

**MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY  
LIMITED**

**POWER PURCHASE AGREEMENT**

**FOR PROCUREMENT OF [\_\_\_] MW (AC) SOLAR POWER**

**UNDER**

**MUKHYAMANTRI SAUR KRUSHI VAHINI YOJANA 2.0 -  
SCHEME LAUNCHED FOR IMPLEMENTATION OF  
FEEDER LEVEL SOLARISATION UNDER  
COMPONENT C OF PM-KUSUM SCHEME**

**THROUGH**

**COMPETITIVE BIDDING PROCESS**

## TABLE OF CONTENTS

1. DEFINITIONS .....	2
2. INTERPRETATIONS.....	12
3. GENERAL TERMS AND CONDITIONS .....	14
4. CONDITIONS SUBSEQUENT .....	15
5. OBLIGATIONS OF THE PARTIES .....	16
6. CONNECTIVITY, SYNCHRONIZATION, COMMISSIONING AND COMMERCIAL OPERATION.....	19
7. RMU, DEEMED GENERATION, SCHEDULING AND DISPATCH .....	27
8. TARIFF RATE, CHARGES AND BILLING .....	30
9. PAYMENT AND PAYMENT SECURITY .....	31
10. FORCE MAJEURE.....	36
11. CHANGE IN LAW .....	39
12. TERM, TERMINATION AND DEFAULT .....	42
13. GOVERNING LAW AND DISPUTE RESOLUTION .....	46
14. INDEMNITY.....	48
15. ASSIGNMENTS AND CHARGES .....	51
16. MISCELLANEOUS PROVISIONS.....	52
SCHEDULE 1 PARAMETERS AND TECHNICAL LIMITS OF SUPPLY .....	56
SCHEDULE 2 TECHNICAL LIMITS.....	57
SCHEDULE 3 DEEMED GENERATION FORMULATION .....	62
SCHEDULE 4 INDICATIVE KEY APPROVALS .....	64
SCHEDULE 5 COMMISSIONING CHECKLIST .....	66
SCHEDULE 6 METERING SPECIFICATIONS .....	67
SCHEDULE 7 LIST OF UNITS ALONG WITH APPLICABLE TARIFFS .....	68

This **Power Purchase Agreement** is made and entered into at Mumbai on this \_\_\_\_ day of \_\_\_\_\_ 2024,

**BY AND BETWEEN**

1. [●], incorporated under The Companies Act, 2013 having its registered office at \_\_\_\_\_ India (hereinafter referred to as “**SPV**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees) of the **FIRST PART**;

**AND**

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

The SPV and MSEDCL shall be individually referred to as a “**Party**” and collectively as the “**Parties**”.

**WHEREAS:**

- (A) The Government of India vide O.M dated July 22, 2019 has issued guidelines for implementation of “Pradhan Mantri Kisan Urja Suraksha evam Utthan Mahabhiyan” (“**PM-KUSUM**”). Under PM KUSUM, agriculture feeders already segregated or, feeders having major load for agriculture may be solarized using installation of grid connected solar power plant. Subsequently, the MNRE introduced and amended guidelines for implementation of feeder level solarization under Component-C of PM-KUSUM vide OM dated December 4, 2020 and July 12, 2023. The MNRE has on January 17, 2024, issued comprehensive guidelines for implementation of PM KUSUM Scheme, with components, including, *inter alia*, Component C (Feeder Level Solarization).
- (B) The Industries, Energy and Labour Department, Government of Maharashtra had notified MSKVY 2.0 aiming to solarise at least 30% (thirty percent) of agricultural feeders by 2025 and facilitate faster capacity addition in “Distributed RE Mode”. MSKVY2.0 has been launched for procurement of power from decentralized Solar PV ground mounted power plants in Maharashtra through RESCO mode.
- (C) In furtherance of the implementation of Component C of PM KUSUM and the objectives under MSKVY 2.0, MSEB Solar Agro Power Limited (“**MSAPL**”) was incorporated as a wholly owned subsidiary of MSEB Holding Company Limited to act as the nodal agency for implementation of MSKVY 2.0 in the State of Maharashtra.
- (D) In furtherance of the same, MSAPL had, vide RfS No. MSKVY-MSE-01, dated January [25], 2024 floated a tender for procurement of solar power (“**RfS**”) through a competitive bidding process for the development, generation and supply of electricity from the Project (*defined hereinbelow*).

- (E) The Solar Project Developer (*defined hereinbelow*) participated in such bid process and has been selected as the successful bidder to develop solar energy based power plants totalling to [\_\_\_] MW (AC). Pursuant to being declared the successful bidder, the Solar Project Developer has been issued a Letter of Award number \_\_\_\_\_ dated \_\_\_\_\_ for the development and establishment of the Project.
- (F) Upon receipt of the Letter of Award, the Solar Project Developer has [incorporated/designated]<sup>1</sup> the SPV and will develop the Project through the SPV at the locations in Maharashtra as set out in Appendix-A-3. The electrical energy produced from the Project will be sold to MSEDCL for its daytime power supply requirements and to enable MSEDCL to fulfil its renewable purchase obligations.
- (G) The SPV has also furnished a Performance Bank Guarantee No. \_\_\_\_\_ dated \_\_\_\_\_ for an amount of Rs. \_\_\_\_\_<sup>2</sup> as per the RfS in furtherance of its obligations.
- (H) Accordingly, the Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by SPV to MSEDCL.

**NOW THEREFORE**, in view of the foregoing premises and in consideration of the mutual benefits, covenants and conditions hereinafter set forth, the Parties hereby agree as follows:

## 1. DEFINITIONS

For all purposes of this PPA (*defined hereinbelow*), the following words and expressions, including the Recitals or Schedules hereto, together with their respective grammatical variations and cognate expressions, shall have the respective meanings set forth below:

<b>Act or Electricity Act, 2003</b>	means the Electricity Act, 2003 and includes any modifications, amendments and/or substitutions from time to time.
<b>Affected Party</b>	means the Party affected by an event of Force Majeure.
<b>AMR</b>	means ‘Automated Meter Reading’.
<b>Appropriate Commission</b>	means MERC.
<b>Approvals</b>	means the permits, clearances, licenses, and consents as are listed in Schedule 4 hereto and any other statutory approvals as may be required for establishment and operation of the Project for the Term.

<sup>1</sup> Note: Retain as relevant.

<sup>2</sup> Note: The amount to be inserted will be calculated at the rate of Rs. 5 Lakh/MW for the total capacity being developed by SPV.

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<b>Bill Disagreement Notice</b>	has the meaning ascribed to such term in Article 9.5.4.
<b>Bill Dispute Notice</b>	has the meaning ascribed to such term in Article 9.5.2.
<b>Billing Period</b>	means the calendar month ending with the Metering Date.  The first Billing Period shall commence from the Commercial Operation Date of a Unit(s) / Project (as the case may be) and end with the Metering Date corresponding to the month in which the Commercial Operation Date for such Unit / Project (as the case may be) has occurred.
<b>Business Day</b>	means a day other than a Sunday or a statutory holiday, on which banks remain open for business in Mumbai.
<b>Capacity Utilization Factor or CUF</b>	shall have the same meaning as provided in Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 (as may be amended or replaced 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 of the Contracted Capacity, $CUF = (X \text{ MWh} / (Y \text{ MW} * 8766)) * 100\%$
<b>CEIG</b>	means Chief Electrical Inspector of Government.
<b>CERC</b>	means Central Electricity Regulatory Commission.
<b>CFA</b>	shall have the meaning ascribed thereto in Article 6.8.1 of this PPA.
<b>Change in Law</b>	shall have the meaning ascribed thereto in Article 11 of this PPA.
<b>Commercial Operation Date</b>	means, with respect to a Unit / Project (as the context may require) the date on which the Unit / Project (as the context may require) is Commissioned.
<b>Commissioning</b>	means, with respect to the Unit / Project (as the context may require), when all equipment as per rated capacity of the Unit / Project (as the context may require) has been installed as per the 'Commissioning Checklist' set out in Schedule 5 and energy has flown into the grid, as certified by SLDC / MSEDCL.

<b>Consultation Period</b>	means a period of 90 (ninety) days or such longer period as the Parties may agree.
<b>Contract Year</b>	means, with respect to the initial Contract Year, the period beginning on the Scheduled Commercial Operation Date and ending at 12.00 midnight on 31 <sup>st</sup> March of that Fiscal Year. 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 PPA whichever is earlier.
<b>Contracted Capacity</b>	means the aggregated AC capacity of [___] MW produced from the Units and contracted by the SPV with MSEDCL for supply to MSEDCL at the Delivery Point from the Project.
<b>CTU</b>	means Central Transmission Utility of India Limited.
<b>DC Capacity</b>	means the aggregate rated power output of the solar photovoltaic (PV) panels forming part of the Project or a Unit of the Project.
<b>Debt Due</b>	<p>means an amount that is the aggregate of the following sums expressed in Indian Rupees outstanding on the Expiry Date:</p> <ul style="list-style-type: none"><li>(i) The principal amount of the debt provided by the senior lenders under the Financing Documents for financing the Total Project Cost (the '<b>Principal</b>') but excluding any part of the Principal that had fallen due for repayment 2 (two) years prior to the Expiry Date; and</li><li>(ii) All accrued interest, financing fees and charges payable under the Financing Documents on, or in respect of, the debt referred to in sub-clause (i) above until the Expiry Date but excluding: (i) any interest, fees or charges that had fallen due 1 (one) year prior to the Expiry Date, (ii) any penal interest or charges payable under the Financing Documents to any senior lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to default by MSEDCL.</li></ul>

*Provided that*, in the event that the SPV is eligible for, and has availed the CFA in terms of the KUSUM Scheme, the amount of Debt Due shall be reduced to the extent of the proportionate amount of the CFA corresponding to the principal amount of the Debt Due.

<b>Deemed Generation</b>	shall have the meaning as specified in Schedule 3.
<b>Delivered Energy</b>	means the kilowatt hours of electricity actually fed / scheduled and measured by the energy meters at the Delivery Point and as certified by SLDC / MSEDCL (as the context may require).
<b>Delivery Point</b>	means the point(s) of connection(s) at which energy generated from each Unit is delivered into the Grid System at the bus bar level of the 11/22 kV substation of MSEDCL / STU.  Metering shall be done at this interconnection point where the power is injected into. For interconnection with grid and metering, the SPV shall abide by the relevant CERC / MERC Regulations, Grid Code and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended and revised from time to time. All charges and losses related to transmission of power from the Project up to Delivery Point as notified by the Appropriate Commission shall be borne by the SPV.
<b>Dispute</b>	means any dispute or difference of any kind between MSEDCL and the SPV, in connection with or arising out of this PPA including but not limited to any issue on the interpretation and scope of the terms of this PPA as provided in Article 13.2.1 of this PPA.
<b>Due Date of Payment</b>	in respect of an Invoice, means the date, which is 30 (thirty) days from date of online submission of an Invoice (including all the relevant documents) or a Supplementary Bill or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by MSEDCL.
<b>Effective Date</b>	means the date of signing of the PPA.
<b>Electricity Laws</b>	means the Electricity Act, 2003 and the relevant rules, notifications, and amendments issued thereunder 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 including the rules, regulations, and amendments issued by the MERC / CERC/CEA/MNRE/MOP from time to time
<b>Emergency</b>	means a condition or situation of physical damage to CTU/STU electrical system including MSEDCL's Grid System, which threatens the safe and reliable operation of such system, or which is likely to result in disruption of safe,

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	adequate, and continuous electric supply by CTU/STU or MSEDCL's Grid System or could endanger life or property.
<b>Event of Default</b>	means the events as defined in Article 12 of this PPA.
<b>Expiry Date</b>	means the date occurring after 25 (twenty-five) years from the Scheduled Commercial Operation Date of the Project.
<b>Financial Closure</b>	means compliance with the conditions set out in Article 4.1.
<b>Financing Documents</b>	means the agreements and documents (including any asset leasing arrangements, other than lease agreements in relation to the land required for the Project) entered/to be entered into between the SPV and the Financing Parties relating to the financing of the Project.
<b>Financing Parties</b>	means the parties financing the Project, pursuant to the Financing Documents.
<b>Force Majeure</b>	shall have the meaning ascribed to such terms in Article 10.1.1 of this PPA.
<b>GoI</b>	means the Government of the Republic of India and any agency, legislative body, department, authority, or instrumentality thereof.
<b>GoM</b>	means the Government of the State of Maharashtra and any agency, legislative body, department, authority, or instrumentality thereof.
<b>Grid Code</b>	means the MERC (State Grid Code) Regulations, 2020, as may be amended, supplemented or modified from time to time.
<b>Grid System</b>	means STU / MSEDCL power transmission system / distribution system through which Delivered Energy is evacuated and distributed.
<b>Implementation Agreement</b>	shall mean the agreement dated [____] entered into amongst MSAPL, MSEDCL and the SPV in connection with certain obligations assumed by SPV, MSAPL and MSEDCL in respect of the Project.
<b>Indian Governmental Instrumentality</b>	shall mean the Government of India, Government of Maharashtra and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or Government of Maharashtra or both, including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India.



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<b>Interconnection Facilities</b>	in respect of the SPV, shall mean all the facilities installed by the SPV to enable MSEDCL to receive the Delivered Energy from the Project at the Delivery Point, in compliance with the limits specified in the RfS, for scheduling, transmitting and metering the electrical output in accordance with this PPA and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, data transfer and acquisition facilities for transmitting data, the metering system required for supply of power as per the terms of this PPA.
<b>Invoice or Bill</b>	means either a Monthly Bill / Supplementary Bill raised by any of the Parties.
<b>KUSUM C Guidelines</b>	means the 'Guidelines for implementation of Component C of KUSUM C Scheme on Solarization of Grid-connected Agricultural Pumps' dated November 08, 2019 issued by MNRE, as may be amended, supplemented or modified or consolidated from time to time and includes the consolidated guidelines dated January 17, 2024 issued by the MNRE.
<b>KUSUM Scheme</b>	means the scheme notified by the MNRE in terms of the Pradhan Mantri Kisan Urja Suraksha evam Utthaan Mahabhiyaan (PM KUSUM), as may be amended, restated or consolidated from time to time.
<b>kV</b>	means kilovolts.
<b>kWh</b>	means kilowatt-hour.
<b>Late Payment Surcharge</b>	means the charges payable by MSEDCL to the SPV on account of delay in payment of any Monthly Bill beyond the Due Date of Payment.
<b>Late Payment Surcharge Base Rate</b>	means the marginal cost of funds based on lending rate for one year of the State Bank of India, as applicable on the 1 <sup>st</sup> April of the financial year in which the delay occurs, plus 5% (five percent) per annum on the amount under such delayed Invoice, and in the absence of and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify.  <i>Provided</i> that if the period of default lies in two or more financial years, the Late Payment Surcharge Base Rate shall be calculated separately for the periods falling in different years.

<b>Law</b>	means, in relation to this PPA, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality, including but not limited to or CEA/MNRE/MOP, and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions.
<b>Letter of Award</b>	means the letter issued by MSAPL to the Solar Project Developer as the successful bidder confirming the award of a bid, upon confirmation by MERC of the tariff adoption arrived at on the basis of the bids submitted or the e-reverse auction conducted by MSAPL (as applicable).
<b>Letter of Credit</b>	shall have the meaning ascribed thereto in Article 9.4.1 of this PPA.
<b>Liquidated Damages</b>	means damages to be paid by the SPV on account of delay in achieving Commercial Operation Date of the Contracted Capacity or any part thereof.
<b>Main Meter</b>	means the main meter used to measure and record energy input at the Delivery Point.
<b>MEDA</b>	means Maharashtra Energy Development Agency.
<b>MERC</b>	means Maharashtra Electricity Regulatory Commission, a governing body incorporated under the Electricity Regulatory Commission Act, 1998 and existing under the Electricity Act, 2003.
<b>Metering Date</b>	means, for a Billing Period, the midnight of the last day of the calendar month.
<b>MNRE</b>	means the Ministry of New and Renewable Energy, Government of India.
<b>Monthly Bill</b>	means the invoice raised by the SPV on a monthly basis for all Units on a consolidated basis, in accordance with terms specified in Article 8.
<b>Monthly Energy Charge</b>	shall have the meaning set forth in Article 8.2.1.
<b>MRI</b>	means meter reading instrument.

<b>MSEDCL Designated Account</b>	means the account opened by MSEDCL in terms of Article 9.1.2.
<b>MSETCL</b>	means Maharashtra State Electricity Transmission Company Limited.
<b>MSKVY 2.0</b>	means the Mukhyamantri Saur Krushi Vahini Yojana 2.0 – a scheme launched for implementation of feeder level solarisation under Component C of PM-KUSUM Scheme, as notified by the Industries, Energy and Labour Department, Government of Maharashtra and as may be revised or amended from time to time.
<b>MW</b>	means Megawatts.
<b>Performance Bank Guarantee</b>	means the irrevocable unconditional bank guarantee submitted by the SPV as per the RfS No. MSKVY-MSE-01.
<b>PPA or Power Purchase Agreement</b>	means this power purchase agreement executed hereof, including the schedules hereto, amendments, modifications and supplements made in writing by the Parties from time to time.
<b>Project</b>	means a group of decentralized / grid connected solar photovoltaic grid interactive power stations to be connected at 11 kV / 22 kV voltage level of MSEDCL / STU substations to be established by the SPV comprising of multiple Units at single/multiple locations with varying capacities aggregating to Contracted Capacity, and shall include land, buildings, plant, machinery, ancillary equipment, material, switch-gear, transformers, protection equipment, transmission infrastructure and the like necessary to deliver the generated electricity at the Delivery Point.
<b>Project Commercial Operation Date</b>	means the last date on which all Units of the Project have been Commissioned in accordance with the terms of this PPA.
<b>Prudent Utility Practices</b>	means those practices, methods, techniques and standards, that are generally accepted for use in electric utility industries taking into account conditions in India for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:

	(a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Project; and/or
	(b) the requirements of Law and the physical conditions at the site of the Project.
<b>Rebate</b>	shall have the same meaning as ascribed thereto in Article 9.2.1 of this PPA.
<b>RfS</b>	shall have the meaning ascribed thereto in Recital (D).
<b>RMU</b>	shall have the meaning ascribed thereto in Article 5.1.12 of this PPA.
<b>Rupees or Rs. or INR</b>	means Indian rupees, the lawful currency of the Republic of India.
<b>SBI 1 Year MCLR Rate</b>	means the 1 (one) -year marginal cost of funds based lending rate fixed by the State Bank of India (“SBI”) / any replacement thereof by SBI for the time being in effect applicable for 1 (one) year period, as on 1 <sup>st</sup> 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.
<b>Scheduled CoD or Scheduled Commercial Operation Date</b>	means the date that falls upon the expiry of a period of 12 (twelve) months from the date of Letter of Award or a date as extended in accordance with the provisions of the PPA.
<b>SEA</b>	means the ‘State Energy Account’ issued by the SLDC.
<b>SLDC</b>	means the Maharashtra State Load Despatch Centre as notified by the GoM.
<b>Solar Project Developer</b>	means the successful bidder in terms of the RfS.
<b>Solar RPO</b>	means solar renewable purchase obligation.
<b>SPV Designated Account</b>	means the account opened by the SPV in terms of Article 9.1.1.
<b>STU</b>	shall mean Maharashtra State Electricity Transmission Company Limited.
<b>Supplementary Bill</b>	shall have the meaning under Article 9.7.1.

<b>Tariff</b>	shall have the meaning set forth in Article 8.1.1.
<b>Technical Limits</b>	means the limits and constraints described in Schedule 2, relating to the operations, maintenance, and dispatch of the Project.
<b>Term</b>	means the term of the PPA as defined in Article 3.2.
<b>Total Project Cost</b>	means the capital cost incurred by the SPV on construction and financing of the Project which shall be limited to the capital cost of the Project as originally appraised by the lenders.
<b>Unit</b>	means one set of ground mounted solar photovoltaic grid interactive power plant and all the auxiliary equipment and facilities that forms part of such solar power plant, to be connected at 11/22 kV voltage for a decentralised project.

## **2. INTERPRETATIONS**

- 2.1** “PPA” shall be construed as including a reference to its Schedules and/or Appendices and/or Annexure.
- 2.2** An “Article”, a “Recital”, a “Schedule” and a “paragraph / clause” shall be construed as a reference to an Article, a Recital, a Schedule, and a paragraph/clause respectively of this PPA.
- 2.3** An “affiliate” of any party shall mean a company that either directly or indirectly controls or is controlled by or is under common control of the same person which controls the concerned party; and control means ownership by one company of at least 51% (fifty one percent) of the voting rights of the other company.
- 2.4** A “person” shall be construed as a reference to any natural person, company, corporation, government, state or agency of a state or any association (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees, and permitted assigns in accordance with their respective interests.
- 2.5** The “winding-up”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection, or relief of debtors.
- 2.6** This PPA itself or any other PPA or document shall be construed as a reference to this or to such other PPA or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented.
- 2.7** Different parts of this PPA are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this PPA, they shall be interpreted in a harmonious manner so as to give effect to each part.
- 2.8** The tables of contents and any headings or subheadings in this PPA have been inserted for ease of reference only and shall not affect the interpretation of this PPA.
- 2.9** All interest, if applicable and payable under this PPA, shall accrue from day to day and be calculated on the basis of a year of 365 (three hundred and sixty-five) days. Unless otherwise stated, all references made in this PPA to “Articles” and “Schedules” shall refer, respectively, to Articles of, and Schedules to, this PPA. The Schedules to this PPA form part of this PPA and will be in full force and effect as though they were expressly set out in the body of this PPA.
- 2.10** In this PPA, unless the context otherwise requires (i) the singular shall include plural and vice versa; (ii) words denoting persons shall include 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.

**2.11** In the event of any conflict between the RfS and this PPA, the provisions of this PPA shall prevail.

### **3. GENERAL TERMS AND CONDITIONS**

- 3.1 Effective Date:** The PPA shall come into effect from the Effective Date.
- 3.2 Term of PPA:** This PPA, subject to Article 13, shall be effective from the Effective Date and remain in operation until the Expiry Date (“**Term**”), unless it is terminated in accordance with Article 3.3 hereinbelow or extended by the Parties on mutually agreed terms and conditions
- 3.3 Early termination:** This PPA shall terminate before the Expiry Date:
- (a) if either MSEDCL or SPV terminates the PPA, pursuant to Article 12 of this PPA;
  - (b) in such other circumstances as MSEDCL may agree, in writing, in accordance with Article 12.
- 3.4 Survival:** Notwithstanding anything to the contrary herein, the expiry or termination of this PPA shall not affect any accrued rights, obligations and liabilities of the Parties under this PPA, including the right to receive penalty as per the terms of this PPA, nor shall it affect the survival of any continuing obligations for which this PPA provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 10, Article 12, Article 13, Article 14 and other Articles and Schedules of this PPA which are indispensable for survival or amicable settlement of events and transactions pursuant to this PPA.
- 3.5 Breach of Obligation:** The Parties herein agree that during the Term, subject to MSEDCL being in compliance of its obligations and undertakings under this PPA, the SPV shall have no right to negotiate or enter into any dialogue with any third party for the sale of the Contracted Capacity or any part thereof, other than as provided in Article 7.4 hereof.



#### **4. CONDITIONS SUBSEQUENT**

##### **4.1 Conditions Subsequent for the SPV**

The SPV shall make the arrangement of necessary funds required by the SPV for the Project, either by way of commitment of funds by the SPV 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 within 6 (six) months from the date of signing of the PPA or any other time period as mutually agreed with MSEDCL. The SPV shall submit to MSEDCL the copies of the Financing Documents regarding the tie-up of 100% (one hundred percent) of the funds indicated for the Project, including certificates from its chartered accountants in respect of any funds arranged in the form of equity.

##### **4.2 Consequences of Non-fulfilment of Conditions Subsequent**

In the event the SPV fails to achieve Financial Closure as required above, MSEDCL shall have the right to encash the Performance Bank Guarantee, unless the delay is due to Force Majeure in terms of this PPA.

## **5. OBLIGATIONS OF THE PARTIES**

### **5.1 Obligations of the SPV**

- 5.1.1 Subject to the provisions of Article 6 below, the SPV shall ensure that the Project Commercial Operation Date is achieved on or prior to the Scheduled Commercial Operation Date.
- 5.1.2 The SPV shall submit the final design and drawings, layout and drawings/bill of material of the Project and associated evacuation infrastructure to MSEDCL.
- 5.1.3 The SPV shall be responsible for undertaking ownership, financing, development, designing, engineering, procurement, construction, Commissioning, operation, and maintenance of the Project including the evacuation infrastructure up to the Delivery Point, at its own cost.
- 5.1.4 The SPV shall implement the Project on a 'Build Own Operate' (BOO) mode and supply power to MSEDCL, with desired level of performance, until the Expiry Date in accordance with the applicable Law, the Grid Code and the terms and conditions of this PPA and those prescribed in the RfS.
- 5.1.5 The SPV shall be responsible for obtaining all remaining statutory clearances, Approvals and permits, as may be necessary for the development and operation of the Project, an indicative list of which has been provided in Schedule 4 hereto, at its cost in a timely manner. Notwithstanding any Approvals which may be already present with the SPV, the procurement of all construction and operations related Approvals for the Project shall be the sole responsibility of the SPV.
- 5.1.6 The SPV shall be responsible for commencing of supply of power up to the Contracted Capacity to MSEDCL no later than the Scheduled Commercial Operation Date and continue the supply of power throughout the Term.
- 5.1.7 The SPV shall undertake at its own cost construction/ upgradation of: (a) the Interconnection Facilities, (b) the transmission lines, upto the Delivery Point and as per the specifications and requirements of STU/ MSEDCL, as notified to the SPV.
- 5.1.8 The SPV shall undertake at its own cost maintenance of the Interconnection Facilities as per the specifications and requirements of STU / MSEDCL, as notified to the SPV, in accordance with Prudent Utility Practices.
- 5.1.9 The SPV shall be responsible for all payments on account of any taxes, cesses, duties, or levies imposed by the GoI/GoM 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.
- 5.1.10 To apply to MSEDCL for connection for the plant from MSEDCL for power to be consumed during construction, wherever applicable.
- 5.1.11 Operation and maintenance of the Project and power evacuation lines to the substation will be the responsibility of SPV.

- 5.1.12 Maintain connectivity and accuracy of remote monitoring unit (“**RMU**”) with MSEDCL’s / STU’s system.
- 5.1.13 Maintain guaranteed performance parameters including those specified in Schedule 1.
- 5.1.14 Ensure that meter reading shall be through AMR. In case meter is not fetching data through AMR, joint meter readings shall be undertaken with MSEDCL on a monthly basis.
- 5.1.15 Raising Invoices in a timely manner.
- 5.1.16 Notwithstanding anything to the contrary contained in this PPA, the SPV shall ensure that the technical parameters or equipment limits of the Project shall always be subject to the requirements as specified in Schedule 2.
- 5.1.17 If the SPV is unable to commence supply of solar power to MSEDCL by the Scheduled Commercial Operation Date, other than for the reasons specified in Article 6.2 or Article 10, the SPV shall pay Liquidated Damages for the delay in such commencement of supply of solar power as per this PPA.
- 5.1.18 The SPV shall ensure that it owns the Project throughout the Term, free and clear of encumbrances, except those expressly permitted under Article 15 hereof.
- 5.1.19 The SPV shall be further required to provide entry to the site of the Project, free of all encumbrances, at all times during the Term of this PPA to any MSEDCL representative, any Indian Governmental Instrumentality or any third party nominated by them for inspection and verification of the works being carried out by the SPV at the site of the Project. In case it is determined that the construction works/operation of the Project is not as per the Prudent Utility Practices, the third party and / or MSEDCL may seek clarifications from the SPV in this regard and require compliance with Prudent Utility Practices.
- 5.1.20 The SPV shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of this PPA, insurances against such risks to keep the Project in good condition and shall take ‘Industrial All Risk’ insurance policy covering risks against any loss or damage, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Documents, and under the Laws.
- 5.1.21 In case of the Project not being implemented through Financing Document(s), save as expressly provided in this PPA or the insurances, the proceeds of any insurance claim made due to loss or damage to the Project or any part of the Project shall be first applied to reinstatement, replacement or renewal of such loss or damage. In case of the Project being financed through Financing Document(s), save as expressly provided in this PPA or the insurances, the proceeds of any insurance claim made due to loss or damage to the Project or any part of the Project shall be applied as per such Financing Documents.

- 5.1.22 The SPV shall ensure that there is no change in the shares held by the Solar Project Developer in the SPV for a period of at least 1 (one) year from the Commercial Operation Date of the Project. However, in case of any proposed change in shareholding prior to 1 (one) year from the Commercial Operation Date, the SPV shall provide such information about its promoters and their shareholding and the proposed changes thereto to MSEDCL. Any change in the shareholding of the SPV after the expiry of 1 (one) year from the Commercial Operation Date shall be undertaken under prior written intimation to MSEDCL.
- 5.1.23 If the SPV is establishing the Project on private lands procured by the SPV, the SPV shall undertake all such actions as may be required to finalise and procure the land parcel for development of the Units within a period of 6 (six) months from the effective date of this PPA and provide details of such land parcels, along with supporting evidence of such procurement to MSEDCL within the aforementioned period of 6 (six) months.
- 5.1.24 The SPV shall comply with the KUSUM Scheme, KUSUM C Guidelines and any other compliances that may be mandated in terms of applicable law, from time to time and such compliances shall be the sole responsibility of the SPV.
- 5.1.25 The SPV shall be responsible for:
- (a) completion of all activities mentioned provided in this PPA within the timelines prescribed herein; and
  - (b) fulfilling all other obligations undertaken by the SPV under this PPA.
- 5.1.26 The SPV shall not engage in any other activities other than the Project.

## **5.2 Obligations of MSEDCL**

- 5.2.1 MSEDCL shall establish, maintain and restore as and when needed, the Letter of Credit as per terms and conditions of this PPA.
- 5.2.2 At the time of Commissioning, MSEDCL shall ensure connectivity and sufficient grid availability with load at the Delivery Point(s) to ensure synchronization and drawal of power from the Project.
- 5.2.3 MSEDCL shall off-take and purchase the electricity generated by all Units under SPV as per the terms and conditions of this PPA.

## **6. CONNECTIVITY, SYNCHRONIZATION, COMMISSIONING AND COMMERCIAL OPERATION**

### **6.1 Connectivity for Evacuation**

- 6.1.1 Connectivity for evacuation will be at the bus bar level of the 11 kV/22 kV level of MSEDCL / STU substations. The SPV shall abide by the relevant CERC/ MERC/CEA regulations and Grid Code (as amended and revised from time to time), for interconnection with grid.
- 6.1.2 The connectivity clearances required for establishment of the Units and the Project in its entirety shall be through a single window portal of the Maharashtra Energy Development Agency that will be accessible to the SPV.

### **6.2 Synchronization**

- 6.2.1 The SPV shall give at least 30 (thirty) days written notice to the SLDC/MSEDCL, of the date on which it intends to synchronize the Unit(s) of the Project to the Grid System.
- 6.2.2 Subject to the provisions in this Article 6, each Unit will be synchronized by the SPV to the Grid System when it meets all the connection conditions prescribed in the Grid Code and otherwise meets all other requirements under Law for synchronization to the Grid System.
- 6.2.3 The synchronization equipment and all necessary arrangements/ equipment including 'Remote Terminal Unit' 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 SPV at its generation facility of the Project at its own cost. The SPV shall synchronize its system with the Grid System only after the approval of SLDC or MSEDCL.
- 6.2.4 Prior to synchronization of the Project, the SPV shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by respective authorities.
- 6.2.5 The SPV shall immediately after each synchronization / tripping of SPV, inform the sub-station of the Grid System to which the Project is electrically connected in accordance with applicable Grid Code. In addition, the SPV shall inject in-firm power from the Units to the grid from time to time to carry out operational/ functional test(s) prior to the Commercial Operation Date. For avoidance of doubt, it is clarified that synchronization / connection of the Project with the grid shall not to be considered as Commissioning of the Project.
- 6.2.6 Subsequent to grant of connectivity and after completion of each Unit in all aspects, a delay in grant of synchronization/charging permission by the STU and/or a delay in readiness of the MSEDCL/STU substation at the Delivery Point, including readiness of the power evacuation and transmission infrastructure of the STU network until Scheduled Commercial Operation Date of the Project, shall be treated as delays beyond the control of the SPV, provided that the following are established by the SPV:

- (a) A Unit including its transmission line till MSEDCL / STU's substation has been completed by SPV and CEIG approval/certificate for the same has also been obtained by the SPV;
- (b) The SPV has adhered to all the applicable procedures and requirements in regard to 'Connectivity and Synchronization' of the Unit as notified by the MERC/STU;
- (c) The SPV has complied with the complete application formalities for connectivity within the timeline as prescribed under Law; and,
- (d) The SPV has complied with the complete application formalities for synchronization of the Unit at least 15 (fifteen) days prior to the Commercial Operation Date.

6.2.7 In the event of any delay as set out in Article 6.2.6 hereinabove, the Units that are impacted by such delay shall be deemed to have achieved the Commercial Operation Date on the Scheduled Commercial Operation Date. Such Units shall be eligible to receive Deemed Generation in terms of Article 7.5 hereinbelow until the event of delay set out in Article 6.2.6 hereinabove is remedied by MSEDCL.

6.2.8 Decision on eligibility for deemed achievement of Commercial Operation Date and receiving Deemed Generation on account of the above factor shall be taken by MSEDCL based on supporting documents and evidence available and provided by the SPV. In case of delay in Commissioning of a Unit due to reasons beyond the reasonable control of the SPV, MSEDCL may extend the Scheduled Commercial Operation Date after examining the issue on a case-to-case basis.

### **6.3 Commissioning of Solar Capacity**

6.3.1 The Parties agree that for the purpose of commencement of the supply of electricity by SPV to MSEDCL, Liquidated Damages for delay, etc, the Scheduled Commercial Operation Date as defined in this PPA shall be the relevant date.

6.3.2 The part Commissioning of the Units may be accepted by MSEDCL subject to the condition that minimum capacity for acceptance of part Commissioning shall be the full capacity to be connected at a single bay of the MSEDCL substation. For an illustration, if the Unit capacity is 10 (ten) MW, and this capacity is to be connected at 2 (two) numbers of 11 kV bays, then in that case 5 (five) MW can be offered for early Commissioning as each 11 kV bay caters to a capacity of 5 (five) MW.

6.3.3 Early Commissioning of the Units would be permitted if such Units become ready before Scheduled Commercial Operation Date for full Commissioning or part Commissioning. In case of early full or part Commissioning of the Units prior to the Scheduled Commercial Operation Date, MSEDCL will purchase the energy generated till Scheduled Commercial Operation Date at the Tariff.

6.3.4 Irrespective of the dates of the part Commissioning or full Commissioning, the PPA will remain in force until the Expiry Date. Early full Commissioning of the Units before Scheduled Commercial Operation Date will lead to the increased tenure of this PPA for such Units that are Commissioned early without affecting the Expiry

Date of this PPA. Similarly, the delay in Commissioning would lead to corresponding reduction of the PPA tenure for such Units Commissioned late without affecting the Expiry Date of this PPA, as permitted in terms of this PPA.

- 6.3.5 SPV shall need to comply with all the compliances and regulations to be required and undertake the Commissioning in accordance with Prudent Utility Practice, and RfS. The same is applicable for part Commissioning as well.
- 6.3.6 The SPV expressly agrees that all costs incurred by it in synchronizing, connecting, Commissioning and/ or testing a Unit shall be solely and completely to its account and MSEDCL's liability shall not exceed the amount of the Tariff, payable for such power output or as per relevant Law applicable at the time.
- 6.3.7 The Parties shall comply with the provisions of the applicable Law including, in particular, but not limited to, Grid Code as amended from time to time regarding operation and maintenance of the Project and all matters incidental thereto.
- 6.3.8 The SPV shall declare the CUF of the Project on the Effective Date and shall be allowed to revise the same once within the first year of achieving Commercial Operation Date. The CUF for the Project shall in no case be less than 19% (nineteen percent) over any Contract Year. The SPV shall be allowed to achieve CUF of 15% (fifteen percent) for certain Units that are part of the Project provided that the CUF of the Project shall remain 19% (nineteen percent) over any Contract Year. For the first year of operation, the CUF shall be considered on a pro-rata basis for the respective Unit(s) for the period from the Commercial Operation Date of the respective Unit and ending at 12.00 midnight of 31<sup>st</sup> March of that fiscal year. Subsequently, the annual CUF for each Contract Year will be calculated every year from 1<sup>st</sup> April of the year to 31<sup>st</sup> March of the following year and for the final Contract Year will end on the Expiry Date or on termination of the PPA, whichever is earlier.
- 6.3.9 The SPV shall maintain generation so as to achieve CUF in the range of  $\pm 10\%$  (ten percent) of the declared value at all times during the Term. MSEDCL shall have the right to revise the lower limit for CUF only to the extent of grid non-availability for evacuation which is beyond the control of the SPV.
- 6.3.10 The SPV shall send a written intimation to MEDA and MSAPL, with a copy to MSEDCL declaring the Commercial Operation Date for respective Unit(s) as and when they happen.

#### **6.4 Commercial Operation Date**

- 6.4.1 The SPV shall ensure that the Project Commercial Operation Date is achieved on or prior to the Scheduled Commercial Operation Date. The SPV shall provide a written notice to MSEDCL at least 30 (thirty) days in advance intimating MSEDCL of the proposed date on which the Commercial Operation Date of a Unit or the Project is proposed to be achieved.
- 6.4.2 If the Commercial Operation Date for the Units having a capacity equivalent to at least 75% (seventy five percent) of the Contracted Capacity is achieved before the Scheduled Commercial Operation Date, then all Units injecting energy at 11 kV /22

kV in respect of which the Commercial Operation Date has been achieved prior to the Scheduled Commercial Operation Date, shall be given an incentive of Rs. 0.25/kWh for the power sold to MSEDCL for the first 3 (three) years from the Commercial Operation Date. To receive such incentives from MSAPL, which shall be over and above the Tariff, the SPV shall follow the process agreed to by the SPV under the Implementation Agreement.

- 6.4.3 It is hereby clarified that the aforementioned incentive shall not be available: (i) in respect of any Unit if the Commercial Operation Date for such Unit has not been achieved prior to the Scheduled Commercial Operation Date; and (ii) if the aggregate capacity of the Units for which the Commercial Operation Date has been achieved prior to Scheduled Commercial Operation Date is less than 75% (seventy five percent) of the Contracted Capacity.
- 6.4.4 In the event that Commercial Operation Date for any of the Units is achieved after the Scheduled Commercial Operation Date, the SPV shall be liable to pay Liquidated Damages as per the provisions set out below.
- 6.4.5 Without prejudice to any other rights of MSEDCL under this PPA, in case one or more Units of the SPV are unable to achieve Commercial Operation Date within a period of 2 (two) months from the Scheduled Commercial Operation Date, the capacity of such Units shall be annulled, and the Contracted Capacity shall be reduced to that extent.

For Illustration: The Project has a Contracted Capacity of 100 (one hundred) MW and comprises of 10 (ten) Units of 10 (ten) MW each. If at the end of the aforementioned period of 14 (fourteen) months from the Effective Date, the SPV has achieved Commissioning for only 8 (eight) out of 10 (ten) Units, then the Contracted Capacity of the Project will stand reduced for the capacity of the 2 Units which have not been Commissioned, i.e. the Contracted Capacity will be 80 (100 (original Contracted Capacity)) – 10 (capacity of each Unit)\*2 (number of Units not Commissioned).

## **6.5 Extensions of Time**

- 6.5.1 Notwithstanding anything to the contrary contained in this PPA, extension of the Scheduled Commercial Operation Date, shall be limited to the maximum of 2 (two) months.
- 6.5.2 In case of delays in achieving Commercial Operation Date beyond Scheduled Commercial Operation Date, due to reasons beyond the control of the SPV, MSEDCL after having been satisfied with documentary evidence produced by the SPV for the purpose, may extend the Scheduled Commercial Operation Date for those Unit(s) without imposing Liquidated Damages. In no case shall such extension be provided for a period of more than 2 (two) months from Scheduled Commercial Operation Date.
- 6.5.3 For obtaining any extension of the Scheduled Commercial Operation Date, SPV shall notify MSEDCL at least 15 (fifteen) days in advance of Scheduled Commercial Operation Date and detail out the reasons for delay for the



determination by MSEDCL's, which notice and the content thereof shall be binding on the SPV.

## **6.6 Liquidated Damages for delay in Commissioning beyond Scheduled Commercial Operation Date**

- 6.6.1 If the SPV is unable to commission the Project by the Scheduled Commercial Operation Date, the SPV shall be liable to pay to MSEDCL, Liquidated Damages for the delay in such Commissioning and making the Contracted Capacity available for dispatch by the Scheduled Commercial Operation Date. Such Liquidated Damages shall be recovered by MSEDCL by way of encashment of the Performance Bank Guarantee, on a per day basis, on and from the Scheduled Commercial Operation Date, for an amount proportionate to such portion of the Contracted Capacity which has not been Commissioned.
- 6.6.2 The maximum time period allowed for Commissioning of the complete Contracted Capacity, with encashment of Performance Bank Guarantee, shall be limited to 14 (fourteen) months from the Effective Date. For any Contracted Capacity not Commissioned by the expiry of such 14 (fourteen) month period, Liquidated Damages shall be recovered by MSEDCL by way of encashment of the Performance Bank Guarantee for entirety of the balance amount of the Performance Bank Guarantee proportionate to the Contracted Capacity which has not been Commissioned.
- 6.6.3 The Commissioning of the Project or any part thereof, which is delayed beyond 14 (fourteen) months from the Effective Date shall be considered as an SPV Event of Default in accordance with the provisions of Article 12 and the Contracted Capacity shall stand reduced to the capacity Commissioned within 14 (fourteen) months from Effective Date. The PPA shall stand terminated for such portion of the Contracted Capacity which has not been Commissioned within the aforementioned period.
- 6.6.4 The SPV further acknowledges that the amount of the Liquidated Damages fixed is a genuine and reasonable pre-estimate of the damages that may be suffered by MSEDCL.

## **6.7 Performance Bank Guarantee**

- 6.7.1 The Performance Bank Guarantee furnished by SPV to MSEDCL shall be for guaranteeing the Commissioning/ Commercial Operation Date of the Project and its Unit(s) within Scheduled Commercial Operation Date.
- 6.7.2 MSEDCL shall release the Performance Bank Guarantee within a period of 30 (thirty) days of Commissioning of the full Contracted Capacity after adjusting Liquidated Damages (if any) as per Article 6.6.

## **6.8 Availing Central Financial Assistance**

- 6.8.1 Subject to meeting the qualification criteria as specified in the KUSUM C Guidelines in terms of the KUSUM Scheme, the Project would be eligible for the Central Financial Assistance ("CFA") thereunder.

- 6.8.2 The CFA upto 100% (one hundred percent) of the total eligible CFA will be released to the SPV after successful operation and performance of the Project for 2 (two) months after the Commercial Operation Date, with at least 1 (one) month CUF as per minimum CUF agreed in this PPA. The SPV should note that its eligibility for any benefits, that are prescribed under the KUSUM Scheme, may be subject to the SPV meeting further criteria and compliances in terms of the KUSUM Scheme. MSEDCL may, at its sole discretion, extend support to the SPV for availing CFA. However, MSEDCL shall not be responsible, in any manner whatsoever, for the SPV not meeting the eligibility criteria at the time of release of CFA by MNRE. Further, if the SPV achieves Commercial Operation Date for at least 75% (seventy five percent) of the Contracted Capacity on or before Scheduled Commercial Operation Date, the SPV shall become eligible to receive additional incentives as specified in Article 6.4.2.
- 6.8.3 The SPV shall be, subject to compliance with the KUSUM Scheme, provided a CFA of 30% (thirty percent) of the estimated cost of the Project, , which shall be arrived at on the basis of benchmark cost declared by the MNRE or the cost discovered through the Bid Process, whichever is lower..

## **6.9 Obligations of the SPV for CFA**

- 6.9.1 The SPV shall be responsible for ensuring compliance with the KUSUM Scheme (particularly the KUSUM C Guidelines), including but not limited to, the requirement to achieve Commercial Operation Date within a period of 12 (twelve) months from the date of the Letter of Award to get the corresponding CFA from the GoI. In addition, the SPV shall ensure compliance with the requirements of MNRE for availing CFA.
- 6.9.2 Notwithstanding anything to the contrary provided in this PPA, MSEDCL shall in no way be liable to the SPV if the SPV is unable to avail the CFA from Government of India on account of failure to meet the eligibility criteria.

## **6.10 Reading and Correction of Meters**

- 6.10.1 The metering point shall be the Delivery Point at 11 kV/22 kV level of MSEDCL / STU substations, as the case may be for respective Unit(s) under the SPV.
- 6.10.2 For the purpose of energy accounting, ABT compliant meters with AMR feature shall be provided and installed by SPV at the Delivery Point. The interface metering shall conform to the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2014 and any amendments thereto and any specifications stipulated by STU/ MSEDCL including those set out in Schedule 6.
- 6.10.3 The SPV shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal, and repair of meters at Delivery Point.
- 6.10.4 The ABT metering equipment consisting of Main Meters and check meters with separate 'Current Transformer' and 'Potential Transformer' shall be identical in make, technical standards and of 0.2s (zero point two seconds) accuracy class and calibration and comply with the requirements of Law.

- 6.10.5 The meters installed at the Delivery Point shall have 4 (four) quadrants, 3 (three) phase, 4 (four) wires and provision for online/automatic reading and time slots as required by MSEDCL and SLDC.
- 6.10.6 The SPV shall also establish a backup metering system/check meter which shall be inspected and approved by MSEDCL.
- 6.10.7 In the event that the main metering system is not in service as a result of maintenance, repairs, or testing, then the backup metering system/check meter shall be used during the period the main metering system is not in service, and the above provisions shall apply to the reading of the backup metering system.

## **6.11 Testing of the Metering Equipment**

- 6.11.1 The Main Meters and check meters shall be tested for accuracy, with a portable standard meter, certified by a lab accredited with the National Accreditation Board for Testing and Calibration Laboratories. Such tested Main Meter and check meter shall be sealed by MSEDCL at the cost of the SPV. MSEDCL shall carry out the calibration, periodical testing, sealing and maintenance of meters in the presence of the authorized representative(s) of the SPV and such representative(s) of the SPV shall sign on the results thereof.
- 6.11.2 The frequency of meter testing shall be annual. All the meters will be tested only at the Delivery Point and MSEDCL shall provide a copy of the test reports to the SPV.
- 6.11.3 If during testing, both the main and check meter are found within the permissible limit of error i.e. 0.2% (zero point two percent), the energy computation will be as per the Main Meter. If during the test, a Main Meter 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 and the corresponding check meter shall be calibrated immediately.
- 6.11.4 If during the tests, a Main Meter is found to be beyond permissible limits of error, but the corresponding check meter is found to be within the permissible limits of error, then the energy computation for the month, up to date and time of such test check, shall be in accordance with the check meter. The Main Meter shall be calibrated immediately and the energy for the period thereafter shall be as per the calibrated Main Meter.
- 6.11.5 If during any of the monthly meter readings, the variation between the Main Meter and the check meter is more than 0.5% (zero point five percent), all the meters shall be re-tested and calibrated immediately by MSEDCL at the cost of the SPV.
- 6.11.6 It is hereby clarified that at all times during the Term of this PPA, only the reading of the Main Meter shall be considered for the purposes of this PPA, except in rarest conditions, such as maintenance, repairs, testing or discrepancy in meter reading compared to check meters, in which case, the check meter reading may be considered, at the sole discretion of MSEDCL.

## **6.12 Sealing and Maintenance of Meters**

- 6.12.1 The main metering system and the backup metering system shall be sealed in the presence of the representatives of SPV and MSEDCL.
- 6.12.2 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 SPV or MSEDCL at SPV's cost, as soon as possible.
- 6.12.3 Any meter seal(s) shall be broken only by MSEDCL's representative in the presence of SPV's representative at such time when the main metering system or the backup metering system is to be inspected, tested, adjusted, repaired, or replaced.
- 6.12.4 All the Main Meters and check meters shall be calibrated at least once in each Contract Year.
- 6.12.5 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 starting from the immediately preceding test of the relevant Main Meter, or
  - (b) the period of 180 (one hundred and eighty) days immediately preceding the date of the test in which the relevant Main Meter was determined to be defective or inaccurate.

## **6.13 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 PPA and the operation of the Project. Among such other records and data, the SPV shall maintain an accurate and up-to-date operating log at the Project with records of:

- (a) 15 (fifteen) 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 such records generated at the Project will be preserved for a period of 36 (thirty six) months from the time such records are generated.

## **7. RMU, DEEMED GENERATION, SCHEDULING AND DISPATCH**

### **7.1 Remote Monitoring Unit**

- 7.1.1 The SPV shall ensure that all Units are RMU enabled. The data from such RMU enabled Units would be monitored or analysed remotely by MSEDCL. The SPV shall support MSEDCL and/or their authorized representatives in establishing technical handshake between RMU and any monitoring system/centre established or notified by MSEDCL for logging the data generated by the RMU.
- 7.1.2 The internal data logger of the RMU shall work on a store-and-forward mechanism. The SPV shall ensure that such data logger is able to store data in case of connectivity outage and forward the stored data once the connectivity is regained. The SPV shall ensure data for a minimum period of 1 (one) year is stored in the data logger. The RMU must also be capable of interfacing with external data loggers as may be installed by MSEDCL or its authorized representatives at no extra cost.
- 7.1.3 The SPV shall ensure that the connectivity each Unit with the monitoring system/centre as specified in Article 7.1.1 is uninterrupted at all times during operating life of the Project, and shall make all necessary arrangements for the same.
- 7.1.4 The RMU should have the ability to send data on defined intervals so that data should not be lost due to performance and load issues. The information should be shared only with the trusted systems maintained by MSEDCL. The SPV shall ensure the availability and connectivity of the RMU to be at least 98% (ninety eight percent).
- 7.1.5 In addition to the above, the SPV shall ensure and shall have no objection to provide access to RMU and / or any other medium used to transfer data for data acquisition and monitoring the performance of the Unit(s) by MSEDCL. MSEDCL and any authorized agency will have the right to validate the authenticity of such data for which SPV shall extend full access and its cooperation.
- 7.1.6 MSEDCL shall have an unfettered right on the use of data collected for its analytics, policy, and program function to promote renewable energy sector in Maharashtra.

### **7.2 Shortfall in minimum generation**

- 7.2.1 During the Term, if for any Contract Year, it is found that: (i) the SPV has not been able to generate minimum energy corresponding to the value of annual CUF within the permissible lower limit of CUF as declared by the SPV, or (ii) if the CUF for any of the Units at any point during any Contract Year, is less than 15% (fifteen percent), or such lower limit as may be prescribed by MSEDCL in this regard, such shortfall in performance shall make the SPV liable to pay the compensation at 1.5 (one point five) times of the Tariff for such shortfall. Notwithstanding the above, the lower limit may, however, be relaxed by MSEDCL to the extent of grid non-availability for evacuation which is beyond the control of the SPV.
- 7.2.2 Such compensation shall not be applicable in the events of Force Majeure identified under PPA affecting supply of solar power by SPV.

### **7.3 DC Oversizing**

- 7.3.1 Any DC oversizing of the Project shall be the commercial decision of the SPV to optimize the power output from the Project. Notwithstanding the above, the SPV shall not be permitted to add any DC Capacity in any Unit after the Commercial Operation Date for such Unit has been achieved. Any addition of such DC Capacity shall be at sole risk and cost of the SPV without any recourse to MSEDCL.
- 7.3.2 However, for the purpose of compensation towards Change in Law, if any, the DC installed capacity shall be considered as the lower of the actual installed DC Capacity or the following formula:

DC Capacity for Change in Law = AC Contracted Capacity x (declared CUF / minimum CUF stipulated in RfS)

### **7.4 Excess generation**

- 7.4.1 If in any Contract Year, the generation from the Project is more than the maximum CUF, i.e. over and above 10% (ten percent) of declared CUF by the SPV, the SPV will be free to sell such excess energy generated to any other entity. However, it is clarified that any sale of power to any other entity will result in monetary penalties on the SPV which could include the SPV having to refund proportionate CFA that may have been granted to the Project by MNRE. Provided however that, MSEDCL will have first right of refusal over such excess power generated.
- 7.4.2 In case MSEDCL purchases the excess generation, the same shall be done at the rate of 75% (seventy five percent) of the Tariff. MSEDCL shall inform the SPV of its willingness to purchase the excess power within 15 (fifteen) days of receiving a written intimation from the SPV for such excess generation, provided that such written intimation by the SPV shall be received by MSEDCL at least 30 (thirty) days prior to the end of a Contract Year. If MSEDCL fails to reply to the SPV within the above stipulated time period of 15 (fifteen) days, then the SPV shall be free to sell it to any third party.
- 7.4.3 Notwithstanding the right of the SPV to sell the power to a third party, such right shall be subject to injection of excess power not causing any disturbance in the grid at the point of injection. If the injection is likely to cause any such grid disturbance, the SPV will have to forego the excess generation and reduce output to rated capacity to ensure compliance with grid requirement.
- 7.4.4 Provided further that, in terms of KUSUM Scheme, any sale of power to a third party during the Term shall result in the SPV having to refund proportionate CFA that may have been granted to the Project by MNRE. In case of any liquidation of assets of the solar power plant prior to completion of PPA period, the first charge shall be towards recovery of proportionate CFA granted to the Project by MNRE.

### **7.5 Deemed Generation**

The SPV will be entitled to Deemed Generation in terms of this PPA as per the provisions set out in Schedule 3.

## **7.6 Scheduling and Dispatch**

- 7.6.1 The SPV shall be required to schedule its power as per the applicable regulations/ requirements / guidelines of MERC and maintain compliance to the Grid Code requirements and directions, as specified by SLDC 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, including payment of any unscheduled interchange charges shall be to the account of the SPV.
- 7.6.2 SPV shall be responsible for directly coordinating and dealing with MSEDCL, SLDC, and other authorities in all respects in regard to declaration of availability, scheduling and despatch of power and due compliance with deviation and settlement mechanism and the applicable Grid Code.

## **7.7 Repowering**

The SPV shall be allowed a maximum cumulative period of 6 (six) months for repowering during the entire PPA term. The SPV shall not be in default for non-supply of power during this period of repowering. However, MSEDCL will be obliged to buy power only within the range of CUF specified in the PPA. Any excess generation will be dealt with as specified in Article 7.4 of this PPA.

## **7.8 Reactive Power**

- 7.8.1 In order to maintain grid stability and prevent any excess drawal of reactive power, the SPV shall install capacitor banks or such other means capable of generating reactive power. The reactive power charges (including penalty to any governmental authority for excess reactive power drawn) and charges against power drawn from grid as per CERC / MERC regulations, shall be payable by the SPV as per provisions herein.
- 7.8.2 The SPV shall be capable of supplying dynamically varying reactive power so as to maintain the power factor within the limits of 0.95 (zero point nine five) lagging to 0.95 (zero point nine five) leading at Delivery Point and shall inject reactive power equal to 30% (thirty percent) of the active power generated (without netting off) in a month. In case reactive power generated is less than 27% (twenty seven percent), (i.e. 10% (ten percent) of 30% (thirty percent) of the active power generated), in a month, then the SPV shall be liable to pay damages at the rate of 25% (twenty five percent) of the Tariff, which shall be deducted from the Monthly Bills.

## **7.9 Harmonics**

The SPV shall maintain harmonics levels as specified in IEEE 519.

## **8. TARIFF RATE, CHARGES AND BILLING**

### **8.1 Tariff rate**

8.1.1 MSEDCL shall pay a fixed tariff per kWh for each Unit operated by the SPV at the tariff rates specified in Schedule 7 (“**Tariff**”) as discovered under the competitive bidding and as agreed by the Parties upon Commissioning of a Unit / Project (as certified by SLDC/MSEDCL) for Delivered Energy / scheduled energy (as per the prevailing MERC Regulations), during the Term. All power produced by a Unit shall be purchased by MSEDCL at the Tariff from the date of Commercial Operation Date of such Unit at 100% (one hundred percent) of the Tariff, irrespective of whether the Commercial Operation Date of such Unit was prior to Scheduled Commercial Operation Date or within the permissible delay period of 2 (two) months (with payment of Liquidated Damages in terms of this PPA) from the Scheduled Commercial Operation Date.

8.1.2 The early Commissioning of the Project is permitted for full Commissioning as well as part Commissioning before Scheduled Commercial Operation Date, subject to the provisions of Article 6 of this PPA.

### **8.2 Billing Provision**

8.2.1 MSEDCL shall pay for the Delivered Energy / scheduled energy (as per the prevailing MERC Regulations) as certified by SLDC/ MSEDCL / appropriate authority through SEA/joint meter reading (AMR/MRI), from the Commercial Operation Date of the respective Unit till end of the Term of this PPA, to the SPV every month (“**Monthly Energy Charge**”).

8.2.2 Power imported during start-up / auxiliary consumption / power consumption during shutdown will be netted-off while accounting for the energy sold to MSEDCL. It is clarified that, subject to approval of the MERC, such net-off would also be counted towards compliance of MSEDCL’s Solar RPO.

8.2.3 The billing shall be on a monthly basis.

8.2.4 The SPV would raise Monthly Bills (online) for the power supplied during the month by the 10<sup>th</sup> (tenth) day of the following month.

8.2.5 Billing, collection, and other terms of this PPA would apply uniformly for the whole of the Contracted Capacity under this PPA.



## 9. PAYMENT AND PAYMENT SECURITY

### 9.1 Payment

- 9.1.1 The SPV shall open a bank account (“**SPV Designated Account**”) for all Tariff payments be made by MSEDCL to the SPV. The details of such account shall be notified to MSEDCL at least 30 (thirty) days before the dispatch of the first Monthly Bill.
- 9.1.2 MSEDCL shall also designate a bank account (“**MSEDCL Designated Account**”) for payments to be made by the SPV to MSEDCL, if any. MSEDCL shall notify the SPV of the details of the MSEDCL Designated Account thirty 30 (thirty) before the dispatch of the first Monthly Bill. The SPV and MSEDCL shall instruct their respective bankers to make all payments under this PPA to the MSEDCL Designated Account or the SPV Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.
- 9.1.3 MSEDCL shall make payment of the amounts due in INR within 30 (thirty) days from the date of receipt of the Invoice by the designated office of MSEDCL.
- 9.1.4 The Parties hereby agree that any payments required to be made by MSEDCL under this PPA shall be subject to any deductions or set-off that MSEDCL would be required to do in terms of applicable Law or for any adjustments that may be due on account of any amounts due from the SPV to MSEDCL.

### 9.2 Rebate

- 9.2.1 For payment of any Bill on or before Due Date of Payment, MSEDCL shall be allowed by the SPV, a rebate on the Invoice (“**Rebate**”) equivalent to:
- (a) 2% (two percent) – for the payments made through a revolving and valid Letter of Credit upon presentation of Invoice for the Tariff along with required supporting documents at MSEDCL office; or
  - (b) 1% (one percent) – for the payments made within a period of 7 (seven) days of the presentation of Invoice for the Tariff along with required supporting documents at MSEDCL office.
- 9.2.2 No Rebate shall be applicable for any payments beyond 7 (seven) days of the presentation of Invoice for Tariff. For the above purpose, the date of presentation of the Bill shall be the next Business Day of delivery of the Invoice for Tariff at MSEDCL.
- 9.2.3 No Rebate shall be payable on the Bills raised on account of taxes, duties, cess etc.
- 9.2.4 For the above purpose, date of presentation of a Bill shall be considered as the same day on which the online copy is delivered to MSEDCL. However, for the purposes of consideration of Rebate, the Bill will be considered to have been submitted to MSEDCL on the next Business Day of the date of presentation of the online copy of the Bill.

### 9.3 Late Payment

- 9.3.1 In regard to the payments against the Monthly Bill, if paid beyond the 30 (thirty) days of its Due Date of Payment, a Late Payment Surcharge on simple interest basis shall be payable by MSEDCL. Such Late Payment Surcharge shall be payable on the amounts outstanding after the Due Date of Payment and shall be calculated at the Late Payment Surcharge Base Rate. *Provided* that if the delay in payment continues for a period of more than 1 (one) month, the Late Payment Surcharge for the successive months of delay in payment shall increase by 0.50 % (zero point five zero percent) for every month of delay, *provided* further that the Late Payment Surcharge shall in no event be more than 3% (three percent) higher than the Late Payment Surcharge Base Rate at any point during the Term of this PPA.
- 9.3.2 The Late Payment Surcharge shall be claimed by the SPV through the Supplementary Bill. All payments by MSEDCL shall be first adjusted towards any Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.

### 9.4 Payment Security

- 9.4.1 MSEDCL shall provide to the SPV, in respect of payment of its Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit (“**Letter of Credit**”), opened and maintained which may be drawn upon by the SPV in accordance with this Article 9.
- 9.4.2 Not later than 1 (one) month prior to the Scheduled Commercial Operation Date, MSEDCL shall through a scheduled bank open a Letter of Credit in favour of the SPV, to be made operative from a date prior to the Due Date of Payment of its first Monthly Bill under this PPA post the Scheduled Commercial Operation Date. The Letter of Credit shall have a term of 12 (twelve) months and shall be renewed annually, for an amount equal to:
- (a) for the first Contract Year, equal to the estimated average monthly billing for the relevant Units;
  - (b) for each subsequent Contract Year, equal to the average of the monthly billing of the previous Contract Year for the relevant Units.

Provided that the SPV shall not draw upon such Letter of Credit prior to achievement of Commercial Operation Date for the entire Project. The SPV shall also not be permitted to draw upon such Letter of Credit prior to the Due Date of Payment of the relevant Bill and/or Supplementary Bill, and shall not make more than one drawal in a month.

Provided further that if at any time, such Letter of Credit amount falls short of the amount specified hereinabove due to any reason whatsoever, MSEDCL shall restore such shortfall within 15 (fifteen) days.

- 9.4.3 MSEDCL shall cause the scheduled bank issuing the Letter of Credit to intimate the SPV, in writing regarding establishing of such irrevocable Letter of Credit.

- 9.4.4 MSEDCL shall ensure that the Letter of Credit shall be renewed not later than its expiry.
- 9.4.5 All costs relating to opening, maintenance of the Letter of Credit shall be borne by MSEDCL.
- 9.4.6 If MSEDCL fails to pay undisputed Bill or Supplementary Bill or a part thereof within and including the Due Date of Payment, then, subject to Article 9.4.4 and 9.5.2, the SPV may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from MSEDCL, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 9.4.2 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:
- (a) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to SPV; and
  - (b) a certificate from the SPV to the effect that the Bill at sub-clause (a) above, or specified part thereof, is in accordance with the PPA and has remained unpaid beyond the Due Date of Payment.
- 9.4.7 In case the Bill or the Supplementary Bill is of an amount greater than the amounts secured by the Letter of Credit and remains unpaid in full or in part for a period of more than 3 (three) months, then the SPV may access the guarantee funds in terms of the Implementation Agreement to obtain such amounts due to it.

## **9.5 Billing Disputes**

- 9.5.1 If MSEDCL does not dispute a Monthly Bill or a Supplementary Bill raised by the SPV within 15 (fifteen) days of receiving such Bill shall be taken as conclusive.
- 9.5.2 If MSEDCL disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, 80% (eighty percent) of the payment under such disputed Monthly Bill or a Supplementary Bill (as applicable) has to be made under protest within time period specified in Article 9.5.1. MSEDCL shall within 15 (fifteen) days of receiving such Bill, issue a notice (the “**Bill Dispute Notice**”) to the SPV setting out:
- (a) the details of the disputed amount;
  - (b) its estimate of what the correct amount should be; and
  - (c) all written material in support of its claim.
- 9.5.3 If the SPV agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 9.5.2, the SPV shall revise such Bill and present along with the next Monthly Bill.
- 9.5.4 If the SPV does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 9.5.2, it shall, within 15 (fifteen) days of receiving the Bill Dispute Notice, furnish a notice (“**Bill Disagreement Notice**”) to MSEDCL providing:

- (a) reasons for its disagreement;
  - (b) its estimate of what the correct amount should be; and
  - (c) all written material in support of its counter-claim.
- 9.5.5 Upon receipt of the Bill Disagreement Notice by MSEDCL under Article 9.5.4, authorized representative(s) or Director, Commercial of MSEDCL and SPV shall meet and make best endeavours to amicably resolve such dispute within 15 (fifteen) days of receipt of the Bill Disagreement Notice.
- 9.5.6 If the Parties do not amicably resolve the Dispute within 15 (fifteen) days of receipt of Bill Disagreement Notice pursuant to Article 9.5.4, the matter shall be referred to Dispute resolution in accordance with Article 13.
- 9.5.7 Post resolution, the balance pay-out or recovery (for either side) shall be entitled to a carrying cost at applicable interest rate for working capital as approved by MERC for MSEDCL for the respective year.
- 9.5.8 For the avoidance of doubt, it is clarified the despite a Dispute regarding an invoice, MSEDCL shall, without prejudice to its right to Dispute, be under an obligation to make payment of undisputed amount in any the Monthly Bill or Supplementary Bill (as applicable).

## **9.6 Quarterly and Annual Reconciliation**

- 9.6.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 (thirty) days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 (thirty) days to take into account the energy accounts, Tariff adjustment payments, Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this PPA.
- 9.6.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year, as the case may be, has been finally verified and adjusted, the SPV and MSEDCL shall jointly sign such reconciliation statement. Within 15 (fifteen) days of signing of a reconciliation statement, the SPV shall make appropriate adjustments in the next Monthly Bill.
- 9.6.3 Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 13.

## **9.7 Payment of Supplementary Bill**

- 9.7.1 SPV may raise a supplementary bill (“**Supplementary Bill**”) for payment on account of:
- (a) Adjustments required by the energy accounts (if applicable); or

(b) Change in Law as provided in Article 11;

and such Supplementary Bill shall be paid by MSEDCL as provided hereinbelow.

- 9.7.2 MSEDCL shall remit all amounts due under a Supplementary Bill raised by the SPV to the SPV's Designated Account by the Due Date of Payment, except open access charges, MSLDC or scheduling charges and transmission charges (if applicable). For Supplementary Bill on account of adjustment required by energy account, Rebate as applicable to Monthly Bills pursuant to Article 9.2 shall equally apply. No surcharge will be applicable other than that on the monthly energy payment and associated debit and credit note.
- 9.7.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date of Payment, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 9.3.

## **10. FORCE MAJEURE**

### **10.1 Force Majeure**

10.1.1 A “**Force Majeure**” means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this PPA, 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:

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

### **10.2 Force Majeure Exclusions**

10.2.1 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 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 any Law; or
- (iii) Breach of, or default under this PPA.

### **10.3 Notification of any Event of Force Majeure**

- 10.3.1 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 7 (seven) 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 1 (one) day after such reinstatement.
- 10.3.2 Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this 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 monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the event of Force Majeure.
- 10.3.3 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 this PPA, as soon as practicable after becoming aware of each of these cessations.

### **10.4 Duty to Perform and Duty to Mitigate**

To the extent not prevented by an event of Force Majeure pursuant to Article 10.2, the Affected Party shall continue to perform its obligations pursuant to this PPA. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

### **10.5 Available Relief for an Event of Force Majeure**

10.5.1 Subject to this Article 10:

- (a) no Party shall be in breach of its obligations pursuant to this PPA except to the extent that the performance of its obligations was prevented, hindered or delayed due to an event of Force Majeure;
- (b) every Party shall be entitled to claim relief in relation to an event of Force Majeure in regard to its obligations;
- (c) for avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of events of Force Majeure under this PPA shall be suspended or excused due to the occurrence of an event of Force Majeure in respect of such Party.

- (d) Provided that no payments shall be made by either Party affected by an event of Force Majeure for the period of such event on account of its inability to perform its obligations due to such event of Force Majeure.

10.5.2 It is hereby clarified that the benefit of this Article 10 shall be available to the SPV only in respect of such Units which are affected by the occurrence of an event of Force Majeure.



## **11. CHANGE IN LAW**

### **11.1 Definitions**

In this Article 11, the term ‘Change in Law’ shall refer to the occurrence of any of the following events pertaining to this Project only after the last date of the bid submission under the RfS, including:

- (a) the enactment of any new Law; or
- (b) an amendment, modification or repeal of an existing Law; or
- (c) the requirement to obtain a new consent, permit or license; or
- (d) any modification to the prevailing conditions prescribed for obtaining a consent, permit or license, not owing to any default of the SPV; or
- (e) any change in the rates of any Taxes including any duties and cess or introduction of any new tax made applicable for setting up and supplying power from the Project by the SPV and which has a direct effect on the Project. However, Change in Law shall not include (i) any change in taxes on corporate income or (ii) any change in any withholding tax on income or dividends distributed to the shareholders of the SPV, or
- (f) any change on account of regulatory measures by the Appropriate Commission.

**11.2** In the event a Change in Law results in any gain / adverse financial loss to the SPV then, in order to ensure that the SPV is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the SPV / MSEDCL shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined in accordance with the formula specified in Article 11.4 below and shall be effective from such date as may be decided by the Appropriate Commission.

**11.3** In the event of any decrease in the recurring/ non-recurring expenditure by the SPV or any income to the SPV on account of any of the events as indicated above, the SPV shall file an application to the Appropriate Commission no later than 60 (sixty) days from the occurrence of such event, for seeking approval of Change in Law. In the event of the SPV failing to comply with the above requirement, in case of any gain to the SPV, MSEDCL shall withhold the monthly Tariff payments on immediate basis, until compliance of the above requirement by the SPV.

### **11.4 Relief for Change in Law**

11.4.1 The aggrieved Party shall be required to approach the MERC for seeking approval of such Change in Law.

11.4.2 If a Change in Law results in any adverse financial loss/ gain to the SPV then, in order to ensure that the SPV is placed in the same financial position as it would have been had it not been for the occurrence of the Change in Law, the SPV /

MSEDCL (as relevant) shall be entitled to compensation by the other party, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the MERC.

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

11.4.4 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 as per the formula below:

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

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

Where  $X = \text{estimated monthly electricity generation (in kWh)} = (1/12) X [\text{Contracted Capacity of the RE power plant as per PPA (in MW)} \times \text{Annual CUF declared in PPA (in \%)} \times 8760\text{-hour} \times 10]$ .

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

where,

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

$Mr = \text{monthly rate of interest} = ; \text{ where } R = \text{annual rate of interest equal to 125 basis points above the average SBI 1 Year MCLR Rate prevalent during the last available 6 (six) months for such period.}$

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

11.4.5 MSEDCL or the SPV, as the case may be, shall provide the other Party with a certificate stating that the adjustment in the Tariff is directly as a result of the Change in Law and shall provide supporting documents to substantiate the same and such certificate shall correctly reflect the increase or decrease in costs.

11.4.6 The revised tariff shall be effective from the date of such Change in Law as approved by MERC, the Parties hereto have caused this Agreement to be executed by their fully authorized officers, and copies delivered to each Party, as of the day and year first above stated.

- 11.4.7 The decision of the MERC to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.
- 11.4.8 For the excess amount to be recovered against the approved Change in Law events, shall not attract any carrying costs or any other interest on such amount.
- 11.4.9 For the avoidance of doubt, it is clarified that the benefit of this Article 11 shall be available to the SPV only in respect of such Units which have achieved Commercial Operation Date and are affected by the Change in Law.

## **12. TERM, TERMINATION AND DEFAULT**

### **12.1 SPV's Default**

The occurrence and/or continuation of any of the following events, unless any such event occurs as a result of an event of Force Majeure or a breach by MSEDCL of its obligations under this PPA, shall constitute an 'SPV Event of Default':

- (a) the failure to commence supply of power to MSEDCL up to the Contracted Capacity, by the end of the period specified in Article 6, or failure to continue supply of Contracted Capacity to MSEDCL after Commercial Operation Date throughout the term of this PPA, or
- (b) if
  - (i) the SPV assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project in contravention of the provisions of this PPA; or
  - (ii) the SPV transfers or novates any of its rights and/ or obligations under this PPA, in a manner contrary to the provisions herein; except where such transfer is:
    - (A) in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this PPA; or
    - (B) to a transferee who assumes such obligations under this PPA and the PPA remains effective with respect to the transferee;
- (c) if
  - (i) the SPV becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of 30 (thirty) days, or
  - (ii) any winding up or bankruptcy or insolvency order is passed against the SPV, or
  - (iii) the SPV goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the SPV will not be a SPV Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation; or
  - (iv) reorganization and where the resulting company retains creditworthiness similar to the SPV and expressly assumes all obligations of the SPV under this PPA and is in a position to perform them; or

- (d) the SPV repudiates this PPA and does not rectify such breach within a period of 30 (thirty) days from a notice from MSEDCL in this regard; or
- (e) except where due to any MSEDCL's failure to comply with its material obligations, the SPV is in breach of any of its material obligations pursuant to this PPA, and such material breach is not rectified by the SPV within 30 (thirty) days of receipt of first notice in this regard given by MSEDCL; or
- (f) occurrence of any other event which is specified in this PPA to be a material breach/ default of the SPV, except where due to MSEDCL's failure to comply with its material obligations, the SPV is in breach of any of its material obligations pursuant to this PPA, and such material breach is not rectified by the SPV within 30 (thirty) days of receipt of first notice in this regard given by MSEDCL.

## **12.2 MSEDCL's Default**

The occurrence and the continuation of any of the following events, unless any such event occurs as a result of an event of Force Majeure or a breach by the SPV of its obligations under this PPA, shall constitute an 'MSEDCL Event of Default':

- (a) MSEDCL fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of 90 (ninety) days after the Due Date of Payment and the SPV is unable to recover the amount outstanding to the SPV through the Letter of Credit,
- (b) MSEDCL repudiates this PPA and does not rectify such breach even within a period of 60 (sixty) days from a notice from the SPV in this regard; or
- (c) except where due to any SPV's failure to comply with its obligations, MSEDCL is in material breach of any of its obligations pursuant to this PPA, and such material breach is not rectified by MSEDCL within 60 (sixty) days of receipt of notice in this regard from the SPV to MSEDCL; or
- (d) if:
  - (i) MSEDCL becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of 60 (sixty) days, or
  - (ii) any winding up or bankruptcy or insolvency order is passed against MSEDCL, or
  - (iii) MSEDCL goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that it shall not constitute a MSEDCL Event of Default, where such dissolution or liquidation of MSEDCL or 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 PPA and has

creditworthiness similar to MSEDCL and expressly assumes all obligations of MSEDCL and is in a position to perform them; or

- (e) Occurrence of any other event which is specified in this PPA to be a material breach or default of MSEDCL.

### **12.3 Procedure for Cases of SPV Event of Default**

- 12.3.1 Upon the occurrence and continuation of any SPV Event of Default under Article 12.1, MSEDCL shall have the right to deliver to the SPV, with a copy to the representative of the lenders to the SPV with whom the SPV has executed the Financing Documents, a notice stating its intention to terminate this PPA, which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 12.3.2 Following the issue of such notice by MSEDCL in terms of Article 12.3.1 above, the Parties shall discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances and complete such discussion within the Consultation Period.
- 12.3.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this PPA.
- 12.3.4 Within a period of 7 (seven) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the SPV Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, MSEDCL may terminate this PPA by giving a written termination notice of 60 (sixty) days to the SPV.
- 12.3.5 Subject to the terms of this PPA, upon occurrence of a SPV Event of Default under this PPA, the lenders in concurrence with MSEDCL, may exercise their rights, if any, under Financing Documents, to seek substitution of the SPV by a selectee for the residual period of the PPA, for the purpose of securing the payments of the total debt amount from the SPV and performing the obligations of the SPV. In the event a selection of a new entity leads to signing of a fresh PPA with such entity, an amount of Rs. 1 Lakh per MW +18% GST per transaction as a facilitation fee (non-refundable) shall be deposited by the SPV with MSEDCL.
- 12.3.6 However, in the event the lenders are unable to substitute the defaulting SPV within the stipulated period, MSEDCL may terminate the PPA and may, at its sole discretion, acquire the Project assets for an amount equivalent to 90% of the Debt Due or less as mutually agreed, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets. Provided that for the purposes of calculation of Debt Due, only the normative debt of 75% of the Total Project Cost corresponding to the depreciated value of the Project or the actual debt, whichever is lower, shall be considered.

Provided further that any substitution under this PPA can only be made with the prior consent of MSEDCL including the condition that the selectee meets the eligibility requirements of the RfS and accepts the terms and conditions of this PPA.

12.3.7 The lenders in concurrence with MSEDCL, may seek to exercise right of substitution under Article 12.3.5 by an amendment or novation of the PPA in favour of the selectee. The SPV shall cooperate with MSEDCL to carry out such substitution and shall have the duty and obligation to continue to operate the Project in accordance with this PPA till such time as the substitution is finalized. In the event of change in shareholding/substitution of promoters triggered by the lenders leading to signing of a fresh PPA with a new entity, an amount of Rs. 1 Lakh per MW +18% GST per transaction shall be deposited by the SPV with MSEDCL as a non-refundable facilitation fee.

#### **12.4 Procedure for Cases of MSEDCL Event of Default**

12.4.1 Upon the occurrence and continuation of any MSEDCL Event of Default specified in Article 12.2, the SPV shall have the right to deliver to MSEDCL, a default notice, which shall specify in reasonable detail the circumstances giving rise to its issue.

12.4.2 Following the issue of such notice by the SPV in terms of Article 12.4.1 above, the Parties shall discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances and complete such discussion within the Consultation Period.

12.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this PPA.

12.4.4 After a period of 210 (two hundred ten) days following the expiry of the Consultation Period in Article 12.4.2 and unless the Parties shall have otherwise agreed to the contrary or MSEDCL Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, MSEDCL under intimation to SPV shall, subject to the prior consent of the SPV, novate its part of the PPA to any third party, including its affiliates within the stipulated period. In the event the aforesaid novation is not acceptable to the SPV, or if no offer of novation is made by MSEDCL within the stipulated period, then the SPV may terminate the PPA and at its discretion require MSEDCL to either (i) takeover the Project assets by making a payment of the termination compensation equivalent to the amount of the Debt Due and 110% (one hundred and ten per cent) of the adjusted equity or, (ii) pay to the SPV, 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 SPV.

Provided further that at the end of 3 (three) months period from the period mentioned in this Article 12.4.4, this PPA may be terminated by the SPV.

#### **12.5 Termination due to Force Majeure**

If the event of Force Majeure or its effects continue to be present beyond a period as specified in Article 12.4.2, either Party shall have the right to cause termination of the PPA. In such an event this PPA shall terminate on the date of such termination notice without any further liability to either Party from the date of such termination.

## **13. GOVERNING LAW AND DISPUTE RESOLUTION**

### **13.1 Governing Law**

This PPA shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or Disputes under this PPA shall, subject to Article 13.2 below, be under the exclusive jurisdiction of appropriate courts in Mumbai.

### **13.2 Amicable Settlement and Dispute Resolution**

#### **13.2.1 Amicable Settlement**

- (a) Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this PPA (“**Dispute**”) by giving a written notice (“**Dispute Notice**”) to the other Party, which shall contain:
  - (i) a description of the Dispute;
  - (ii) the grounds for such Dispute; and
  - (iii) all written material in support of its claim.
- (b) The other Party shall, within 30 (thirty) days of issue of Dispute Notice issued under Article 13.2.1(a), furnish:
  - (i) counter-claim and defences, if any, regarding the Dispute; and
  - (ii) all written material in support of its defences and counter-claim.
- (c) Within 30 (thirty) days of issue of Dispute Notice by any Party pursuant to Article 13.2.1:
  - (i) if the other Party does not furnish any counter claim or defence under Article 13; or
  - (ii) 30 (thirty) days from the date of furnishing counter claims or defence by the other Party,

both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within 30 (thirty) days from the later of the dates mentioned in this Article 13.2.1, the Dispute shall be referred for dispute resolution in accordance with Article 13.3.

### **13.3 Dispute Resolution**

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

- (a) Where any Dispute or differences arises in relation to this PPA of any nature whatsoever including the construction, interpretation or implementation of the provisions of this PPA as well as claim made by any Party for any change



in or determination of the 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 of such claims could result in change in the Tariff, and relates to any matter agreed to be referred to the Appropriate Commission, shall be submitted to adjudication by the Appropriate Commission. Appeal against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

- (b) MSEDCL shall be entitled to co-opt the lenders (if any) as a supporting party in such proceedings before the Appropriate Commission.

### 13.3.2 Parties to Perform Obligations

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

## 14. INDEMNITY

### 14.1 Indemnity

14.1.1 The SPV shall defend, indemnify and hold MSEDCL harmless against:

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

14.1.2 MSEDCL shall defend, indemnify and hold the SPV harmless against:

- (a) any and all third party claims against the SPV, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by MSEDCL of any of their obligations under this PPA; and
- (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by the SPV from third party claims arising by reason of a breach by MSEDCL of any of its obligations under this PPA.

### 14.2 Procedure for Claiming Indemnity

#### 14.2.1 Third party claims

- (a) Where a Party is entitled to indemnification (“**Indemnified Party**”) from the other Party (“**Indemnifying Party**”) pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or 14.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within 30 (thirty) days of receipt of the above notice. Provided however that, if:
  - (i) the Parties choose to refer the dispute before the Appropriate Commission in accordance with Article 13.3.1; and
  - (ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

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

- (b) The Indemnified Party may contest the claim by referring to the Appropriate Commission for which it is entitled to be indemnified under Article 14.1.1(a) or 14.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified Party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.
- (c) An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

### **14.3 Indemnifiable Losses**

- 14.3.1 Where an Indemnified Party is entitled to any losses, damages, costs and expenses including legal costs, fines, penalties and interest (“**Indemnifiable Losses**”) from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within 30 (thirty) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party.

### **14.4 Limitation on Liability**

- 14.4.1 Except as expressly provided in this PPA, neither the SPV nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this PPA, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this PPA), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of MSEDCL, the SPV or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.
- 14.4.2 The SPV shall have no recourse against any officer, director or shareholder of MSEDCL, or any affiliate of MSEDCL or any of its officers, directors or shareholders for such claims excluded under this Article. MSEDCL shall have no recourse against any officer, director or shareholder of the SPV or any affiliate of the SPV or any of its officers, directors or shareholders for such claims excluded under this Article.

#### **14.5 Duty to Mitigate**

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

## **15. ASSIGNMENTS AND CHARGES**

### **15.1 Assignments**

15.1.1 This PPA shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This PPA shall not be assigned by any Party, except to the lenders to the Project or lender's representative as security for their debt under the Financing Documents, other than by mutual consent between the Parties to be evidenced in writing. Such assignment shall be agreed to by MSEDCL subject to the compliance of provisions contained in this PPA and more specifically to the provisions of Article 12.3 of this PPA. In no case, such assignment shall be permissible prior to the Scheduled Commercial Operation Date.

15.1.2 Provided that, MSEDCL shall permit assignment of any of SPV's rights and obligations under this PPA in favour of the lenders to the SPV, if required under the Financing Documents. Provided that, such consent shall not be withheld if MSEDCL seeks to transfer to any transferee all of its rights and obligations under this PPA.

15.1.3 The enforcement of the rights and obligation between the SPV and MSEDCL provided in this PPA shall not be treated as an assignment but an enforcement of the terms agreed under this PPA.

### **15.2 Permitted Charges**

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

## **16. MISCELLANEOUS PROVISIONS**

### **16.1 Amendment**

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

### **16.2 Third Party Beneficiaries**

This PPA is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this PPA.

### **16.3 Waiver**

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

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

### **16.4 Confidentiality**

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

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

### **16.5 Severability**

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

### **16.6 Notices**

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

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

Address :

Attention :

Email :

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

Address : Prakashgad, Plot No. G-9, Anant Kanekar Marg Bandra (E),  
Mumbai-400051

Attention : Ms. Kavita Gharat

Email : [ceremsedcl@gmail.com](mailto:ceremsedcl@gmail.com)

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

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

## **16.7 Language**

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

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

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

Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this PPA. Further, the financial liabilities of the shareholder/s of each Party to this PPA, shall be restricted to the extent provided in the Companies Act, 2013.

## **16.9 Taxes and Duties**

- 16.9.1 The SPV shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the SPV, contractors or their employees that are required to be paid by the SPV as per the Law in relation to the execution of the PPA and for supplying power as per the terms of this PPA.
- 16.9.2 MSEDCL shall be indemnified and held harmless by the SPV against any claims that may be made against MSEDCL in relation to the matters set out in Article 16.9.1.
- 16.9.3 MSEDCL shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the SPV by MSEDCL on behalf of SPV.

#### **16.10 Independent Entity**

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

#### **16.11 Compliance with Law**

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

#### **16.12 Breach of Obligations**

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



**IN WITNESS WHEREOF**, the Parties hereto have caused this PPA 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  
[•]

FOR AND ON BEHALF OF  
**MAHARASHTRA STATE  
ELECTRICITY DISTRIBUTION  
COMPANY LIMITED**

**Authorized Signatory**

**Authorized Signatory**

**WITNESSES**

**WITNESSES**

1. \_\_\_\_\_
2. \_\_\_\_\_

1. \_\_\_\_\_
2. \_\_\_\_\_

**SCHEDULE 1****PARAMETERS AND TECHNICAL LIMITS OF SUPPLY****1. Electrical characteristics**

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

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

**Note:** The tolerances and Electrical characteristics variations and Basic Insulation level will be as per relevant Grid Code and CEA standards.

**2. Quality of Service**

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

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

**3. Power Factor**

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

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

## **SCHEDULE 2**

### **TECHNICAL LIMITS**

1. The nominal steady state electrical characteristics of the system are as follows:
  - a) Three phases alternating current at 50 Hertz plus or minus 0.5 Hertz
  - b) Nominal voltage of 11/22 kV with 6% on higher side to 9% on the lower side variation.
2. The Project shall be designed and capable of being synchronized and operated within a frequency range as per relevant Grid Code and voltage of 11/22 kV.
3. Operation of the Project outside the nominal voltage and frequency specified above will result in reduction of power output consistent with SPV's capability curves.

**Appendix-A-1**

- i) The SPV shall give to the concerned SLDC, MEDA and MSEDCL at least 30 (thirty) days advance written notice, of the date on which it intends to synchronize the Project to the Grid System. The SPV shall be solely responsible for any delay or non-receipt of the notice by the concerned agencies, which may in turn affect the Scheduled Commercial Operation Date of the Project.
- ii) The Project will be considered as commissioned if all equipment as per rated project capacity has been installed and energy has flown into the grid.
- iii) SPV shall ensure that the equipment up to the rated capacity has been installed and completed in all respects before the Scheduled Commercial Operation Date.

**Documents to be submitted to MSEDCL within 30 (thirty) days after synchronization:**

The SPV shall have to submit the following hardcopies to MSEDCL:

1. Covering Letter
2. Board resolution for authorized signatory.
3. Invoice of the major equipment (including but not limited to modules, Inverters/PCUs, Weather Monitoring Stations/ DC Cables and for all the equipment).
4. All supporting documents towards meeting the technical compliance along with datasheet/ warranty certificates/ contract agreement etc. as mentioned, in Appendix-A-1.
5. Installation report duly signed by the authorized signatory as per Appendix-A-2.
6. Plant Layout clearly mentioning the details of rows and number of modules in each row.
7. Synchronization Certificate as per prescribed format issued by respective STU/Transmission Utility/MSEDCL for ascertaining injection of power into the Grid System.
8. Relevant document from SLDC acknowledging successful data communication between the SPV and SLDC.
  - i) In case any additional supporting/revised documents are asked by MSEDCL, the same have to be submitted/uploaded by the SPV.
  - ii) The SPV shall have to submit the commissioning date along with the commissioning order issued by the State Nodal Agency/MSEDCL.
  - iii) Early Commissioning of a Unit / Project prior to the scheduled commissioning date is permitted on acceptance of power by MSEDCL. In order to facilitate this, SPV shall inform the concerned SLDC and MSEDCL well in advance the date on which it intends to synchronize the Project to

the Grid System. The SPV shall be required to give an advance notice of at least 90 (ninety) days prior to the proposed commissioning date.

- iv) Joint Meter Reading (JMR) shall be taken at Delivery Point and Pooling Substation (if applicable)/plant premise at the time of connectivity of the Project with Grid. This shall include information of respective meters installed at Delivery Point and pooling substation/plant premises.

### Appendix-A-2

*(To be provided by SPV and to be submitted at least 10 days prior to commissioning date)*

Sr. No.	Capacity of the Project (MW)	
	Capacity already commissioned (MW)	
	Capacity proposed to be commissioned (MW)	
I.	Technology used  (Mono/Multi Crystalline / thin film / Others; please specify along with capacity of each type)	
II.	Rating of each module (Wp)	
III.	Angle from horizontal at which array is installed	
IV.	Number of modules installed of each type	
V.	Source(s) of the cells installed of each type	
VI.	Source(s) of the Modules installed of each type	
VII.	Number of PCUs / Inverters installed	
VIII.	Source of the PCUs / Inverters (Name of supplier with address)	
IX.	Rating of PCUs / Inverters	
X.	Date of installation of full capacity (as per capacity proposed to be commissioned)	-----
	PV arrays	
	PCUs / Inverters	
	Transformers	
XI	Documents / lease agreement to establish possession / right to use 100% (one hundred percent) of the required land in the name of SPV for a period not less than the complete term of PPA.	

**Appendix-A-3**

**DETAILS OF UNITS**

*[Note to Draft: To be inserted]*

### SCHEDULE 3

#### DEEMED GENERATION FORMULATION

- I. Deemed Generation on account of power evacuation:
- a) Generation Compensation in off-take constraint due to transmission/distribution network:

In any given month during the Term, if the availability of the distribution line/transmission line after inter-connection point for evacuation of power falls below 98% i.e. the line unavailability is more than 2% i.e. 14.40 hours (2% x 30 days x 24 hours), and the power is not evacuated, for reasons not attributable to the SPV, then the generation loss shall be compensated by MSEDCL at 100% of the Tariff so as to offset this loss as given below, subject to the submission of documentary evidences from the competent authority, and there shall be no other claim, directly or indirectly against MSEDCL:

Grid Unavailability	Provision for Generation Compensation
Grid unavailability at each instance	<p>Generation loss for each instance (“<b>Generation Loss</b>”)</p> <p>= (Average Generation during the same time block, in the previous eight days, as the block in which the interruption is encountered) × (period of grid unavailability for such instance expressed in hours or any part thereof)</p> <p>Where, Average Generation in any time block in the previous eight days (kWh) = Total generation in the time block in the previous eight days (kWh) ÷ Total hours of uninterrupted generation in the same time block in the previous eight days.</p> <p>For calculating the total generation compensation in a calendar month, the total generation loss shall be a summation of each instance of generation loss that occurs in such calendar month.</p>

The Generation Loss shall be compensated at an amount arrived at by multiplying the units of total generation loss in a calendar month with the Tariff.

Such Generation Loss will be paid as part of the energy Bill for the successive month after receipt of State Energy Accounts (SEA) or any other relevant documents certified by MSEDCL/SLDC.

- II. Due to Forced Outage (Back down)

The SPV shall follow the forecasting and scheduling process as per the regulations in this regard by the MERC. The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), encourages a status of “must-run” to solar power projects. Accordingly, no solar power plant, duly commissioned, should be



directed to back down by a DISCOM/ Load Despatch Centre (LDC). If backdown is required, except for the cases where the backdown is on account of events like consideration of grid security, any Emergency or safety of any equipment or personnel or other such conditions, the SPV shall be eligible for a generation compensation, from MSEDCL, in the manner detailed below for each individual project, subject to the submission of documentary evidences from the competent authority, and there shall be no other claim, directly or indirectly against MSEDCL. The said compensation will be paid after acceptance from MSEDCL.

<b>Duration of Back down</b>	<b>Generation Loss</b>
Hours of back down (“ <b>Forced Outage</b> ”) during a monthly billing cycle.	<p>Generation Compensation = 50% of [(Average Generation during previous 8 days during the same time block) × (period of grid unavailability for such instance expressed in hours or any part thereof)]</p> <p>Where, Average Generation in any time block (kWh) = Total generation in the time block in the previous eight days (kWh) ÷ Total hours of uninterrupted generation in the same time block in the previous eight days.</p> <p>No back-down/ curtailment will be ordered without giving formal/written instruction for the same.</p> <p>The details of back-down/ curtailment, including justifications for such curtailment, will be made public by the concerned Load Despatch Centre.</p>

The Generation Loss shall be compensated at an amount arrived at by multiplying the units of total generation loss in a calendar month with the Tariff.

Such Generation Loss will be paid as part of the energy Bill for the successive month after receipt of State Energy Accounts (SEA) or any other relevant documents certified by MSEDCL/SLDC.

**SCHEDULE 4****INDICATIVE KEY APPROVALS**

Details of the indicative key statutory clearances related to Project are set out below. Parties to note that the approvals listed herein are only indicative and not exhaustive.

<b>Sr. No.</b>	<b>Name of Approval/Clearance</b>	<b>Department</b>
1.1	Clearance from ZP Office	Zila Parishad CEO
1.2	Clearance from PWD Office	PWD
1.3	Clearance from rehabilitation Centre	Rehabilitation Department
1.4	Forest Clearance	Forest Department
1.5	Joint Measurement	Bhumi Abhilekh Dept. (TILR)
1.6	Town Planning clearance	Urban Department
1.7	Irrigation officer	Irrigation Department
1.8	Clearance from Mining Department	Mining Department
2.	Vendor (SPV) registration	MEDA
3	Deemed Grid Connectivity	MSEDCL / MSETCL
4	Standard Metering Specification	
5.1	Confirmation / Approval Grid Connectivity	MSEDCL / MSETCL
5.2	Changes in Land (Govt. / optional private land)	MSEDCL
6	Project Registration	MEDA
7	Electrical Inspector Plan Approval	EI Office
8	Electrical Inspector charging permission	EI Office
9	Installation of SEM Meters & NOC for SEM Charging	MSEDCL
10	Final Grid Connectivity approval	MSETCL
11	Synchronization permission from SLDC	SLDC
12	Permission to Commission (PTC)	MSEDCL

13	Project Commissioning by Field Office	MSEDCL
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## **SCHEDULE 5**

### **COMMISSIONING CHECKLIST**

- (a) Electrical Inspector Drawing approval of project.
- (b) Grid connectivity permission letter.
- (c) Land Sale Deed.
- (d) Approval of Electrical Inspector for Commissioning of Solar project and Evacuation line.
- (e) Land documents 7/12 extract.
- (f) DPR of solar project.
- (g) Joint Inspection report for SEM installation report.
- (h) Work Completion Report.
- (i) MEDA Registration.
- (j) Visibility confirmation from SLDC.

## SCHEDULE 6

### METERING SPECIFICATIONS

<b>METERING CT SPECIFICATIONS FOR MSKVY PROJECT (0.2S CLASS,-/5A, BURDEN-10VA (CUBICLE) / 15VA (OUTDOOR), SINGLE CORE SINGLE RATIO)</b>			
<b>11 KV</b>		<b>22 KV</b>	
1MW	50/5A	1MW-2MW	50/5A
2MW	100/5A	3MW-4MW	100/5A
3MW-4MW	200/5A	5MW-8MW	200/5A
5MW-6MW	300/5A	9MW-13MW	300/5A
7MW-8MW	400/5A	14MW-16MW	400/5A
9MW-10MW	500/5A	17MW-20MW	500/5A
<b>Metering PT:- (11/22 KV)/<math>\sqrt{3}</math>/110V/<math>\sqrt{3}</math>, 0.2 class, 50VA, Single Core, Single Ratio</b>			
<b>ENERGY METER:-ABT, Four Quadrant Import-Export Meter, CT ratio-/5A, 0.2S class, PT ratio-11Kv/<math>\sqrt{3}</math>/110V/<math>\sqrt{3}</math>, 3 X 63.5V, 50 Hz, 3 phase 4 wire (Neutral Solidly Grounded) {MSEDCL APPROVED}</b>			
<b>Note:- CT Ratios are provided irrespective of SOP guidelines. Hon. MERC SOP guidelines shall be followed for grid connectivity. - Detailed Technical specifications are available on MSEDCL website.</b>			

**SCHEDULE 7**

**LIST OF UNITS ALONG WITH APPLICABLE TARIFFS**

*[Note to Draft: To be inserted]*