Facility on Long Term Basis with Green Shoe Option. The generated energy shall be dispatched through scheduling of power in both Non-Solar generation and Solar generation hours. It is mandated to deliver the 300 MWh of energy per 100 MW contracted capacity of the project in AC terms, during Non-Solar Generation Hours as per the schedule given by the MSEDCL. Now, MSEDCL shall enter this Power Purchase Agreement/s (PPA/s) with the successful bidder(s) selected based on reverse auction results.

WHEREAS MSEDCL vide RfS No. MSEDCL/ RE/2022/Flexible Power/T-07 dated 10.08.2022 has floated tender for procurement power from Renewable Energy Projects with Energy Storage facility through Competitive Bidding (followed by e-reverse auction) and the Renewable Energy Project Developers has been declared Successful Bidder pursuant to

Letter of Award (LoA) dated for development of Renewable Energy Project capacity ofMW along with Energy Storage facility of MW capacity located within or outside Maharashtra state and sale of electrical energy, so produced, for commercial purposes from such Power Plant to MSEDCL.

AND, WHEREAS the Renewable Energy Project Developer has furnished Performance Bank Guarantee no..... dated amounting to Rs. __ Crore (Calculated at Rs. 35.4 Lakh / MW) as per the RfS No. MSEDCL/RE/2022/Flexible Power/T-07 dated 10.08.2022

AND, WHEREAS the Renewable Energy Project Developer desires to set-up Renewable Energy Power Project with Energy Storage facility Plant at _____

AND, WHEREAS the Renewable Energy Project Developer has taken responsibility to deliver the contracted capacity at 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 Renewable Energy Project Developer 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 RENEWABLE ENERGY PROJECT DEVELOPER, EACH TOGETHER WITH THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS, A PARTY AND COLLECTIVELY THE PARTIES, HEREBY AGREE AS FOLLOWS:

1 ARTICLE : DEFINITIONS

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

"Agreement" or "PPA" shall mean this Power Purchase Agreement, if not defined explicitly, executed hereof, including the schedules hereto, amendments, modifications and supplements made in writing by the Parties from time to time.

"Adjusted Equity" shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the "Reference Date"), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date;

- a. On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date;
- b. An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "Base Adjusted Equity");
- c. After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three three three percent) thereof at the commencement of each month following the COD [reduction of 1% (one percent) per quarter of a 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;

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.

"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.

"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 a Day other than Sunday or a statutory holiday on which banks remain open for business in Mumbai.

“Buying Entity” or **“Buying Entities”** or **“Buyer”** or **“Buyers”** means Maharashtra State Electricity Distribution Company Limited (MSEDCL) who shall sign the Power Purchase Agreement with the SUPPLIER;

“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/MSEDCL/SNA shall mean when all equipment’s as per rated capacity has been installed and energy has flown into the grid.

“Commercial Operation Date” “with respect to the Project shall mean the date certified in the commissioning certificate is issued upon successful commissioning of the full capacity of the Project or the last part capacity of the Project (certified by SLDC/DISCOM) as the case may be and such date as specified in a written notice given at least 30 days in advance by the Successful Bidder to MSEDCL.”

“CERC” means Central Electricity Regulatory Commission.

“Competent Court” means the Supreme Court of India or any High Court, or any tribunal or any similar judicial or quasi-judicial body that has jurisdiction in relation to issues relating to the Project.

“Contracted Capacity” shall mean the capacity (in MW AC) contracted with MSEDCL for supply of flexible and schedulable power by the successful bidder at the Delivery Point from the respective Renewable Energy Project (Solar/ Wind/ Hydro/Pumped Hydro storage or combination thereof) with Energy Storage Facility.

“Contract Year” shall mean, with respect to the initial Contract Year, the period beginning on the Commercial Operation Date and ending at 12.00 midnight on 31st March of that Fiscal Year i.e. a period of twelve months commencing on April 1 and ending on following March 31. Each successive Contract Year shall coincide with the succeeding Fiscal Year, except that the final Contract Year shall end on the date of expiry of the Term or on Termination of this Agreement whichever is earlier.

“Capacity Utilisation Factor (CUF)” shall have the same meaning as provided in CERC (Terms & Conditions for tariff determination from renewable energy sources)

Regulations, 2020 as amended from time to time. However for avoidance of any doubt, it is clarified that the CUF shall be calculated on the Contracted Capacity; In any Contract Year, if „X“ MWh of energy has been metered out at the Delivery Point for „Y“ MW Project capacity, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) \times 100\%$;

“Delivered Energy” means the kilowatt hours of Electricity accounted for at the Delivery Point and as certified by SLDC /RLDC / DISCOM/MSEDCL.

“Delivery Point” shall mean Maharashtra State periphery where the power from the selected Project will be accounted for scheduling and billing. Accordingly:

| | |
|--|--|
| For projects located outside Maharashtra (whether connected to CTU or to STU of their home States) | Delivery Point shall be Maharashtra State periphery i.e., the point at which the CTU network is connected to the Intra-State Transmission network of Maharashtra. Accordingly, all charges & losses, including the STU transmission charges & losses of the Bidder’s / Renewable Energy Project Developer’s home State, POC, scheduling / SLDC / RLDC charges, etc. shall be borne by the Bidder / Renewable Energy Project Developer. |
| For projects located in Maharashtra and connected to Maharashtra -STU | Delivery point shall be where Interconnection point of Renewable Energy Project Developer is connected to the voltage level of 33 kV or above of STU/MSETCL sub-station. |
| For projects located inside Maharashtra, but connected to CTU | Delivery Point will be Maharashtra State periphery. Accordingly, all charges & losses, including the POC, scheduling / RLDC charges, etc. shall be borne by the Bidder / Renewable Energy Project Developer. |

“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” shall mean the date of execution of Power Purchase Agreement (PPA) by both the parties.

"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 respective state regulatory commission/MERC / CERC from time to time.

"Emergency" means a condition or situation of physical damage to 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 beyond the interconnection point Grid System or could endanger life or property.

“Energy Storage Facility” or “Energy Storage” or “Storage” shall mean the system(s) installed in addition to the solar PV and/or wind power and/or Hydro power/Hydro Pumped storage Plants or combination thereof capacity as part of the Project, that can capture energy produced at one time for use at a later time;

“Expiry Date” shall mean the date occurring after twenty-five (25) years from the Scheduled Commercial Operation Date.

“Financial Closure” or “Project Financing Arrangements” shall mean arrangement of necessary funds by the Renewable Energy Project Developer either by way of commitment of funds by the Company from its internal resources and/or tie up of funds through a bank / financial institution by way of a legally binding agreement for commitment of such finances.

“Financing Documents” mean the agreements and documents (including asset leasing arrangements) entered/to be entered into between the bidder and the Financing Parties relating to the financing of the Project.

“Financing Parties” shall mean the parties financing the Project, pursuant to the Financing Documents.

“Force Majeure Event” shall have the meaning set forth in ARTICLE 8.

“GoI” shall mean the Government of the Republic of India and any agency, legislative body, department, political subdivision, authority or instrumentality thereof.

“GoM” shall mean the Government of the State of Maharashtra and any agency, legislative body, department, political subdivision, authority or instrumentality thereof.

“Government Instrumentality” shall mean the GoI, the GoM, respective state govt. and their ministries, inspectorate, departments, agencies, bodies, authorities, legislative bodies.

“Grid System” shall mean state STU/ CTU power transmission system /distribution system through which Delivered Energy is evacuated and distributed.

“Inter Connection Point” shall mean the point(s) of connection(s) at which the project is connected to the grid.

“kV” shall mean kiloVolts.

“kWh” shall mean kiloWatt-hour.

"Law" shall mean 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 Renewable Energy Project Developer for award of the Contract.

"MERC" means the Maharashtra Electricity Regulatory Commission

"Metering Date" for a Billing Period, means the midnight of the last Day of the calendar month.

"Metering Point" shall mean the point at which energy shall be measured and accounted for supply to MSEDCL. Metering shall be at the delivery for the selected project.

"MNRE" means the Ministry of New and Renewable Energy Project.

"Monthly Charge" shall have the meaning set forth in ARTICLE 5.

"MRI" shall mean Meter Reading Instrument.

"MW" means MegaWatt

"O & M Default" shall mean any default on the part of the Renewable Energy Project Developer 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.

"SOLAR GENERATION HOURS" shall mean the energy scheduling of 8 hours between 10.00 hrs to 18.00 hrs ;

"SOLAR GENERATION HOUR POWER" shall mean the power supplied during Solar Generation Hours;

"SOLAR GENERATION HOURS TARIFF" shall mean the tariff payable to the Renewable Energy Developer for energy supplied during the Solar Generation Hours;

"PERFORMANCE BANK GUARANTEE" shall mean the irrevocable unconditional bank guarantee submitted by the Renewable Energy Project Developer as per the RfS No. MSEDCL / Flexible Schedulable Renewable Power with Storage Facility/XX/ dated XXXX.

"NON-SOLAR GENERATION HOURS" shall mean the **any 06 energy scheduling hours** between (& including) 00:01 hrs up to 10:00 hrs and between (& including) 18.01 hrs up to 24:00 hrs of the same day; For the purpose of scheduling a 'day' shall commence from 00:00

hrs and end at 24:00 hrs.;

“NON-SOLAR GENERATION HOUR POWER” shall mean the power supplied from the project during non-solar generation Hours;

“NON-SOLAR GENERATION HOURS TARIFF” shall mean the tariff payable to the Renewable Energy Developer for energy supplied during the non-solar generation Hours as per the dispatch schedule confirmed by the MSEDCL, applicable to supply of energy limited to 300 MWh during non-solar generation hours, for each 100 MW Contracted Capacity.

“Project or Renewable Energy Project” shall mean a Renewable Energy (Solar, Wind, Hydro, Pumped Hydro Storage or combination thereof) along with Energy Storage (facility) Grid Interactive Power Generating Station to be established by the successful bidder in or outside Maharashtra and shall include land, buildings, plant, machinery, ancillary equipment, material, switch-gear, transformers, protection equipment and the like necessary to deliver the Electricity generated to MSEDCL at the Delivery Point.

“Project Capacity” means the AC capacity in Mega Watt of the project at the generating terminal(s) and to be contracted with MSEDCL for supply from the Renewable Energy Project along with Energy Storage asset.;

“Prudent Utility Practices” shall mean 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.

“Renewable Energy Project Developer” means the Bidding Company or a Bidding Consortium participating in the bid and having been selected and allocated a renewable energy project with energy storage facility by MSEDCL through a competitive bidding process.

“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.

“SCADA” means the Supervisory Control and Data Acquisition System (SCADA) installed for recording and transferring the online data.

“Scheduled COD” or “Scheduled Commercial Operation Date” shall mean the date *(Insert a date within 30 (Thirty) months from the date of execution of the PPA as declared by the Renewable Energy Project Developer.*

“SEA” means the State Energy Account issued by State Load Dispatch Centre.

“SLDC” means the State load dispatch center.

“SNA” shall mean respective State Nodal Agency, which is MEDA in Maharashtra, for the purpose of the implementation of the Renewable Energy Project with Energy Storage facility.

“STU or State Transmission Utility” shall mean the Maharashtra State Energy Transmission Company of the state in which the project is located as it is MSETCL (Maharashtra State Energy Transmission Company Limited) in case of Maharashtra state.

“Successful Bidder” means the Bidding Company or a Bidding Consortium participating in the bid and having been selected and allocated a Renewable Energy Project (Solar, Wind, Hydro, Pumped Hydro Storage or Combination thereof) along with Energy Storage facility by MSEDCL through a competitive bidding process.

“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.

“Week” shall mean calendar week.

1.2 Interpretation:

- a. Unless otherwise stated, all references made in this Agreement to "Articles" and "Schedules" shall refer, respectively, to Articles of, and Schedules to, this Agreement. The Schedules to this Agreement form part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement.
- b. In this Agreement, unless the context otherwise requires (i) the singular shall include plural and vice versa; (ii) words denoting persons shall include partnerships, firms, companies and MSEDCL (iii) the words "include" and "including" are to be construed without limitation and (iv) a reference to any Party includes that Party's successors and permitted assigns.

2 ARTICLE: LICENCES, PERMITS

The Renewable Energy Project Developer, 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.

3 ARTICLE: OBLIGATIONS

3.1 Obligations of the Renewable Energy Project Developer:

- i. Renewable Energy Project Developer shall develop the project based on the renewable energy sources (Solar, Wind, Hydro/ Hydro Pumped storage Plants, or combination thereof) along with adequate energy storage capacity.
- ii. The Renewable Energy Project Developer shall obtain all statutory approvals, consents, clearances and permits required for the Project as per the terms of this Agreement, at its cost in addition to those Approvals as listed in SCHEDULE 3.
- iii. The Renewable Energy Project Developer shall obtain financial closure within Twelve (12) months from date of execution of this PPA unless such completion is affected by any Force Majeure Event
 - a. The Successful Bidder shall make 100 % Project financing arrangements and provide necessary certificates to MSEDCL in this regard;
 - b. The Successful Bidder shall produce the documentary evidence of allotment/possession / right to use of 100% of the land identified for the Project.
 - c. The Successful Bidder shall obtain transmission/connectivity approval from CTU/STU and provide necessary documents in this regard.
 - d. The Successful Bidder shall submit the details of all planned/proposed components of the renewable energy project like solar panels, inverters and wind turbine generators, Energy Storage along with necessary purchase order/agreements for the project.
- iv. The Renewable Energy Project Developer shall construct, operate and maintain the Project during the term of PPA at his cost and risk including the required Interconnection Facilities.
- v. The Renewable Energy Project Developer shall seek approval of CTU/STU/DISCOM in respect of interconnection facilities.
- vi. The Renewable Energy Project Developer shall undertake at its own cost construction/ upgradation of (a) the Interconnection Facilities, (b) the Transmission Lines and as per the specifications and requirements of CTU/STU/DISCOM, as notified to the Renewable Energy Project Developer at schedule 4
- vii. The Renewable Energy Project Developer shall undertake at its own cost maintenance of the Interconnection Facilities, as per the specifications and requirements of CTU/STU/ DISCOM, in accordance with Prudent Utility Practices.
- viii. The Renewable Energy Project Developer shall operate and maintain the Project in accordance with Prudent Utility Practices.

- ix The Renewable Energy Project Developer 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.
- x For evacuation facility and maintenance of the transmission system, the Renewable Energy Project Developer shall enter into separate agreement with CTU/STU/DISCOM, as applicable.
- xi To apply for start up power required for the plant from MSEDCL.
- xii Fulfilling all other obligations undertaken by him under this Agreement.
- xiii The Renewable Energy Project Developer cannot inject power three months earlier to Scheduled Commercial Operation Date from Project without MSEDCL's consent.

3.2 Obligations of MSEDCL

- i. MSEDCL shall off-take and purchase the electricity generated by renewable energy project developer 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 Right to Contracted Capacity & Energy

Criteria for generation during Solar Generation Hours:

The Renewable Energy Project Developer will declare the CUF of their project at the time of signing of PPA and will be allowed to revise the same once within first year of COD. The declared CUF shall in no case be less than 19% over a year. They shall maintain generation so as to achieve CUF in the range of $\pm 10\%$ of their declared value during PPA duration. The lower limit will, however, be relaxed by MSEDCL to the extent of grid non-availability for evacuation which is beyond the control of the Renewable Energy Project Developer.

The complete energy supplied by the Successful Bidder during Solar Generation Hours will be consumed by the MSEDCL at the pre fixed tariff of **Rs 2.42/kWh**.

Scheduling and Off-take of Energy during Non-Solar Generation Hours

- i. The generated energy shall be dispatched through scheduling of power in both Non-Solar Generation Hours. It is mandated to deliver the 300 MWh of energy per 100 MW contracted capacity of the project in AC terms, during Non-Solar Generation Hours as per the schedule given by the MSEDCL. Reconciliation of the same shall be carried out on a monthly basis.

- ii. The energy supplied by the successful bidder during Non-Solar Generation Hours will be purchased by the MSEDCL at the tariff discovered through the e-RA.
- iii. The mandatory Non-Solar Generation Hour energy supply per MW during the Non-Solar Generation Hours will be consumed by the MSEDCL at the tariff arrived through the bidding and e-Reverse Auction process.

The successful bidder may supply the required energy during Non-Solar Generation Hours either from the stored energy in the energy storage system or from any RE generation available during the Non-Solar Generation Hours.

The discharge cycle corresponding to offtake of stored energy may vary as per requirements of the MSEDCL.

Following table illustrates few of the combinations of off-take energy which may be demanded by MSEDCL as per day-ahead schedule :

| Discharge hours during morning Non-Solar Generation hours | Discharge hours during evening Non-Solar Generation hours | Total discharge hours |
|---|---|-----------------------|
| 2 | 4 | 6 |
| 3 | 3 | 6 |
| 4 | 2 | 6 |

The MSEDCL shall mandatorily off-take Power from the Non-Solar Generation hours during morning and evening Non-Solar Generation with a minimum of 2 hours off-take period. Further, a variation of ± 30 minutes in the deadlines of morning and evening Non-Solar Generation hours is also allowed in making that choice by the MSEDCL.

Further, for every 50 MW Contracted Capacity, supply of power below 50 MW, during any 1-hr block in the 6 nos. of 1-hr block as identified by the MSEDCL, will be counted as shortfall in supply of Non-Solar Generation Hour Power.

- iv. The day-ahead schedule shall be required to be confirmed by the successful bidder, subject to the condition that the successful bidder meets the minimum requirement of discharge of energy corresponding to 6-hr Non-Solar Generation Hour Power supply.
- v. It is clarified that charging of the ESS should be strictly from the Renewable Energy Sources. It is also clarified that power procurement from the trading license shall not be allowed to supply power under this RfS during non-solar generation hours.

Shortfall in Generation:

Shortfall in supply of Solar Generation Hour Power:

If for any Contract Year, it is found that the Successful Bidder has not been able to generate minimum energy corresponding to the value of annual CUF within the permissible lower limit of CUF declared by the Successful Bidder, on account of reasons solely attributable to the Successful

Bidder, such shortfall in performance shall make the Successful Bidder liable to pay the compensation @ 25% of the PPA tariff to MSEDCL. This will, however, be relaxable by MSEDCL to the extent of grid non-availability for evacuation (beyond the Delivery Point) which is beyond the control of the Successful Bidder. This compensation shall be applied to the amount of shortfall in generation during the Contract Year.

However, this compensation shall not be applicable in events of Force Majeure identified under the PPA with MSEDCL, affecting supply of Renewable Energy power by the Successful Bidder

Shortfall in supply of Non-Solar Generation Hour Power: In case of any shortfall of generation/supply during the Non-Solar Generation Hours from the mandated supply of energy (i.e. 300 MWh for each 100 MW contracted capacity), the Successful Bidder shall pay a penalty as illustrated below:

| Monthly Non-Solar Generation Hour Power availability | Penalty |
|--|---|
| 85% and above | Nil |
| 80% and below 85% | Non-Solar Generation hour tariff X shortfall energy |
| 70% and below 80% | 2 X Non-Solar Generation hour tariff X shortfall energy |
| Below 70% | 3 X Non-Solar Generation hour tariff X shortfall energy |

However, this compensation shall not be applicable in events of Force Majeure identified under the PPA with MSEDCL by the Renewable Energy Project Developer.

Excess Generation

During any contract year, in case the generation is over and above 10% of declared annual CUF, the Successful Bidder will be free to sell it to any other entity provided first right of refusal will vest with MSEDCL. In case MSEDCL purchases the excess generation, the same may be done at 75% (seventy-five per cent) of the PPA tariff. MSEDCL shall inform the Renewable Energy Project Developer for procurement of excess power within 15 days of receiving a written intimation from the Renewable Energy Project Developer for such excess generation. If in case MSEDCL fails to reply to the Renewable Energy Project Developer within the above stipulated time period then the generator shall be free to sell it to any other entity.

In case of energy supply during Non-Solar Generation Hours over and above the mandated energy requirement (300 MWh for each 100 MW of contracted capacity), and in the event of such power being procured by the MSEDCL, the Successful Bidder will be paid energy charges @ 75% of the Tariff. In case at any point of time, the peak of capacity reached is higher than the rated capacity and causes disturbance in the system at the point where power is injected, the Successful Bidder will have to forego the excess generation and reduce the output to the rated capacity to ensure compliance with grid requirement.

Compensation in Offtake Constraint due to Grid Unavailability:

During the operation of the project, there can be some periods where the project can generate power but due to temporary transmission unavailability the power is not evacuated, for reasons not attributable to the Successful Bidder. In such cases the generation compensation shall be addressed by MSEDCL in following manner:

| Duration of Grid unavailability | Provision for Generation Compensation |
|--|--|
| Grid unavailability in a contract year as defined in the PPA: (only period from 8 am to 6 pm to be counted): | <p><i>Generation Loss = [(Average Generation per hour during the Contract Year) × (number of hours of grid unavailability during the Contract Year)]</i> Where, Average Generation per hour during the Contract Year (kWh) = Total generation in the Contract Year (kWh) ÷ Total hours of generation in the Contract Year. The excess generation by the Successful Bidder equal to this generation loss shall be procured by MSEDCL at the Solar Generation Hour PPA tariff so as to offset this loss in the succeeding 3 (three) Contract Years.</p> |

Offtake Constraints due to Backdown:

The Successful Bidder and MSEDCL shall follow the forecasting and scheduling process as per the regulations in this regard by the CERC/SERC. The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), encourages a status of “must-run” to renewable power projects. Accordingly, no solar 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 Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions, the Successful Bidder shall be eligible for a Minimum Generation Compensation, from MSEDCL, in the manner detailed below.

| Duration of Backdown | Provision for Generation Compensation |
|---|--|
| Hours of Backdown during a monthly billing cycle. | <p><i>Minimum Generation Compensation = 50% of [(Average Generation per hour during the month) × (number of backdown hours during the month)] X Back down Capacity x PPA Tariff</i> Where, Average Generation per hour during the month (kWh) = Total generation in the month (kWh) ÷ Total hours of generation in the month</p> |

3.4 Liquidated damages for delay in Commissioning the Grid Interactive Power Plant beyond Scheduled Commercial Operation Date

The Projects shall be commissioned within a period of 30 (thirty) months from the date of execution of the PPA.

The Renewable Energy Project Developer shall have to submit Commissioning Certificate as verified, inspected and certified by authorized central / state agency/ RLDC/SLDC/MSEDCL. 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.
- b) **In case the commissioning of the project is delayed beyond Six (6) months from SCOD** - The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee and shall be limited to 36 months.
- c) In case, the Commissioning of the Project is delayed beyond this period as mentioned in Article (b) above, Renewable Energy Project Developer's Event of Default, as per clause 10.3 of PPA, shall be considered to have occurred and the PPA contracted capacity shall stand reduced / amended to the project Capacity commissioned upto maximum time period allowed for commissioning of full project capacity as per Article (b) above and the PPA for the balance Capacity not commissioned shall be terminated and shall be reduced from the Contracted Capacity.

4 ARTICLE: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

4.1 Synchronization, Commissioning and Commercial Operation

The Renewable Energy Project Developer shall give written notice to the RLDC/SLDC/SNA/STU/DISCOM, as the case may be, at least Thirty (30) days in advance of the date on which it intends to synchronize the Power Project to the Grid System.

Subject to Article 4.1.1, the Power Project may be synchronized by the Renewable Energy Project Developer 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.

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 Renewable Energy Project Developer at its generation facility of the Power Project at its own cost. The Renewable Energy Project Developer shall synchronize its system with the Grid System only after the approval of STU/CTU and SLDC/RLDC or DISCOM.

The Renewable Energy Project Developer 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.

The Projects shall be commissioned within a period of 30 (Thirty) months from the date of execution of the PPA.

Part commissioning of the Project shall be accepted by MSEDCL subject to the condition that the Minimum Capacity for acceptance of first and subsequent part(s) commissioning shall be the 50% of the capacity specified by the bidder in its bid for the particular/each site or 50 MW, without prejudice to the imposition of penalty, in terms of the PPA on the part which is not commissioned.

The Successful Bidder shall be permitted for full commissioning as well as part commissioning of the Project even prior to the SCOD subject to the availability of the evacuation arrangements. In cases of early part- commissioning and the evacuation arrangements are available, MSEDCL shall purchase the generation at 75% of the respective Part PPA tariff without any additional Tariff on account of Change in Law till the SCoD for the energy supplied during Solar Generation Hours and Non-Solar Generation Hours. In case of early full commissioning, MSEDCL will purchase the generation till SCOD at respective part PPA tariff for the energy supplied during Non-Solar Generation Hours and Solar Generation Hours. Further, early part/ full commissioning of the Project and subsequent energy procurement from the same shall be subject to the approval of MSEDCL.

4.2 Performance Bank Guarantee:

The Performance Bank Guarantee furnished by Renewable Energy Project Developer to MSEDCL as specified in the bidding documents shall be for guaranteeing the commissioning / commercial operation of the project / unit up to the Contracted Capacity within SCOD.

If the Renewable Energy Project Developer fails to achieve Financial Closure within 12 months from the date of signing of PPA, the MSEDCL shall encash the Performance Bank Guarantee (PBG) unless the delay is on account of 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 Renewable Energy Project Developer, on advance payment of extension charges of Rs. 10,000/- per day per MW. In case of any delay in depositing this extension charge, the Renewable Energy Project Developer has to pay an interest on this extension charge for the days lapsed beyond due date of Financial Closure @ SBI MCLR (1Year) and upon submission of a fresh Performance Bank Guarantee (PBG) with the same conditions, value and validity. This extension will not have any impact on the Scheduled Commissioning Date (SCOD). However, such amount of encashed PBG shall be returned to the Renewable Energy Project Developer without any interest within a period of 30 days of achievement of successful commissioning provided such commissioning is within the Scheduled Commissioning Date (SCOD) on pro-rata basis, based on the Project Capacity commissioned on SCOD. However, in case of any delay in commissioning of the project beyond the Scheduled Commissioning Date, the amount as deposited above by the Renewable Energy Project Developer shall not be refunded by MSEDCL.

If the Renewable Energy Project Developer fails to commission the project / Unit on or before Scheduled Commercial Operation Date, MSEDCL shall have the right to forfeit the Performance Bank Guarantee without prejudice to the other rights of the Renewable Energy Project Developer under this Agreement as per Article 4.2

MSEDCL shall release the Performance Bank Guarantee upon successful commissioning of full contracted capacity after adjusting Liquidated Damages (if any)

4.3 Dispatch and Scheduling:

The Renewable Energy Project Developer shall be required to Schedule its power as per the applicable regulations / requirements / guidelines of CERC/respective state regulatory commission 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 Renewable Energy Project Developer.

Renewable Energy Project Developer 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.

5 ARTICLE: RATES AND CHARGES

5.1 Monthly Energy Charges:

The MSEDCL shall pay for the Scheduled /Delivered Energy as certified by RLDC / SLDC/Appropriate authority through Automated Meter Reading (AMR) / Meter Reading Instrument (MRI) /Joint Meter Readings (JMR)), for the Term of this Agreement from the Commercial Operation Date, to the Renewable Energy Project Developer every month. The Tariff payable by MSEDCL for energy purchased shall be as per Article below.

MSEDCL shall pay a **fixed rate of two part tariffs referred as “Non-Solar Generation Hour Tariff” and “Solar Generation Hour Tariff” Rs. (in words Rs.----) per kWh.** Energy supplied during the Solar Generation Hours shall be eligible for a flat tariff payment @ Rs. 2.42/kWh, i.e. the Solar Generation Hour Tariff. Energy supplied during the Non-Solar Generation Hours shall be purchased at the tariff as discovered under the Competitive Bidding (followed by e-reverse auction) and as agreed by the Parties upon commissioning of a Unit / Project (as certified by RLDC/SLDC/MSEDCL) for delivered/scheduled energy during Non-Solar Generation hours of the period of PPA.

Start-up power/Auxiliary consumption:

In case of import of energy by the project during a month by the selected project located within Maharashtra state, the successful bidder shall be required to make payment to MSEDCL at prevailing HT Industrial tariff rate or any such tariff as determined by MERC from time to time. The project located in the other state, payment for the start-up/auxiliary power shall be as per the state regulations from time to time.

Reactive power charges shall be as per MERC/ respective state regulatory commission regulations and shall be payable by Renewable Energy Project developer as per provisions of PPA.

6 ARTICLE: BILLING AND PAYMENT

6.1 Billing Provision:

The Billing shall be on monthly basis. MSEDCL shall be billed by the Renewable Energy Project Developer based on Meter reading (MRI/AMR)/REA/SEA as certified by Maharashtra SLDC /RLDC or MSEDCL authority as may be applicable following the end of each month for the energy supplied.

The Renewable Energy Project Developer shall raise bills (on online portal only) for the power supplied during the month by the 10th day of the following month.

The Renewable Energy Project Developer shall open a bank account ("Renewable Energy Project Developer's Designated Account"), and shall notify MSEDCL as per the format enclosed with this PPA as **Schedule 5**, for all Tariff Payments be made by the Procurer to the Renewable Energy Project Developer, and notify the Procurer of the details of such account at least thirty (30) Days before the dispatch of the first Monthly Bill. The Procurer shall also designate a bank account (the "Procurer's Designated Account") for payments to be made by the Seller to the Procurer, if any, and notify the Seller of the details of such account thirty (30) days before the dispatch of the first Monthly Bill. The Seller and the Procurer shall instruct their respective bankers to make all payments under this Agreement to the Procurer's Designated Account or the Seller's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

6.2 Payment:

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

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 Renewable Energy Project Developer 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 Bill on or before Due Date, the following Rebate shall be paid by the Renewable Energy Project Developer to MSEDCL in the following manner.

- a. A rebate of 1% shall be payable to MSEDCL for the payments made within a period of 15 days of the presentation of Tariff Invoice by modes as mentioned in Article 6.3.1 along with required supporting documents at MSEDCL office. No rebate shall be applicable for payment beyond 15 days of the presentation of Tariff

Invoice.

- b. For the above purpose, the date of presentation of Bill shall be the next Business Day of delivery of the Tariff Invoice at MSEDCL.
- c. No rebate shall be payable on the Bills raised on account of taxes, duties, cess etc.

6.5 Payment Security:

(1) Letter of Credit:

- a) MSEDCL shall establish and maintain irrevocable and unconditional revolving Letter of Credit in favour of, and for the sole benefit of, the Renewable Energy Project Developer 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 MSEDCL.
- b) The Letter of Credit shall be established in favour of, and issued to, the Renewable Energy Project Developer 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.
- c) Such Letter of Credit shall be in form and substance acceptable to both the Parties and shall be issued by any Scheduled/Nationalised Bank and be provided on the basis that:
 - i. 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 Renewable Energy Project Developer for payment of undisputed amount.
 - ii. 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 equal to one month's average billing of previous contract year.
 - iii. The MSEDCL shall replenish the Letter of Credit to bring it to the original amount within 30 days in case of any valid drawdown.
- d) The Letter of Credit shall be renewed and/or replaced by the MSEDCL not less than 30 days prior to its expiration.

e) **Payment under the Letter of Credit:** The drawl under the Letter of Credit in respect of a Tariff Invoice (excluding supplementary bills) shall require:

- i. 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.
- ii. a certificate from the Renewable Energy Project Developer 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.

(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 Renewable Energy Project Developer of the amount in dispute and MSEDCL shall pay the Renewable Energy Project Developer 100% of the undisputed amount within the due date provided either party shall have the right to approach the MERC/CERC 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 Renewable Energy Project Developer of the amount in dispute and try and settle the dispute amicably.

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 Renewable Energy Project Developer 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) per annum plus 125 basis points for the period it retained the additional amount and vice-versa.

MSEDCL / Renewable Energy Project Developer 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.

Where any dispute arising out of or in connection with this agreement is not resolved mutually/amicably, then such dispute shall be raised before the MERC for adjudication of dispute.

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

7 ARTICLE: METERING

7.1 Reading and Correctness of Meters

- i. The metering point will be as given below:
 - a. For projects located outside Maharashtra (whether connected to CTU or to STU of their home States): Metering Point shall be Maharashtra State periphery i.e., the point at which the CTU network is connected to the Intra-State Transmission network of Maharashtra. Accordingly, all charges & losses, including the STU transmission charges & losses of the Bidder's / Renewable Energy Project Developer's home State, POC, scheduling / SLDC / RLDC charges, etc. shall be borne by the Bidder / Renewable Energy Project Developer.
 - b. For projects located in Maharashtra and connected to Maharashtra -STU: Metering point shall be where Interconnection point of Renewable Energy Project Developer is connected to the voltage level of 33 kV or above of STU/MSETCL sub-station.
 - c. For projects located inside Maharashtra, but connected to CTU: Metering Point will be Maharashtra State periphery. Accordingly, all charges & losses, including the POC, scheduling / RLDC charges, etc. shall be borne by the Bidder / Renewable Energy Project Developer.
- ii. For the purpose of energy accounting, the ABT compliant meter with Automated Meter Reading (AMR) feature shall be installed by Renewable Energy Project Developer at the metering point.
- iii. Interface metering shall conform to the Central Electricity Authority (Installation and Operation of Meters) Regulations 2014 and amendment thereto. CTU/STU/DISCOM shall stipulate specifications in this regard.
- iv. The Renewable Energy Project Developer shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at Delivery Point.
- v. The ABT metering equipment consisting of Main and Check Meters with separate CT and PT shall be identical in make, technical standards and of 0.2s accuracy class and calibration and comply with the requirements of Electricity Rules.
- vi. The meters installed at the Metering Point shall have four quadrant, three phase, four wires and provision for on line/automatic reading and time slots as required by purchaser and RLDC/SLDC.
- vii. The Renewable Energy Project Developer shall also establish backup metering system/check meter. In the event of the Main Metering System is not in service for the reason of maintenance, repairs or testing, then the Backup Metering System/Check Meter shall be used during the period for which the Main Metering System is not in service and the provisions above shall apply to the reading of the Backup Metering System.

7.2 Testing of Metering equipment (wherever applicable)

- i. The Main and Check Meters shall be tested for accuracy, with a portable standard meter, by the National accredited Labs and sealed by MSEDCL at its own cost. MSEDCL/MSETCL/CTU/STU shall carry out the calibration, periodical testing, sealing and maintenance of meters in the presence of the authorized representative(s) of the Renewable Energy Project Developer and the representative of the Renewable Energy Project Developer shall sign on the results thereof.
- ii. The frequency of meter testing shall be annual. All the meters will be tested only at the Metering Point. Purchaser will provide a copy of the test reports to Seller.
- iii. If during testing, both the Main and Check Meter are found within the permissible limit of error i.e. 0.2%, the energy computation will be as per the Main Meter. If during test, any of the Main Meters is found to be within the permissible limits of error but the corresponding Check Meter is beyond the permissible limit; the energy computation will be as per the Main Meter. The Check Meter shall be calibrated immediately.
- iv. If during the tests, any of the Main Meters is found to be beyond permissible limits of error, but the corresponding Check Meters is found to be within the permissible limits of error, then the energy computation for the month upto date and time of such test check shall be in accordance with Check Meter. The Main Meter shall be calibrated immediately and the energy for the period thereafter shall be as per the calibrated Main Meter.
- v. If during any of the monthly meter readings, the variation between the Main meter and the Check meter is more than 0.5%, all the meters shall be re-tested and calibrated at the Seller's cost immediately by Purchaser. During this period energy recorded with SCADA shall be used for billing & payment purposes.
- vi. For all times the reading of the Main meter only will be considered except in rarest conditions such as maintenance, repairs, testing or discrepancy in meter reading with compare to check meters then the Check meter reading may be considered.

7.3 Sealing and Maintenance of Meters:

- i. The Main Metering System and the Backup Metering System shall be sealed in the presence of representatives of Renewable Energy Project Developer, CTU/STU and DISCOM.
- ii. When the Main Metering System and / or Backup Metering System/Check 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 Renewable Energy Project Developer and / or CTU/STU/DISCOM at Renewable Energy Project Developer's cost, as soon as possible.
- iii. Any meter seal(s) shall be broken only by CTU/STU/DISCOM's representative in the presence of Renewable Energy Project Developer'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.

7.4 Records:

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 Renewable Energy Project Developer shall maintain an accurate and up-to-date operating log at the Power Plant with records of:-

- a) 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;
- b) any unusual conditions found during operation / inspections;
- c) chart and printout of event loggers, if any, for system disturbances/ outages;
- d) All the records will be preserved for a period of 36 months.

8 ARTICLE: 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 [(Renewable Energy Project Developer) (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.

9 ARTICLE: CHANGE IN LAW

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

9.1.1 In this Article 9, the term “Change in Law” shall refer to the occurrence of any of the following events pertaining to this project only after [Insert last date of bid submission] including any enactment or amendment or repeal of any law, leading to corresponding changes in the cost requiring change in tariff, and includes a change in interpretation of any law by a competent court; or a change in any domestic tax, including duty, levy, cess, charge or surcharge by the Government Instrumentality leading to corresponding changes in the cost; or a change in any condition of an approval or license obtained or to be obtained for purchase, supply or transmission of electricity, unless specifically excluded in the agreement for the purchase, supply or transmission of electricity, which results in any change in the cost, but does not include:

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

B. change in respect of deviation settlement charges or frequency intervals by an MERC/CERC;

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 SPD 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 **Renewable Energy Power Developer/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 MERC. 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 MERC.

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 MERC recognizes such provisions at the time of adoption of tariff by the MERC and any decision in this regard shall be governing on Renewable Energy Power Developer and MSEDCL. It is clarified that, any introduction of new tax/duty/cess made applicable for setting up the solar power

project and supply of power from the Renewable Energy Power project by the Renewable Energy Project Developer 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 Renewable Energy Power Developer’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 Renewable Energy Power Developer 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:

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

Let financial impact of change in law = P

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

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

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

where,

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

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

$CUF = \text{declared or revised CUF as indicated in the Agreement;}$

$R = \text{annual rate of interest on loan component (in \%)} \text{ as considered by the CERC in its order for Tariff Determination from Conventional or Renewable Energy Sources (Whichever is applicable) for the year in which the Project is commissioned. In absence of relevant orders of CERC for the concerned year, the interest rate shall be average interest rate plus 200 basis points above the average State Bank of India}$

marginal cost of funds based leading rate, of one year tenor, prevalent during the last available six months for such period.

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

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

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

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 Renewable Energy 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 Renewable Energy 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”

10 ARTICLE: 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 25 years from the Scheduled Commercial Operation Date.

Any extension of the PPA period beyond 25 years from the SCOD of the project shall be through mutual agreements between the Successful Bidder and MSEDCL with such mutually agreed terms and conditions at least one hundred eighty (180) days prior to the PPA Expiry Date.

Repowering: The Renewable Energy Generator shall be allowed to repower the project once 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.

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:

A. Renewable Energy Project Developer'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 Renewable Energy Project Developer:

- a) Failure to commission the project by scheduled commercial operation date or fails to supply power in terms of the PPA, or assigns or novates any of its rights or obligations contrary to the terms of the PPA or repudiates the PPA, or effectuates a change in control or shareholding of its promoters in breach of the provisions of the PPA, or commits any other acts or omissions as laid down in the PPA and is also unable to cure any of the aforesaid within the cure period, as may be provided in the PPA, the Renewable Energy Project Developer shall be construed to be in default.

- b) O &M Default on part of Renewable Energy Project Developer.
- c) Failure or refusal by Renewable Energy Project Developer to perform any of its material obligations under this Agreement including but not limited to financial closure.
- d) The Renewable Energy Project Developer fails to make any payment required to be made to Power Procurer under this agreement within three (3) months after the due date of a valid invoice raised by MSEDCL on the Renewable Energy Project Developer.
- e) In case Renewable Energy Project Develop is found to use the land for the purpose other than to develop the Renewable Energy Project on the site for the capacity under this agreement.
- f) If the Renewable Energy Project Developer (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.
- g) If the Renewable Energy Project Developer 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 Renewable Energy Project Developer is for the purpose of a merger, consolidated or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and creditworthiness similar to the Renewable Energy Project Developer and expressly assumes all obligations under this agreement and is in a position to perform them; or
- h) Change in controlling shareholding before the expiry of 1 (one) year from the COD or SCOD whichever is later.
- i) Occurrence of any other event which is specified in this Agreement to be a material breach / default of the Renewable Energy Project Developer.

Upon being in default, the Renewable Energy Project Developer shall be liable to pay MSEDCL, damages, as detailed in the PPA Clause No.3.3.2 for failure to commission within stipulated time and 5.5.2 for failure to supply power in terms of the PPA. MSEDCL shall have the right to recover the said damages by way of forfeiture of bank guarantee without prejudice to resorting to any other legal course or remedy.

In addition to the levy of damages as aforesaid, in the event of a default by the Renewable Energy Project Developer, 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 MSEDCL. However, in the event the lenders are unable to substitute the defaulting Renewable Energy Project Developer within the stipulated period, MSEDCL 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.

B. MSEDCL's Default:

- (a) If MSEDCL is in default on account of reasons including inter alia:
 - i. Default by MSEDCL in performing its obligation under this agreement,
 - ii. Failure to pay the monthly and / or supplementary bills beyond 90 days,

- iii. 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.

The defaulting Procurer shall, subject to the prior consent of the Renewable Energy Project Developer, novate its part of the PPA to any third party, including its Affiliates within the stipulated period.

- (b) In the event the aforesaid novation is not acceptable to the Renewable Energy Project Developer, or if no offer of novation is made by the defaulting Procurer within the stipulated period, then the Renewable Energy Project Developer may terminate the PPA and at its discretion require the defaulting Procurer to either:
 - i. takeover the project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 110% (one hundred and Ten per cent) of the adjusted equity as detailed in the PPA or
 - ii. pay to the Renewable Energy Project Developer, 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 Renewable Energy Project Developer.
- (c) In the event of termination of PPA, any damages or charges payable to the STU, for the connectivity of the plant, shall be borne by MSEDCL.
- (d) 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 (the date of achievement of Financial Closure) and the Reference Date;
 - (i) On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date;
 - (ii) An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”);
 - (iii) After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three three three percent) 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;

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.

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

- (i) The principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the 'Principal') but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;
- (ii) All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause 10.3.4(e)(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:

(A) Termination for Renewable Energy Project Developer's Default:

Upon the occurrence of an event of default as set out in Article 10.3 (A) above, MSEDCL may deliver a Default Notice to the Renewable Energy Project Developer in writing which shall specify in reasonable detail the Event of Default giving rise to the default notice, and calling upon the Renewable Energy Project Developer 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 Renewable Energy Project Developer. MSEDCL may terminate this Agreement by delivering such a Termination Notice to the Renewable Energy Project Developer 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 Renewable Energy Project Developer shall have liability to make

payment within 30 days from the date of termination notice towards compensation to MSEDCL equivalent to six months or balance PPA period whichever is less, of charges for its contracted capacity at declared Capacity Utilization factor(CUF).

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

(B) Termination for MSEDCL's Default:

Upon the occurrence of an Event of Default as set out in Article 10.3 (B) above, the Renewable Energy Project Developer 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 Renewable Energy Project Developer 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 Renewable Energy Project Developer to sell power from the project, to any third party, 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 / RLDC charges and cross subsidy surcharge etc. shall be applicable as per MERC's regulation in force from time to time and paid directly to respective agencies by third party. No banking facility shall be allowed to Renewable Energy Project Developer and third parties.

Till expiry of the Suspension Period, MSEDCL will be entitled to cure its default and buy power from the Renewable Energy Project Developer. In the event MSEDCL fails to cure the default, the Renewable Energy Project Developer may terminate the PPA and at its discretion require the defaulting procurer to either

- 1) 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 or
- 2) pay to the Renewable Energy Project Developer, 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 Renewable Energy Project Developer.

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.

11 ARTICLE: 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 The Parties hereto agree to attempt to resolve all disputes arising hereunder promptly, equitably and in good faith.
- 11.3 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.
- 11.4 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.
- 11.5 In the event of a dispute as to the amount of any Tariff Invoice, MSEDCL shall notify the Renewable Energy Project Developer of the amount in dispute and MSEDCL shall pay the Renewable Energy Project Developer 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.
- 11.6 MSEDCL / Renewable Energy Project Developer 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.
- 11.7 The Parties hereto agree to attempt to resolve all disputes arising hereunder promptly, equitably and in good faith.
- 11.8 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.
- 11.9 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.

- 11.10 Courts in Mumbai shall have exclusive jurisdiction to enforce any award under this agreement, subject to the applicable Laws
- 11.11 The provisions of this clause shall survive the termination of this PPA for any reason whatsoever
- 11.12 The disputes beyond the jurisdiction of MERC shall be filed before the Bombay High Court, Mumbai.

12 ARTICLE: INDEMNITY

12.1 Renewable Energy Project Developer's Indemnity:

The Renewable Energy Project Developer 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 Renewable Energy Project Developer, or by an officer, director, sub- contractor, agent or employee of the Renewable Energy Project Developer 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 Renewable Energy Project Developer, 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 Renewable Energy Project Developer, or by an officer, director, sub- contractor, agent or employee of the Renewable Energy Project Developer.

13 ARTICLE: MISCELLANEOUS PROVISIONS

13.1 Governing Law:

This Agreement shall be interpreted, construed and governed by the Laws of India.

13.2 Insurance:

The Renewable Energy Project Developer 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 Renewable Energy Project Developer 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 Renewable Energy
Project Developer:

Name: _____ Designation: _____ Address : _____

Ph. Nos.: _____

In Case of Maharashtra State Electricity Distribution Company Limited:

Designation: Chief Engineer (Renewable Energy)

Address: 5th Floor, Prakashgad, Bandra (East),
Mumbai – 400 051. Ph. Nos.: 022- 26474211

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 nor shall any portion hereof without the prior written consent of the other Party, provided further that any assignee 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 Renewable Energy Project Developer 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 Renewable Energy Project Developer under the Financing Documents, the Financing Parties may cause the Renewable Energy Project Developer to assign to a third party the interests, rights and obligations of the Renewable Energy Project Developer 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 Renewable Energy Project Developer 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 Renewable Energy Project Developer thereafter arising under this Agreement.

13.10 Entire Agreement, Appendices:

This Agreement constitutes the entire agreement between MSEDCL and the Renewable Energy Project Developer, 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 MS&EDCL and the Renewable Energy Project Developer shall consult to resolve the inconsistency.

13.11 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.

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.

| | |
|---|---|
| FOR AND ON BEHALF OF Renewable Energy Project Developer | FOR AND ON BEHALF OF |
| M/S. | MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED |
| Authorised Signatory | MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED |
| WITNESSES | WITNESSES |
| 1. _____ (| 1. _____ (|
|) | 2. _____ (|

