

**STANDARD**  
**BATTERY ENERGY STORAGE PURCHASE AGREEMENT**

**FOR**

**PROCUREMENT OF \_\_\_\_\_MW/\_\_\_\_MWH**  
**ON LONG TERM BASIS**

**Between**

..... **[Insert Name of BESSD]**

**And**

**Maharashtra State Electricity Distribution Co. Limited**

..... **[Insert month and year]**

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This Battery Energy Storage Purchase Agreement is made on the ..... [Insert date] day of

..... [Insert month] of ..... [Insert year] at.....[Insert place]

Between

..... [Insert name of the BESSD], a Company incorporated under the Companies Act 1956 or Companies Act 2013, having its registered office at ..... [Insert address of the registered office of BESSD] (hereinafter referred to as “**Battery Energy Storage System Developer**” or “**Storage Project Developer**” “**Developer**” or “**BESSD**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the **First Part;**

And

**Maharashtra State Electricity Distribution Company Limited incorporated** under the Companies Act 1956 (1 of 1956) having its Registered office at Prakashgad, Bandra (East), Mumbai – 400 051, (hereinafter referred to individually, as “**MSEDCL**” or “**Power Procurer**” or “**Procurer**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees) as party of the **second part.**

**MSEDCL;**

The BESSD and MSEDCL are individually referred to as ‘Party’ and collectively referred to as ‘Parties’.

WHEREAS:

A. The Ministry of Power, Government of India has issued the “*Guidelines for Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services*” vide Resolution dated 10<sup>th</sup> March 2022, including subsequent amendments and clarifications thereof, if any, issued until\_\_\_\_\_ [Enter the last date of bid submission of the RfS].

MSEDCL had initiated a Tariff Based Competitive Bid Process for development of cumulative capacity of 300 MW/ 600 MWh \_\_\_\_ MW/ \_\_\_\_ MWh of Battery Energy Storage Project(s) (Projects) connected at the MSEDCL sub-

stations on the terms and conditions contained in the Request for Selection Documents (herein after referred to as 'RfS') issued by MSEDCL vide RfS No..... dated...

B. MSEDCL has issued the Letter of Intent No..... dated.....in favor of the \_\_\_\_ [Insert name of the Bidding Company] for development and establishment of the \_ MW/ \_ MWh of "Project" or "BESS" at location(s) provided at \_\_\_\_\_ in t as per the terms and conditions contained in the RfS, this Battery Energy Storage Purchase Agreement (BESPA) and other bidding documents as well as the conditions contained in the Letter of Intent.

C. **[Insert Name of the Bidding Company]** has been selected in the Competitive Bidding Process {in case Bidding Company is executing the Project through SPV}, has constituted a ..... **[Insert Name of the SPV]** (hereinafter referred to as '**BESSD**'), for development, and supply of BESS Capacity from the .....MW/ \_\_\_\_\_MWh of the Project / BESS to be established by BESSD in \_\_\_\_\_ S/s, \_\_\_\_\_ and for making available such Battery Energy Storage Capacity to MSEDCL.

D. MSEDCL has agreed to purchase such Battery Energy Storage Capacity from the BESSD as per the provisions of the RfS and as per the given provision of this Agreement.

E. In terms of the RfS and the Bidding Documents, the BESSD has furnished the Performance Bank Guarantee in the sum of Rs... in favour of MSEDCL as per the format provided as a part of the Bidding Documents and a copy of the Bank Guarantee provided in Schedule –C to this Agreement.

F. BESSD has fulfilled the terms of the RfS Documents and the terms of the Letter of Intent for signing this Battery Energy Storage Purchase Agreement as a definitive agreement for developing the "Project" (or "BESS") of.....MW / MWh at \_\_\_\_\_ S/s, \_\_\_\_\_ for making available Battery Energy Storage Capacity by the BESSD to MSEDCL;

G. The parties have agreed to execute this Battery Energy Storage Purchase Agreement in terms of the provisions of the RfS, the bidding documents and the

Letter of Intent in regard to the terms and conditions for development of the Project at Maharashtra on “Build, Own Operate” basis and for making available such Battery Energy Storage Capacity by the BESSD to MSEDCL

**Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:**

## **ARTICLE 1: DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued / framed by the Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

“Act” or “Electricity Act, 2003”	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
“Adjusted Equity”	<p>shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “Reference Date”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date;</p> <p>a. On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date;</p> <p>b. An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”);</p> <p>c. After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by X% (wherein <math>X=100\% / (12 * \text{Term of BESPA})</math>) thereof at the commencement of each month following the COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date;</p>

	For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the BESPA period is extended, but the revision on account of WPI shall continue to be made.
"Agreement" or "Battery Energy Storage Purchase Agreement" or "Storage Capacity Agreement" or "BESPA"	shall mean this Battery Energy Storage Purchase Agreement including its recitals and Schedules, amended or modified from time to time in accordance with the terms hereof;
"Appropriate Commission"	Appropriate Commission shall mean Maharashtra Electricity Regulatory Commission;
"Annual Availability"	For a particular Contract Year, "Annual Availability" shall be the average availability of the Contracted BESS capacity during that particular Contract Year, calculated as per the Article-4.4.2 and Schedule-A;
"Battery Energy Storage Project" or "Project" or "BESS PROJECT", "Battery Energy Storage systems" or "BESS"	shall mean the system(s)/projects of ..... [Insert capacity] MW/.....MWh, located at.....[Insert name of the place] in .... [Insert name of the District and State] having a separate control system, metering and single point of injection into the grid at Delivery/Interconnection/Metering point at MSEDCL substation and utilizing methods and technologies such as electrochemical batteries (Lead Acid, Li-ion, solid state batteries, flow batteries etc.), providing a facility that can store energy and deliver the stored energy in the form of electricity. It also includes all units and auxiliaries, Battery Energy Management System including associated applications / software; bay/s for transmission system in the switchyard, dedicated transmission line up to the Delivery Point, if any, and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the Energy Storage; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of above mentioned Battery Energy Storage Capacity as per this Agreement;
"Business Day"	shall mean with respect to BESSD and MSEDCL, a day other than Sunday or a statutory holiday, on which the banks remain open for business in Mumbai

“CERC”	shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;
“CTU” or “Central Transmission Utility”	shall mean the Government Company notified by the Central Government under Sub-Section (1) of Section 38 of the Electricity Act, 2003.
Charging Power	<p>Shall mean the requirement of energy to charge the contracted capacity and additional energy considering minimum system efficiency as per clause 4.4.2 (C). Charging power shall be provided by MSEDCL/Procurer under this agreement.</p> <p>Further, in case early commissioning of the project, if BESSD sales storage capacity to third party, then MSEDCL shall not be responsible for providing charging power.</p>
“Change in Law”	shall have the meaning ascribed thereto in Article 12 of this Agreement;
“Commissioning”	The Project will be considered as commissioned if all equipment as per rated Project Capacity has been installed, synchronized with Grid, demonstrated all required parameters as per procedure in Schedule D of this Agreement and certification of the same by MSEDCL Commissioning Committee..
“Commercial Operation Date (COD)”	shall mean the date of next day on which the Project Capacity or the last part capacity of the Project (as the case may be) has achieved successful commissioning (as per provisions of this Agreement Documents).
“Competent Court of Law”	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
“Consents, Clearances and Permits”	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up Project and providing energy storage facility under this Agreement;
“Consultation Period”	shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a BESSD Preliminary Default Notice or MSEDCL Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

“Contract Year”	<p>shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that:</p> <p>(i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and</p> <p>(ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement</p>
"Contracted Capacity"	<p>shall mean ..... [Insert 100% of the Project Capacity] .....MW/_____MWh, which is the Energy Storage Capacity contracted with MSEDCL for supply of discharge capacity contracted between the BESSD to MSEDCL at the Delivery Point from the Project.</p>
“Controlling Shareholding”	<p>shall mean more than 50% of the voting rights and paid up share capital in the Company/ Consortium.</p>
“Day”	<p>shall mean a day, if not a Business Day, the immediately succeeding Business Day.</p>



“Debt Due”	<p>shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:</p> <p>The principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the ‘Principal’) but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;</p> <p>All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (a) above until the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due 2 (two) years prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Procurer Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by equity investors or their Affiliates for financing the Total Project Cost.</p> <p>Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken. Provided further that the Debt Due, on or after COD, shall in no case exceed 80% (eighty percent) of the Total Project Cost.</p>
“Delivery Point”	<p>shall mean the interconnection point at the 11 kV voltage level of MSEDCL Sub-station including the dedicated transmission line (if any) connecting the Project with the MSEDCL sub-station..</p> <p>Metering shall be done at this interconnection point where the power is injected into / drawn. For interconnection with grid and metering, the BESSD shall abide by the relevant and applicable regulations, Grid Code notified by the CERC/SERC or (and) Central Electricity Authority (Installation and Operation of Meters) Regulations, 2014 as amended and revised from time to time, or orders passed thereunder by the appropriate commission or CEA.</p>
“DISCOMs”	<p>shall mean the MSEDCL who have signed/will sign the BESSA (s) with BESSD for purchase of Battery Energy Storage Capacity;</p>
“Dispute”	<p>shall mean any dispute or difference of any kind between</p>

	MSEDCL and the BESSD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
"Due Date"	shall mean the thirtieth (30th) day after a Monthly Bill (including all the relevant documents) or a Supplementary Bill is received in hardcopy and duly acknowledged by the MSEDCL or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by the MSEDCL.
"Effective Date"	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
"Electricity Laws"	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Energy Accounts"	shall mean the state energy accounts as specified in the Grid Code issued by the appropriate agency for each Month (as per their prescribed methodology), including the revisions and amendments thereof
"Event of Default"	shall mean the events as defined in Article 13 of this Agreement;
"Expiry Date"	Shall mean the date occurring as on Twelve (12) years from the date of full commissioning of the Project, as per terms & conditions of this Agreement;
"Financial Closure"	shall mean compliance with the requirements under Article 3.1 of this Agreement;
"Financing Agreements"	shall mean the agreements pursuant to which the BESSD has sought financing for the Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of MSEDCL;
"Force Majeure" or "Force Majeure Event"	shall have the meaning ascribed thereto in Article 11 of this Agreement;
"MEDA"	"MEDA" shall mean the Maharashtra Energy Development Agency, the Nodal Agency constituted by the Government of Maharashtra for energy development of Renewable Energy in the State or it's successor, if any, as decided by the State Government from time to time;

“MERC”	shall mean the Maharashtra Electricity Regulatory Commission;
“Guidelines” or “Scheme”	shall mean the Guidelines for “Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary Services” issued by the Ministry of Power vide Gazette Resolution dated 10 <sup>th</sup> March 2022, including subsequent amendments and clarifications, issued until the last date of bid submission of the referred RfS;
“MSEDCL”	shall mean Maharashtra State Electricity Distribution Co. Limited
"Grid Code" / “IEGC” or “State Grid Code”	shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub- section (1) of Section 86 of the Electricity Act 2003, as applicable;
“Indian Governmental Instrumentality”	shall mean the GoI, the GoM and their ministries, inspectorate, departments, agencies, bodies, authorities, legislative bodies.
“Insurances”	shall mean the insurance cover to be obtained and maintained by the BESSD in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	shall mean the facilities on BESSD’s side of the Delivery Point for scheduling, transmitting and metering the electrical output and input in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipment, transformers, relay and switching equipment and protective devices, safety equipment and RTU, Data Transfer and Acquisition facilities for transmitting data subject to Article 7, the Metering System required for supply of power as per the terms of this Agreement;
“Invoice” or “Bill”	shall mean either a Monthly Bill / Supplementary Bill or a Monthly Invoice/ Supplementary Invoice raised by any of the Parties;
“Joint Control”	shall mean a situation where none of the promoter shareholders has more than 50% shareholding in the paid-up share capital and voting rights in the BESSD, and the control is exercised jointly;

“Late Payment Surcharge”	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
"Law"	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
“Letter of Credit” or “L/C”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“MNRE”	shall mean the Ministry of New and Renewable Energy, Government of India;
"Month"	shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;
"Party" and "Parties"	shall have the meaning ascribed thereto in the recital to this Agreement;
“Payment Security Mechanism”	shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
“Performance Bank Guarantee” or “PBG”	shall mean the irrevocable unconditional bank guarantee, submitted by the BESSD to MSEDCL in the form attached hereto as Schedule-C;
“Preliminary Default Notice”	shall have the meaning ascribed thereto in Article 13 of this Agreement;
“Project Capacity”	Shall mean [Insert the capacity] MW/_____MWh [as per LOI] of BESS, which [Insert name of BESSD] is required to “Build Own Operate” and supply such Battery Energy Storage Capacity as per provisions of this Agreement read harmoniously with RfS Documents and LOI.
"Prudent Utility Practices"	shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of Energy Storage System equipment and which practices, methods and standards shall be adjusted as necessary, to take account of: a) operation and maintenance guidelines recommended by the

	<p>manufacturers of the plant and equipment to be installed / used for the Project Battery Energy Storage Project;</p> <p>b) the requirements of Indian Law; and the physical conditions at the site of the Project;</p> <p>c) Installation, Operation, Maintenance and Safety Guidelines / Rules / Regulations for BESS/ Projects / Power Projects issued by Indian Government Instrumentality;</p>
“RBI”	shall mean the Reserve Bank of India;
“Rebate”	shall have the same meaning as ascribed thereto in Article 10.3.5 of this Agreement;
"Rupees", "Rs.", “₹”	shall mean Indian rupees, the lawful currency of India;
“Scheduled Commissioning Date” or “SCD” of the Project	shall mean ..... [Insert Date]; in relation to the contracted capacity or the part of the contracted capacity shall mean the date(s) corresponding to the date of commencement of supply of quoted storage capacity in the RfS (Request for Selection) (i.e. not more than 18 months from the date of BESPA).
“SLDC”	shall mean the State Load Dispatch Center of the Maharashtra State established under Sub-section (1) of Section 31 of the Electricity Act 2003;
“SLDC Charges”	shall mean the charges levied by the SLDC;
“State Transmission Utility” or “STU”	shall mean the State Transmission Utility notified by respective State Government under Sub-section (1) of Section 39 of the Act.
"Tariff" or “Applicable Tariff”	Shall have the same meaning as provided for in Article 9 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
“Termination Notice”	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;

“Unit/ Part Commissioning”	Subject to the compliance of conditions / procedure as detailed under Schedule-D of this Agreement, Unit / Part Commissioning shall mean the Energy Storage Power Capacity (AC MW/ AC MWh) to be commissioned as per provisions of this Agreement and schedule-E of this agreement and to be certified by the Commissioning Committee Subject to other applicable provisions, the minimum part commissioning capacity for the 1 <sup>st</sup> part will be 50 MW/100 MWh or 50% of the Project Capacity whichever is lower. The total number of instalments / phases / parts in which a Project can be commissioned will be not more than 3, i.e., 1 <sup>st</sup> Part of min. 50 MW/100 MWh or 50% of the Project Capacity whichever is less and 2 subsequent parts.
“Unit Commercial Operation Date (UCOD)”	shall mean the date of the next day of commissioning of the respective part(s) of the Battery Energy Storage Project subsequent to the demonstration of the compliance of commissioning as per this Agreement and witnessed by the Committee (as applicable) duly constituted by MSEDCL and also start of injection / drawl and scheduling of power from the BESS at the Delivery Point and availability / installation of all necessary arrangements / equipment including RTU for scheduling of power charged and discharged from the Project and transmission of data to the concerned authority as per applicable regulation;
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

## **1.2 Interpretation**

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

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees", "Rs" or new rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "Winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, Winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- 1.2.9 Words importing the singular shall include the plural and vice versa;
- 1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or

- may from time to time be, amended, varied, novated, replaced or supplemented;
- 1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- 1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- 1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- 1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.15 All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty-five (365) days;
- 1.2.16 The words “hereof” or “herein”, if and when used in this Agreement shall mean a reference to this Agreement;
- 1.2.17 The terms “including” or “including without limitation” shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- 1.2.18 This Agreement and other documents such as Request for Selection Documents, Guidelines including subsequent clarifications, amendments and further clarifications in regard to the tender shall be read in conjunction with each other and interpreted in harmonious manner. However, in case of any mismatch/contradiction between provisions of different documents, following shall be the order of precedence:
1. Battery Energy Storage Purchase Agreement
  2. RfS Document
  3. Lease Agreement



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

### **2.1 Effective Date**

- 2.1.1 This Agreement shall come into effect from the date of signing by both parties and such date shall be referred to as the Effective Date.
- 2.1.2 The Parties agree that decisions pertaining to adoption of the Tariff and approval of the same, for procurement of Contracted Capacity, shall be binding on all Parties concerned, as contained in the Electricity Act, 2003 and any amendments thereof.

### **2.2 Term of Agreement**

- 2.2.1 Subject to Article 2.3 and 2.4 of this Agreement, this Agreement shall be valid for a term from the Effective Date until the Expiry Date.

### **2.3 Early Termination**

- 2.3.1 This Agreement shall terminate before the Expiry Date if either MSEDCL or BESSD terminates the Agreement, pursuant to Article 13 of this Agreement.

### **2.4 Survival**

- 2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 16 (Governing Law and Dispute Resolution), Article 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

## **ARTICLE 3: CONDITIONS SUBSEQUENT**

### **3.1 Satisfaction of conditions subsequent by the BESSD**

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

BESSD shall sign Right-to-Use Agreement with MSEDCL along with BESP;A;

- (i) BESSD at its own cost and risk by ..... [Enter the date as on Twelve (12) Months after the Effective Date] shall make Project financing arrangements (i.e. *arrangement of necessary funds by the Battery Storage System Developer towards 100 % project cost either by way of commitment of funds by the Company from its internal resources (by a resolution passed by the Board of Directors) and/or tie up of funds through a bank/financial institution by way of sanction of a loan or firm commitment letter agreeing to finance*) for Projects(s) and shall provide necessary certificates to MSEDCL in this regard;
- (ii) Detailed Project Report (DPR) of the Project, detailing out project configuration and proposed commissioning schedule of the Project.
- (iii) The BESSD shall also submit to MSEDCL the relevant documents as stated above, complying with the Conditions Subsequent, within Twelve (12) months from the Effective Date.
- (iv) The BESSD will have to submit the required documents to MSEDCL at least 14 days prior to the scheduled Financial Closure date. In case of delay in submission of documents mentioned above, MSEDCL shall not be liable for delay in verification of documents and subsequent delay in Financial Closure.

### **3.2 Consequences of non-fulfilment of conditions subsequent and financial closure**

- 3.2.1 In case of a failure to submit the documents as above, MSEDCL may encash the Performance Bank Guarantee submitted by the BESSD, terminate this Agreement

and remove the Project by giving a notice to the BESSD in writing of at least thirty (30) days, unless the delay BESSD is on account of delay in allotment of Land not owing to any action or inaction on the part of the BESSD or caused due to a Force Majeure. Unless extended as per provisions of Article 3.2.2 (i) of this Agreement in writing, the termination of the Agreement shall take effect upon the expiry of the 30th day of the above notice.

- 3.2.2 (i) An extension, without any impact on the Scheduled Commissioning Date, can however be considered, on the sole request of BESSD, on payment of Rs. 1000/- per day per MW to MSEDCL. Such extension charges are required to be paid to MSEDCL in advance, for the period of extension required. In case of any delay in depositing this extension charge, BESSD shall pay an interest on this extension charge for the days lapsed beyond due date of Financial Closure @ SBI-MCLR (1Year). In case such delay in making payment of the extension charges to MSEDCL is more than 30 days, the termination of the Agreement shall take effect pursuant to issuance of termination notice of 30 days which may be issued by MSEDCL. In case of the BESSD meeting the requirements of conditions subsequent and financial closure before the last date of such proposed delay period, the excess amount deposited by the BESSD shall be returned by MSEDCL without interest. This extension will not have any impact on the Scheduled Commissioning Date. Any extension charges paid so by the BESSD, shall be returned to the BESSD without any interest on achievement of successful commissioning within the Scheduled Commissioning Date, on pro-rata basis, based on the project capacity commissioned as on Scheduled Commissioning Date. However, in case the BESSD fails to commission the Contract Capacity by Scheduled Commissioning Date, the extension charges deposited by the BESSD shall not be refunded by MSEDCL. This shall be without prejudice to the further right of MSEDCL to claim liquidated damages for the delay in achieving the Commissioning of the project.
- 3.2.3 For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.
- 3.2.4 In case of inability of the BESSD to fulfil the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfilment of the Conditions

Subsequent and Financial Closure as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.

- 3.2.5 Provided that due to the provisions of this Article 3.2.1, any increase in the time period for completion of conditions subsequent and financial closure mentioned under Article 3.1, shall not lead to an equal extension in the Scheduled Commissioning date

### **3.3 Performance Bank Guarantee**

- 3.3.1 The Performance Bank Guarantee (PBG) having validity from the date of submission of PBG until 10 months after the SCD (with additional claim period as per RBI norms) submitted for a value of 18.5 Lakh/MW (being a genuine pre-estimate as agreed by the Parties) to be furnished under this Agreement shall be for guaranteeing the commencement of the supply (injection / drawl) of power / energy up to the Project Capacity within the time specified in this Agreement as per Schedule-C.
- 3.3.2 The failure on the part of the BESSD to furnish and maintain the Performance Bank Guarantee shall be a material breach of the term of this Agreement on the part of the BESSD.
- 3.3.3 If the BESSD fails to commence supply of power from the Scheduled Commissioning Date specified in this Agreement or any further extension thereof granted by MSEDCL, subject to conditions mentioned in Article 4.5, MSEDCL shall encash the Performance Bank Guarantee equivalent to the amount calculated as per liquidated damages applicable under Article 4.6 as on the date of encashment without prejudice to the other rights of MSEDCL under this Agreement.
- 3.3.4 BESSD acknowledges and accepts that the amount of the Performance Bank Guarantee and the methodology specified herein above for calculation of the compensation payable for non-fulfillment of conditions subsequent within the stipulated time as well as non-commencement of supply within the stipulated time is a genuine and accurate pre-estimation of the actual loss that will be suffered by MSEDCL. BESSD further acknowledges and accepts that a breach of any of the obligations contained herein result in injuries and that the amount of the liquidated

damages or the method of calculating the liquidated damages specified in this document is a genuine and reasonable pre estimate of the damages that may be suffered by MSEDCL in each case specified under this Agreement.

### **3.4 Return of Performance Bank Guarantee/ Payment on Order Instrument**

- 3.4.1 Subject to Article 3.3, MSEDCL shall return / release the Performance Bank Guarantee within 45 days after the successful Commissioning of the Project after taking into account any liquidated damages / penalties due to delays in as per provisions stipulated in this Agreement.
- 3.4.2 The return / release of the Performance Bank Guarantee shall be without prejudice to other rights of MSEDCL under this Agreement.

## **ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT**

### **4.1 BESSD's Obligations**

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

4.1.1.1 The BESSD shall be solely responsible and make arrangements for associated infrastructure for development of the Project and for Connectivity with the MSEDCL sub-station till Delivery Point for confirming the evacuation of power by the Scheduled Commissioning date and all clearances related thereto. Connectivity has been assured to be provided to the BESSD, and necessary applications in this regard, will be required to be made by the BESSD. All the requisite costs associated with and including fees for obtaining connectivity shall be borne by the BESSD.

4.1.1.2 Obtaining all Consents, Clearances and Permits as required and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement. Except for the Earmarked Land and Connectivity for the Project, MSEDCL shall have no obligation to recommend to any department/agency or the Govt. for the grant/permission for the Project. The BESSD shall, on his own, obtain permissions/ sanctions from Government authorities, if any required for establishing and operating (including for Charging and Discharging from BESS) the project. Any steps that may be taken by MSEDCL in regard to grant of such consents and permits or any other approval to be taken by the BESSD shall only be a voluntary endeavor with no intention of being bound by any legal or binding obligation.

4.1.1.3 Designing, constructing, erecting, commissioning, completing and testing the Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices.

4.1.1.4 The commencement of charging & discharging of power / energy up to the Contracted Capacity to MSEDCL no later than the Scheduled Commissioning Date and continuance of the charging & discharging of power throughout the term of the Agreement;

4.1.1.5 Connecting the Project switchyard with the Interconnection Facilities at the

4.1.1.6 Delivery Point; The BESSD shall make adequate arrangements to connect the Project switchyard with the Interconnection Facilities at Interconnection / Metering / Delivery Point.

- 4.1.1.7 Owning the Project throughout the Term of Agreement free and clear of encumbrances, except those expressly permitted under Article 15.
- 4.1.1.8 Maintaining its shareholding pattern as per Schedule-F in the agreement.
- 4.1.1.9 Fulfilling all other obligations required to be undertaken by the BESSD under this Agreement for development of Project on “Build, Own, Operate” basis and supply of BESS Capacity during Term of this Agreement and as per provisions of this Agreement, RfS and LOI.
- 4.1.1.10 The BESSD shall be responsible to for directly coordinating and dealing with the MSEDCL, Load Dispatch Centers, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of Stored Energy Capacity and due compliance with deviation and settlement mechanism and the applicable Grid code/State/Central Regulations, acknowledging that the BESSD and MSEDCL are the Grid connected entities in respect of the Battery Energy Storage Capacity contracted under this Agreement.
- 4.1.1.11 The BESSD shall fulfil the technical requirements according to criteria mentioned under Schedule-E for Technical requirement for Project under the Guidelines.
- 4.1.1.12 Further, the Project being implemented under this Agreement shall fulfil the criteria as per MERC Regulations on grid connectivity.
- 4.1.1.13 As part of scheduling of power / energy from / to the Project for discharging / charging, the BESSD will be required to punch-in their respective schedules and subsequent revisions, by themselves, at the interface of SLDC for the corridor of power flow, as per the Regulations in force, under intimation to MSEDCL and in consultation with MSEDCL. MSEDCL may facilitate in identification of any discrepancy and assist the BESSD for its early rectification without any liability on MSEDCL. The BESSD shall be solely responsible for discrepancy identification and its rectification to avoid any rejection/less payment of invoices / penalty.
- 4.1.1.14 After signing of BESPA, the BESSD shall apply for drawl NOC(s) from the STU as per the power mapping provided by MSEDCL.
- 4.1.1.15 The BESSD shall obtain financial closure within 12 (twelve) months period and satisfy all conditions mentioned in Article 3.1.
- 4.1.1.16 BESSD shall be liable to make available on first priority to MSEDCL, all available capacity from the Project namely and there shall be no commitment entered into by the BESSD affecting the said rights of MSEDCL.

4.1.1.17 BESSD will have to comply with the Charging and Discharging Schedule as intimated by SLDC/MSEDCL. Frequent deviations from schedule by BESSD on account of commercial gain shall be considered under the material breach of this agreement.

4.1.1.18 After completion of BESPAs tenure of 12 Years or early termination or any other reason specified in agreement, BESSD shall clear the land provided by the MSEDCL on lease basis. All the infrastructure developed by BESSD needs to be cleared at the time of handing over the land to MSEDCL and that expenses shall be borne by BESSD.

## **4.2 Information regarding Interconnection Facilities**

4.2.1 The BESSD shall be required to obtain all information from the STU/MSEDCL /concerned authority with regard to the Interconnection Facilities as is reasonably necessary to enable it to design, install and operate all interconnection facilities on the BESSD's side of the Delivery Point to enable injection / drawl of electricity at the Delivery Point. The transmission of power / energy to / from up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the BESSD at its own cost.

4.2.2 Penalties, fines and charges imposed by the MSEDCL/MSETCL/ STU under any statute or regulation in relation to delay in commissioning of Project shall be under the Scope of BESSD and there shall be no recourse to MSEDCL in this regard. In case, there is any liability on MSEDCL under the extant Regulations for any delay in commissioning of BESSD, MSEDCL shall be reimbursed for the same from BESSD and MSEDCL shall be entitled to encash the Bank Guarantees available with it or adjust against the payments due to BESSD for recovery of such amounts.

4.2.3 The responsibility of getting connectivity with the transmission system up to the Interconnection Point, will lie with the BESSD. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the BESSD at his own cost. The maintenance of Transmission system up to the designated point as per the applicable terms and conditions shall be the responsibility of the BESSD. All costs, charges and losses up to and including at the Interconnection Point associated with this arrangement will also be borne by the BESSD.



4.2.4 Not Used.

4.2.5 The arrangement of connectivity shall be made by the BESSD through a dedicated transmission line, if applicable. The entire cost of transmission including cost of construction offline, any other charges, losses etc. from the Project up to the Interconnection Point will be borne by the BESSD.

Treatment of STU Charges & losses shall be as per the extent regulation/orders/guidelines.

4.2.6 Following studies may be conducted (not limited to below) by BESS Developer(s) in this regard as per requirements of STU:

- i. Harmonic studies considering network and BESS system along with flicker studies
- ii. Transient and dynamic studies
- iii. Small signal stability studies
- iv. Sub-Synchronous Oscillations/ Sub-Synchronous Resonance / Sub-Synchronous Torsional Interaction studies
- v. Sub-synchronous control interactions studies between different converter based equipment.
- vi. Any other studies stipulated by STU.

1. In addition, BESS system shall comply to requirements/performance parameters stipulated in MERC Grid connectivity Regulations and its amendments.

2. Communication Equipment Requirement at BESS end shall be as per stipulations of STU:

BESSD will provide UGFO/Approach cable (having minimum 12 Fibers) from BESS end to the control room.

BESSD will provide FOTE (STM-16) terminal equipment, FODP and PMU at the BESS end.

3. Communication Equipment Requirement at STU end shall be as per stipulations of STU:

At STU station (bays are provided by STU): BESS Developer to provide suitable optical interface at STU Substation FOTE for integration.

#### **4.3 Purchase and sale of Contracted Capacity**

4.3.1 Subject to the terms and conditions of this Agreement, the BESSD undertakes to sell

to MSEDCL and MSEDCL undertakes to pay Applicable Tariff as per this Agreement for the Battery Energy Storage Capacity up to the Contracted Capacity at the Delivery Point.

#### **4.4 Right to Project / Contracted Capacity**

- 4.4.1 MSEDCL, in any Contract Year, shall not be obliged to off-take any capacity beyond/ over and above Contracted Capacity.

Moreover, during a day in any Contract year, BESSD shall not be asked as well as BESSD shall not be allowed to schedule for more than 1 Cycles / day. For the purpose of this Agreement, Cycle shall mean charging of the BESS up to the Contracted capacity followed by discharge of such stored energy including any intervening recovery time as specified in Schedule- A of this Document. The BESSD shall not use the Contracted Capacity for any purpose other than that specified in this Agreement.

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

- 4.4.2.1 **Minimum Annual Average Availability of 95%:** During any Contract Year for the Contracted Capacity, BESSD shall be required to maintain minimum annual average availability of 95%.

The Monthly Average Availability shall be calculated for each month. On the basis of monthly Availability, average of each month taken for calculation of Annual Average Availability. While considering Annual Average availability, only lesser than 95% or up to 95% Monthly Average Availability to be added to derive the Annual Average Availability. The illustration is provided as under,

**Illustration:**

Month	Monthly Average Availability	Monthly Average Availability for Calculation	Annual Average Availability = $\{\sum(\text{Monthly Average Availability})\} / 12$
1	95%	95%	$= (95\%+95\%+93\%+95\%+93\%+95\%+95\%+92\%+95\%+95\%+91\%+90\%)/12$ $=93.66\% \sim 94\%$
2	95%	95%	
3	93%	93%	
4	97%	95%	
5	93%	93%	
6	98%	95%	
7	95%	95%	
8	92%	92%	
9	96%	95%	
10	95%	95%	
11	91%	91%	
12	90%	90%	

If Annual Average Availability found lesser then minimum requirement than the liquidated damages shall be applicable twice the capacity charges. Annual Average Availability shall be calculated as per methodology given in Schedule-A.

In case of shortfall in meeting the above criteria, the BESSD shall be levied liquidated damages for such shortfall and shall duly pay such damages to MSEDCL. Amount of such liquidated damages shall be twice the Capacity Charges (Capacity Charges shall mean Applicable Tariff as defined under Article 9 of the BESPAs) for the capacity not made available. The Liquidated damages for shortfall of Annual Average Availability shall be applicable at the end of each Year and shall be deducted from the invoices raised by the BESSD.

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

4.4.2.2 **Round Trip Efficiency:** The BESSD shall maintain AC to AC roundtrip efficiency (RtE) of system on a monthly basis. Calculation of Round-Trip Efficiency shall be as per the methodology specified in Schedule- A.

4.4.2.3 The BESSD shall be liable for liquidated damages, if any, as per following criteria:

4.4.2.3.1 For  $80\% \leq \text{RtE} < 95\%$  there shall be a liquidated damage levied @ Rs. APPC charge of previous financial year of MSEDCL of excess conversion losses considering system RtE = 95%

4.4.2.3.2 For  $\text{RtE} < 80\%$ , there shall be a liquidated damage levied @ APPC charge of previous financial year of the Discoms of excess conversion losses considering system RtE = 95% , and tariff payment for the corresponding month shall not be made to the BESSD.

4.4.2.4 Taking into consideration capacity degradation, the minimum dispatchable capacity to be made available by the BESSD at the end of a given year shall be as follows:

Year	Min. Dispatchable Capacity at the end of Year (as a % of Capacity at the Beginning of Life/ Final COD)
1	97.50%
2	95.00%
3	92.50%
4	90.00%
5	87.50%
6	85.00%
7	82.50%
8	80.00%
9	78.50%
10	75.00%
11	72.50%
12	70.00%

4.4.2.5 Performance criteria to be demonstrated by the Project have been detailed out in Schedule-A of this Agreement.

#### 4.4.3 Shortfall in meeting Performance Criteria

Following provisions shall be applicable on the Contracted Capacity guaranteed to be off taken by MSEDCL:

- Subsequent to COD of full Project Capacity, in case the Annual Availability demonstrated by the BESSD is less than the minimum as specified above, such shortfall in performance shall make the BESSD liable to pay the liquidated damages provided in the BESPAs to MSEDCL.
- Liquidated damages on account of shortfall in meeting the minimum Availability criteria as per Article 4.4.2 (a) will be computed as follows:

Liquidated damages =  $(A - B) \times C \times D \times n \times 2$  where,

A is Guaranteed Annual Availability as per Article 4.4.2 (a) above;

B is Actual Annual System Availability, as calculated as per Schedule-A of this Agreement;

C is Contracted Capacity;

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

n is the no. of months.

- The liquidity damages for each non-compliance of Annual Average Availability shall be calculated at the end of each year and L.D shall be deducted from monthly invoice.
- In case the BESSD fails to meet the monthly RtE demonstration as per Article 4.4.2 (b), additional Liquidated Damages for the unavailability of the required minimum RtE shall be applicable for the entire month.
- The liquidity damages for each non-compliance of monthly RtE shall be deducted from each monthly invoice.

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

#### **4.5 Extensions of Time**

4.5.1 In the event that the BESSD is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

4.5.1.1 any MSEDCL Event of Default; or

4.5.1.2 Force Majeure Events affecting MSEDCL or

4.5.1.3 Force Majeure Events affecting the BESSD,

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

4.5.2 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of 180 days (or any mutually agreed extended period) from the date of the Force Majeure, any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.10.

4.5.3 If the Parties have not agreed within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Article 16.

4.5.4 As a result of such extension on account of Article 4.5.1, the newly determined Scheduled Commissioning Date and newly determined Expiry Date shall be deemed to be the Scheduled Commissioning Date and the Expiry Date for the purposes of this Agreement.

4.5.5 Delay in commissioning of the project beyond the scheduled commissioning date for reasons other than those specified in Article 4.5.1 shall be an event of default on part of the BESSD and shall be subject to the consequences specified in the Article 4.6.

#### **4.6 Liquidated Damages not amounting to penalty for delay in Commissioning**

4.6.1 The Project shall be fully commissioned within the Scheduled Commissioning Date as defined in this Agreement. If the BESSD is unable to commission the Project by

the Scheduled Commissioning Date for the reasons other than those specified in Article 4.5.1, the BESSD shall pay to MSEDCL, damages for the delay in such commissioning and making the Contracted Capacity available for dispatch by the Scheduled Commissioning Date as per the following:

- (a) Delay beyond the Scheduled Commissioning Date up to (& including) the date of commissioning, as part of the liquidated damages, the total PBG amount for the Project shall be encashed on per-day basis and proportionate to the balance capacity not commissioned. For the purpose of calculations of the liquidated damages, 'month' shall be considered consisting of 30 days.
- (b) Delay beyond Nine (9) Months from SCD: The BESPA capacity shall stand reduced/amended to the Project Capacity commissioned, the entire PBG will be encashed by MSEDCL, and the BESPA for the Project shall stand terminated for the balance un-commissioned capacity.
- (c) For avoidance of doubt it is clarified that provisions of Article 4.6.1 will be applicable even in cases where no capacity (**i.e. 0 MW**) is commissioned.

4.6.2 The BESSD further acknowledges and accepts that the amount of the liquidated damages as specified above is a fixed, genuine and reasonable pre-estimate of the damages that may be suffered by MSEDCL.

#### **4.7 Acceptance/Performance Test**

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

#### **4.8 Third Party Verification**

- 4.8.1 The BESSD shall be further required to provide entry to the site of the Project free of all encumbrances at all times during the Term of the Agreement to MSEDCL (or its authorized representatives) and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the BESSD at the site of the Project. The BESSD shall provide full support to MSEDCL and/or the third party in this regard.
- 4.8.2 The third party may verify the construction works/operation of the Project being carried out by the BESSD and if it is found that the construction works/operation of the Project is not as per the Prudent Utility Practices, it may seek clarifications from BESSD or require the works to be stopped or to comply with the instructions of such third party.

#### **4.9 Breach of Obligations**

- 4.9.1 The Parties herein agree that during the subsistence of this Agreement, the BESSD would have no right to negotiate or enter into any dialogue with any third party for the sale of Contracted Capacity which is the subject matter of this Agreement including in case of any dispute between the parties pending the orders of the adjudication authority under the Dispute Resolution Provisions. It is the specific understanding between the Parties that such bar will apply throughout the entire term of this Agreement.



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

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

- 5.1.1 The BESSD shall give the concerned SLDC, MEDA, MSEDCL/MSETCL and MSEDCL at least sixty (60) days' advanced preliminary written notice and at least thirty (30) days' advanced final written notice, of the date on which it intends to synchronize the Project to the Grid System.
- 5.1.2 Subject to Article 5.1.1, the Project may be synchronized by the BESSD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System.
- 5.1.3 The synchronization equipment and all necessary arrangements / equipment including RTU / any other equipment for charge and discharge of power from the Project and transmission of data to the concerned authority as per applicable regulation shall be installed by the BESSD at its facility of the Project at its own cost. The BESSD shall synchronize its system with the Grid System only after the approval of synchronization scheme is granted by the head of the concerned substation/Grid System and checking/verification is made by the concerned authorities of the Grid System.
- 5.1.4 The BESSD shall immediately after each synchronization/tripping of system, inform the sub-station of the Grid System to which the Project is electrically connected in accordance with applicable Grid Code under intimation to MSEDCL. In addition, the BESSD at its own risk and cost, will be required to arrange for the charging and discharging of power for carrying to carry out operational/ functional test prior to commercial operation as well as for commissioning of the Project. For avoidance of doubt, it is clarified that Synchronization / Connectivity of the Project with the grid shall not to be considered as Commissioning of the Project.
- 5.1.5 The BESSD shall commission the Project as detailed in **“Schedule-D: Commissioning Procedure”** within eighteen (18) Months of the Effective Date of BESPA. Declaration of COD / UCOD shall only be done by MEDA subject to the demonstration of the compliances as per Schedule-D.

- 5.1.6 Part commissioning of the Project, without imposition of any liquidated damages in terms of the BESPAs, shall be accepted by MSEDCL subject to the condition that the minimum part commissioning capacity for the 1st part will be 50 MW or 50% of Project Capacity, whichever is lower, without prejudice to the imposition of penalty on the part which is not commissioned. The total number of instalments in which a Project can be commissioned will be not more than 3, i.e., 1st initial instalment of 50 MW or 50% of the project capacity as the case may be and 2 subsequent instalments.
- 5.1.7 However, the SCD will not get altered due to part commissioning. Irrespective of dates of part commissioning or full commissioning, the BESPA will remain in force for the Term as defined in this Agreement.
- 5.1.8 The Parties agree that for the purpose of commencement of the BESS capacity by the BESSD to MSEDCL, liquidated damages for delay etc., the Scheduled Commissioning Date (or extended Scheduled Commissioning Date) as defined in this Agreement shall be the relevant date.
- 5.1.9 Early Commissioning - The BESSD shall be permitted for full commissioning as well as part commissioning of the Project even prior to the Scheduled Commissioning Date. Early commissioning of the Project will be allowed solely at the risk and cost of the BESSD, and MSEDCL may purchase the BESS capacity from such early commissioned Project at BESPA tariff.

Such intimation for early commissioning shall be provided to MSEDCL at least 15 days before the proposed early commissioning date as per the Commissioning Procedure. In case there is no response provided by MSEDCL within 7 days from the receipt of such intimation, such early commissioned capacity shall be deemed to have been rejected by MSEDCL. In case MSEDCL does not agree to purchase such capacity, early part/full commissioning of the Project shall still be allowed and the BESSD will be free to sell such capacity to a third party at its own risk and cost; until SCD or the date of commencement of procurement of BESS Capacity notified by MSEDCL, whichever is earlier. In such cases, a Provisional Commissioning Certificate will be issued to BESSD for period up to SCD or date of commencement of Storage Capacity Procurement (whichever is earlier), along with a NOC for sale of Storage Capacity to 3<sup>rd</sup> Party for such period. UCOD/COD of the Project under

the BESPA will be the date on which the commissioning certificate is issued upon successful commissioning of the part/full capacity of the Project. Subject to the provisions of this Agreement, in case of early commissioning, if BESSD sells any capacity to a third party, the BESSD will have to again demonstrate 100% of Contracted Capacity (as per the Commissioning Procedure) to the Procurer from the date of commencement of off-take of capacity by the Procurer.

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

### **6.1 Dispatch and Scheduling**

- 6.1.1 The BESSD, in consultation with MSEDCL, shall be required to charge/ discharge the Battery System as per the applicable regulations / requirements / guidelines of CERC / MERC/SLDC or any other competent agency and same being recognized by the SLDC or any other competent authority / agency as per applicable regulation/ law / direction and maintain compliance to the applicable Codes/ Grid Code requirements and directions, if any, as specified by concerned SLDC from time to time. Any deviation from the Schedule will attract the provisions of applicable regulation / guidelines / directions and any financial implication on account of this shall be on the account of the BESSD.
- 6.1.2 The BESSD shall be responsible for directly coordinating and dealing with MSEDCL, SLDCs, Regional Power Committees, and other authorities in all respects in regard to declaration of availability, scheduling and dispatch of charging and discharging power and due compliance with deviation and settlement mechanism and the applicable Grid code Regulations, acknowledging that the BESSD and MSEDCL are the Grid connected entities.
- 6.1.3 DSM charges, if any, shall be levied separately on the BESSD as applicable, for the charging and discharging activities. DSM / UI charges on this account shall be directly paid by the BESSD as applicable. Reactive power charges shall be on account of the BESSD during charging and discharging, as per CERC/MERC regulations.
- 6.1.4 The BESSD shall take separate, metered connection for the Auxiliary Power load of BESS. Cost of Auxiliary power shall be borne by the BESSD as per the MERC regulations. BESSD may opt open access/own source of generation as per Captive / O.A consumer guidelines of MERC.

## **ARTICLE 7: METERING**

### **7.1 Meters**

- 7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the BESSD shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2014, the Grid Code, as amended and revised from time to time.
- 7.1.2 The BESSD shall bear all costs pertaining to installation, testing, calibration, maintenance, renewal and repair of meters at BESSD side of Delivery Point for injection and drawl of power from the Grid during discharging and charging of BESS.
- 7.1.3 A set of Main Meter and Check Meter shall be required to be installed at MSEDCL/MSETCL's/s side and a Back-Up Meter shall be required to be installed at generation side.

### **7.2 Reporting of Metered Data and Parameters**

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

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

- (i) The Main Metering System, the Backup Metering System and all the ABT Compliant Meters shall be sealed in the presence of representatives of BESSD and MSEDCL/MSETCL.
- (ii) When the Main Metering System and / or Backup Metering System and / or any component thereof is found to be outside the acceptable limits of accuracy or otherwise not functioning properly, it shall be repaired, re-calibrated or replaced by the BESSD and / or DISCOM / MSEDCL/MSETCL at BESSD's cost, as

soon as possible.

- (iii) Any meter seal(s) shall be broken only by DISCOM / MSEDCL/MSETCL representative in the presence of BESSD representative whenever the Main Metering System or the Backup Metering System is to be inspected, tested, adjusted, repaired or replaced.
- (iv) All the Main and Check Meters shall be calibrated at least once in a period of three years.
- (v) In case, both the Main Meter and Check Meter are found to be beyond permissible limit of error, both the meters shall be calibrated immediately and the correction applicable to main meter shall be applied to the energy registered by the Main Meter at the correct energy for the purpose of energy accounting / billing for the actual period during which inaccurate measurements were made, if such period can be determined or, if not readily determinable, shall be the shorter of:
  - A. the period since immediately preceding test of the relevant Main meter, or
  - B. one hundred and eighty (180) days immediately preceding the test at which the relevant Main Meter was determined to be defective or inaccurate.

#### **7.4 Records**

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

-

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

## **ARTICLE 8: INSURANCES**

### **8.1 Insurance**

8.1.1 The BESSD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of BESPA, Insurances against such risks to keep the 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 Agreements, and under the applicable laws.

8.1.2 The BESSD shall submit the Insurance copy to Procurer, at the time of commissioning of project.

### **8.2 Application of Insurance Proceeds**

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

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

8.2.2 If a Force Majeure Event renders the Project no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, MSEDCL shall have claim on such proceeds of such Insurance limited to outstanding dues of MSEDCL against BESSD.

### **8.3 Effect on liability of MSEDCL**

8.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the BESSD can claim compensation, under any Insurance shall not be charged to or payable by Procurer. It is for the BESSD to ensure that appropriate insurance coverage is taken for payment by the insurer for the entire loss and there is no under

insurance or short adjustment etc.



## **ARTICLE 9: APPLICABLE TARIFF**

- 9.1** The BESSD shall be entitled to receive the Tariff of INR /MW/Month [Insert the Tariff discovered through the bidding process conducted by MSEDCL], fixed for the entire term of this Agreement, with effect from commissioning of Project or part thereof from the SCD, the Contracted Capacity made available to the MSEDCL during BESPA Period, as per the provisions of this agreement & as certified in the SEA by Maharashtra SLDC,
- 9.2** For each KVARH drawn from the grid, the BESSD shall pay at the rate determined by MERC to MSEDCL/MSETCL from time to time.

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

### **10.1 General**

10.1.1 From the commencement of availability of BESS Capacity, MSEDCL shall pay to the BESSD the monthly Tariff Payments subject to the adjustments as per provisions of this Agreement including Article 6, in accordance with Article 9. All capacity charge Payments by MSEDCL shall be in Indian Rupees.

10.1.2 Subject to the provision of this Agreement, BESSD shall be required to make arrangement of auxiliary power at its own risk and cost.

### **10.2 Delivery and Content of Monthly Bills/Supplementary Bills**

10.2.1 The BESSD shall issue to MSEDCL hard copy of a signed Monthly Bill/Supplementary Bill for the immediately preceding Month/relevant period, including the time-block-wise data in the tabular format as per Illustration in Schedule-A, along with all relevant documents. The BESSD shall also submit calculations of System Availability and Round-trip Efficiency in line with provisions of this Agreement, as part of the Monthly Bill/Supplementary Bill.

10.2.2 As per applicable regulation(s) of the Appropriate Commission(s), charges pertaining to scheduling of power beyond delivery point, if any, shall be borne by MSEDCL.

### **10.3 Payment of Monthly Bills**

10.3.1 Subject to the provisions of Article 10.3.4, MSEDCL shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the BESSD, as shall have been previously notified by the BESSD. The BESSD shall open a bank account (the "BESSD's Designated Account") for all Tariff Payments (including Supplementary Bills) to be made by MSEDCL to the BESSD, and notify MSEDCL of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. MSEDCL shall also designate a bank account at Vadodara ("MSEDCL Designated Account") for payments to be made by the BESSD to MSEDCL, if any, and notify the BESSD of the details of such account ninety (90)

Days before the Scheduled Commissioning Date. MSEDCL and the BESSD shall instruct their respective bankers to make all payments under this Agreement to the BESSD's Designated Account or MSEDCL's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

- i) deductions required by the Law; and
- ii) Amount claimed by MSEDCL, if any, from the BESSD, will be adjusted from the monthly energy payment.

#### **10.3.3 Late Payment Surcharge**

In the event of delay in payment of a Monthly Bill by MSEDCL beyond Due Date, a Late Payment Surcharge shall be payable on the payment outstanding after the Due Date, at the Base rate of Late Payment Surcharge applicable for the period for the first month of default.

"Base rate of Late Payment Surcharge" means the marginal cost of funds-based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent.

Late Payment Surcharge shall be payable on the payment outstanding after the Due Date at the base rate of Late Payment Surcharge applicable for the period for the first month of default. The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time. The Late Payment Surcharge shall be claimed by the BESSD through the Supplementary Bill.

Subject to the Article 9 of this Agreement, in the event of early Commissioning of the Project and subject to acceptance by MSEDCL, the payment for the Capacity charges may be accounted from the date of UCOD, and BESSD would be allowed to raise Bills against such capacity as per Article 10.2.1, subject to the conditions as stipulated in Article 9. However, payment against the 1st such bill raised by the BESSD, will be made subject to acceptance of the bill by the MSEDCL.

#### 10.3.4 **Rebate**

For payment of Monthly Bill by MSEDCL, if paid before Due Date of Payment, a Rebate shall be deducted by MSEDCL at the rate of seven (7) percent in excess of the applicable SBI 1 year Marginal Cost of Funds Based Lending Rate (MCLR) per annum / any replacement thereof by SBI, on the amount paid before due date, calculated on a week or part thereof basis viz.

$$\frac{(\text{SBI MCLR rate} + 7\%)}{52} \text{ per week or part thereof.}$$

#### 10.3.5 **Payment Security Mechanism**

##### **Letter of Credit (LC):**

10.3.6 MSEDCL shall provide to the BESSD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained which may be drawn upon by the BESSD in accordance with this Article.

10.3.7 Before the start of supply of storage capacity, MSEDCL shall, through a scheduled bank, open a Letter of Credit in favour of the BESSD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to 100% of the estimated average monthly billing;
- ii) for each subsequent Contract Year, equal to 100% of the average of the monthly billing of the previous Contract Year.

10.3.8 Provided that the BESSD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawl in a Month.

10.3.9 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, MSEDCL shall restore such shortfall before next drawl.

10.3.10 MSEDCL shall cause the scheduled bank issuing the Letter of Credit to intimate

the BESSD, in writing regarding establishing of such irrevocable Letter of Credit.

10.3.11 MSEDCL shall ensure that the Letter of Credit shall be renewed not later than its expiry.

10.3.12 All costs relating to opening, maintenance of the Letter of Credit shall be borne by BESSD.

10.3.13 If MSEDCL fails to pay undisputed Monthly Bill or Supplementary Bill or a part thereof within and including the Due Date, then, subject to Article 10.4.6 & 10.5.1, the BESSD may draw upon the Letter of Credit, and accordingly the bank shall pay, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, in accordance with Article 10.4.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill (only for energy related bills) which has remained unpaid to BESSD and;
- ii) a certificate from the BESSD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date;

In case of wrongful drawl of the Letter of Credit, the BESSD would be liable to further interest equivalent to late payment surcharge considered from the date of drawl of letter of credit.

#### **10.4 Disputed Bill**

10.4.1 If the MSEDCL disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 50% of the invoice amount provided either party shall have the right to approach the MERC to effect a higher or lesser payment on the disputed amount and it shall within thirty (30) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

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

It is clarified that the non-issuance of a Bill Dispute Notice or payment of the Bill Amount would not foreclose MSEDCL's rights and interests in regard to the Bills

10.4.2 or any claims and MSEDCL may also raise a Dispute at a later stage and take appropriate steps.

10.4.3 If the BESSD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.4.1 the BESSD shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

10.4.4 If the BESSD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.4.1, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the MSEDCL providing:

- i) reasons for its disagreement;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its counter-claim.

10.4.5 Upon receipt of the Bill Disagreement Notice by the MSEDCL under Article 10.4.3, authorized representative(s) of the MSEDCL and BESSD shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

10.4.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 10.4.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

10.4.7 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 50% of the invoice amount in the Monthly Bill.

## **10.5 Quarterly and Annual Reconciliation**

10.5.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within 30 days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within 30 days to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late

Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

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

#### **10.6 Payment of Supplementary Bill**

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

Change in Law as provided in Article 12 and such Supplementary Bill shall be paid by the other Party.

10.6.2 MSEDCL shall remit all amounts due under a Supplementary Bill raised by the BESSD to the BESSD's Designated Account by the Due Date, SLDC/RLDC or scheduling charges and transmission charges (if applicable). No surcharge will be applicable other than that on the monthly energy payment and associated debit and credit note.

## **ARTICLE 11: FORCE MAJEURE**

### **11.1 Definition of Force Majeure**

A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly prevents or unavoidably delays the performance by the Party (the Affected Party) of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices.

An Affected Party means MS&EDCL or the BESSD whose performance has been affected by an event of Force Majeure.

### **11.2 Force Majeure Events**

- a) Act of God, including, but not limited to lightning, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, pandemic, cyclone, typhoon or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of Procurer;
- b) radioactive contamination or ionizing radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Project by the Affected Party or those employed or engaged by the Affected Party.
- c) The discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land and/or as per prudent industry practices.
- d) Exceptionally adverse weather condition which are in excess of the statistical measure of the last hundred (100) years.
- e) any act of war (whether declared or undeclared), invasion, armed conflict or



act of foreign enemy, blockade, embargo, revolution, riot, insurrection,  
terrorist or

- f) military action, or Industry wide strikes and labor disturbances, having a nationwide impact in India, if and only if it is declared / notified by the competent state / central authority / agency (as applicable)
- g) Nationalization or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the BESSD, as a result of which the BESSD or its shareholders are deprived (wholly or partly) of their rights or entitlements under this BESPA. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the BESSD or the BESSD related parties
- h) An event of Force Majeure affecting delivery / offtake of power / Contracted Capacity from BESSD to Procurer.

### **11.3 Force Majeure Exclusions**

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

- a. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project/ BESS;
- 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 / BESS materials and equipment;
- d. Strikes at the facilities of the Affected Party;
- e. Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f. Non-performance caused by, or connected with, the Affected Party's:
  - i. Negligent or intentional acts, errors or omissions or lack of due diligence expected from any prudent and rational human being;
  - ii. Failure to comply with an Indian Law; or
  - iii. Breach of, or default under this Agreement.

## **11.4 Notification of Force Majeure Event**

11.4.1 The Affected Party shall give notice to the other Party of any event of Force Majeure

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

11.4.3 Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than weekly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

11.4.4 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 Agreement, as soon as practicable after becoming aware of each of these cessations.

## **11.5 Performance Excused**

11.5.1 The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 180 (one hundred and eighty) Days from the date of issuance of the FM Notice or any extended period as mutually agreed. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event. However, in case of the FM continuing up to a

period of 180 days or any extended period as mutually agreed, either Party has the right to terminate the BESPA.

11.5.2 For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the BESSD shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the BESPA period, as the case may be. The Term of this Agreement will be suitably extended. However, adjustment in tariff shall not be allowed on account of Force Majeure event.

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

11.5.4 Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

#### **11.6 No Liability for Other Losses**

Save as otherwise provided in this Agreement, no Party shall be liable in any manner, whatsoever, to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event.

#### **11.7 Resumption of Performance**

During the period that a Force Majeure Event is subsisting, the Affected Party shall, in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under the BESPA. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

#### **11.8 Duty to Perform and Duty to Mitigate**

To the extent not prevented by a Force Majeure Event pursuant to Article 11.2, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

### **11.9 Available Relief for a Force Majeure Event**

Subject to this Article 11:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event; However, no adjustment in tariff shall be allowed on account of Force Majeure event.
- (b) For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
- (c) Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Event.

### **11.10 Available Relief & Termination Due to Force Majeure Event**

- a) If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Force Majeure Event is likely to continue beyond such 180 (one hundred and eighty) Day period or any extended period agreed in pursuance of Article 11.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the BESPA, and the termination shall take effect from the date on which such decision is taken.
- b) In case of occurrence of an event which is not a Force Majeure as per provision of this Agreement, but causes some hardship in development of the Project, which may or may not be recognized by the Government of India and for which the Government of India has or hasn't granted any extension of time or any other relief; such event, even if sustained beyond 180 days shall not be considered as a reason for termination of BESPA under this Article.
- c) Without prejudice to the provisions of Article 11.10. (a) above, the Affected Party shall, after the expiry of the period of 180 (one hundred and eighty) Days or any other mutually extended period, be entitled to forthwith terminate the

BESPA in its sole discretion by issuing a notice to that effect.

d) On termination of the BESPA pursuant to Article 11.10. (c):

In case of termination on account of event listed as Force Majeure as under Article 11.2 (a), (b), (c) and (d), no Termination Compensation shall be payable to the BESSD.

- i. In case of termination at the instance of the BESSD, on account of an event listed as Force Majeure as per Article 11.2 (e) and (f) above, the Procurer will have the option to (but will not be obliged to) take- over the Project Assets by paying Debt Due. In case the Procurer chooses not to exercise the aforementioned option, and the same is not agreed to by the BESSD, it will result in a dispute as per the BESPA and will be resolved as per the Dispute Resolution mechanism under the BESPA.
- ii. the BESSD shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event.

## **ARTICLE 12: CHANGE IN LAW**

### **12.1 Definitions**

In this Article 12, the following terms shall have the following meanings:

12.1.1 In this Article 12, the term Change in Law shall refer to the occurrence of any of the following events, after the last date of the bid submission:

- (a) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any statute, decree, ordinance or other law, regulations, notice, circular, code, rule or direction by Governmental Instrumentality having a binding mandate or a change in its interpretation by a Competent Court of law, tribunal, government or statutory authority or any of the above regulations, taxes, duties charges, levies that results in any change with respect to any tax or surcharge or cess levied or similar charges by the Competent Government on the storage of electricity (leviable on final output i.e. the drawl or injection from BESS projects in the form of energy) or on supply of energy storage capacity.
- (b) Introduction / modification / changes in rates of Safeguard Duty and/or Anti-Dumping Duty and/or Customs Duty and/or Goods and Services Tax including surcharge thereon which have direct effect on the Project cost.

12.1.2 For avoidance of doubt, it is clarified that any change in taxes or surcharge or cess or similar charges on inputs like material, labor or any other input for setting up the Project will not be allowed under Change in Law except as specified in 12.1.1(b). It is further clarified that, Change in Law/ Regulation shall not include

- (i) any change in taxes on corporate income or any change in any withholding tax on income or dividends, or
- (ii) change in respect of deviation settlement charges or frequency intervals by an Appropriate Commission.
- (iii) change in transmission charges, open access charges and losses of MSEDCL/MSETCL / STU or Transmission licensees.

12.1.3 In the event of occurrence of any of events as provided under Article 12.1.1 which results in any adverse financial loss or gain to the BESSD then, the BESSD shall be entitled to compensation in case of financial loss from MSEDCL and in case of financial gain shall be liable to compensate MSEDCL, as the case may be, such

compensation payment on account of such 'Change in Law' shall be determined and shall be effective from such date as may be decided by the Appropriate Commission and shall be adjusted in the tariff .

Provided however that, the compensation of Change in law shall be applicable only if the impact of the same in the Contract Year is on net basis more than or equal to one percent (1%) of,

- (i) The estimated Project Cost (during the Construction period) or
- (ii) Revenue for the Contract Year for which such adjustment becomes applicable (during Operation Period), as the case may be.

## **12.2 Relief for Change in Law**

12.2.1 In case of Change in Law taking place prior to commissioning of the Project, the compensation may be passed through in the form of increase/decrease in the tariff, linked with increase/decrease in the Project cost, which is to be paid through the monthly billing. The pass through in this case shall be as per decision of Appropriate Commission and shall be effective from date of commissioning of the Project. BESSD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 12.

12.2.2 In case of Change in Law taking place subsequent to commissioning of the Project capacity, and changes in taxes/duties/cess etc. are defined as a percentage or the ratio of the tariff, the changes will be passed on as appropriate increment/decrement in the tariff, and will be paid through monthly billing as per decision of Appropriate Commission. In other cases, if any, where the Change in Law is not a percentage or ratio of tariff, suitable compensation will be provided as decided by the Appropriate Commission. BESSD shall be required to provide a statutory auditor certificate supported by Board Resolution in regard to implications (loss/ gain) arising out of Article 12.

12.2.3 For the purpose of Article 12.1.2 above, BESSD or MSEDCL , which intends to adjust and recover the costs due to change in law, may file a petition before Appropriate Commission with the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party. BESSD shall furnish to MSEDCL , the computation of impact in tariff or charges to be adjusted and recovered and file the Petition with the Appropriate Commission, within 30 days of the occurrence of



the change in law, and the recovery of the proposed impact in tariff or charges shall start after and in accordance with the approval of Appropriate Commission.

12.2.4 In the event of any decrease in the project cost by the BESSD or any income to the BESSD on account of any of the events as indicated above, BESSD, shall pass on the benefit of such reduction to MSEDCL. In the event of the BESSD failing to comply with the aforementioned requirement, MSEDCL, at its option, shall make such deductions in the monthly tariff payments on immediate basis or file a petition as per Clause 12.2.3 above.

12.2.5 After the adjustment of the amount of the impact in the tariff, the BESSD shall adjust the monthly tariff or charges annually based on actual amount recovered/ paid, to ensure that the payment is not more than the financial implication on account of Change in Law. It is to clarify further that the Change in Law compensation/payment shall be limited to the Contracted Capacity only.

### **12.3 Notification of Change in Law**

12.3.1 In case any increase or decrease in the Project Cost occurs due to Change in Law affecting the Tariff payable under this Agreement, in accordance with Article 12, the BESSD shall serve notice to MSEDCL of such Change in Law within 7 days about the proposed impact in tariff, positive or negative, to be recovered.

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

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

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

13.1.2 the failure to commence availability of BESS for providing Energy Storage capacity to MSEDCL up to the Contracted Capacity, by the end of the period specified in Article 4, or failure to demonstrate guaranteed availability of such energy storage capacity to MSEDCL within six months from the identification of reduced annual availability during the term of this Agreement, or if

a) the BESSD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Project in contravention of the provisions of this Agreement; or

b) the BESSD transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer

- is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
- is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;

(ii) if (a) the BESSD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the BESSD, or (c) the BESSD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the BESSD

- (iii) will not be a BESSD Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the BESSD and expressly assumes all obligations of the BESSD under this Agreement and is in a position to perform them; or
- (iv) the BESSD repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from MSEDCL in this regard; or
- (v) except where due to any MSEDCL's failure to comply with its material obligations, the BESSD is in breach of any of its material obligations pursuant to this Agreement, and such material breach is not rectified by the BESSD within thirty (30) days of receipt of first notice in this regard given by MSEDCL.
- (vi) change in controlling shareholding before the specified time frame as mentioned in Article 4.1.1 of this Agreement; or
- (vii) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the BESSD.

### **13.2 MSEDCL Event of Default**

13.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the BESSD of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting MSEDCL:

- (i) MSEDCL fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) days after the Due Date and the BESSD is unable to recover the amount outstanding to the BESSD through the Letter of Credit,
- (ii) MSEDCL repudiates this Agreement and does not rectify such breach even within a period of sixty (60) days from a notice from the BESSD in this regard; or
- (iii) If
  - 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 sixty (60) days, or

- any winding up or bankruptcy or insolvency order is passed against MSEDCL, or
- 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 Procurer 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 Agreement and has creditworthiness similar to MSEDCL and expressly assumes all obligations of MSEDCL and is in a position to perform them;

### **13.3 Procedure for cases of BESSD Event of Default**

- 13.3.1 Upon the occurrence and continuation of any BESSD Event of Default under Article 13.1, MSEDCL shall have the right to deliver to the BESSD, with a copy to the representative of the lenders to the BESSD with whom the BESSD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (MSEDCL Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- 13.3.2 Following the issue of a MSEDCL Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 13.3.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 13.3.4 On the date of expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the BESSD Event of Default giving rise to the Consultation Period shall have been remedied, the BESSD shall be liable pay to MSEDCL, damages, equivalent to 6 (six) months, or balance BESPA period whichever is less, of charges for its contracted capacity. MSEDCL shall have the right to recover the said damages from pending dues/bills to pay to BESSD, without

prejudice to resorting to any other legal course or remedy.

13.3.5 In addition to the levy of damages as aforesaid, the lenders in concurrence with the MSEDCL, may exercise their rights, if any, under Financing Agreements, to seek substitution of the BESSD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the BESSD and performing the obligations of the BESSD within a period of 90 days from the expiry of the Consultation Period. However, in the event the lenders are unable to substitute the defaulting BESSD within the stipulated period or there are no lenders, the BESPA shall stand terminated. If the MSEDCL desires to acquire the Project assets, it may do so, by paying to the BESSD, a compensation as mutually decided by the MSEDCL and the lender. In case the MSEDCL chooses not to exercise the above option, or the MSEDCL and the lender are unable to come to an agreement, the lenders may liquidate the Project assets and recover their dues, as the last resort. Provided that any substitution under this Agreement can only be made with the prior consent of MSEDCL including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by MSEDCL and accepts the terms and conditions of this Agreement.

13.3.6 The lenders in concurrence with MSEDCL, may seek to exercise right of substitution under Article 13.3.5 by an amendment or novation of the BESPA in favour of the selectee. The BESSD 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 BESPA till such time as the substitution is finalized. In the event of Change in Shareholding/Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh BESPA with a new entity, an amount of Rs. 10 Lakh per Project+ 18% GST per transaction as facilitation fee (non-refundable) shall be deposited by the BESSD to MSEDCL.

#### **13.4 Procedure for cases of MSEDCL Event of Default**

13.4.1 Upon the occurrence and continuation of any MSEDCL Event of Default specified in Article 13.2, the BESSD shall have the right to deliver to MSEDCL, a BESSD Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

- 13.4.2 Following the issue of a BESSD Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.
- 13.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.
- 13.4.4 After a period of two hundred ten (210) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or MSEDCL Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, MSEDCL and the BESSD shall, subject to the prior consent of the BESSD, novate its part of the BESPA to any third party, including its Affiliates within the stipulated period. In this case, MSEDCL shall pay amount equivalent to 3 (three) months of charges for its contracted capacity based on the declared availability, or balance Term of the BESPA, whichever is less, for its Contracted Capacity, with the Project assets being retained by the BESSD, and exit from the BESPA. In the event the aforesaid novation is not acceptable to the BESSD, or if no offer of novation is made by MSEDCL within the stipulated period, then the BESSD may terminate the BESPA and choose to either continue operating the Project by itself finding an alternate procurer or to discontinue the operation of the Project. If the BESSD chooses to continue operating the project, MSEDCL will pay to the BESSD, 'termination compensation' equivalent to 6 (six) months of charges for its contracted capacity corresponding to the declared availability, or balance Term of the BESPA, whichever is less, for its Contracted Capacity. If the BESSD decides to discontinue the operation of the Project, it may require MSEDCL to make a payment of the 'termination compensation' which will be equivalent to the amount of the Debt due and 110% (one hundred and ten per cent) of the Adjusted Equity, less Insurance Cover if any, and the assets shall be transferred to MSEDCL or any other entity nominated by MSEDCL.

13.4.5 Provided further that at the end of three (3) months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the BESSD.

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

13.4.7 In the event of termination of BESP, any damages or charges payable to the STU/MSDCL/MSETCL, for the connectivity / transmission charges of the plant, shall be borne by the by the entity due to whose failure, the termination was triggered.



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

### **14.1 Indemnity**

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

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

### **14.2 Limitation on Liability**

14.2.1 Except as expressly provided in this Agreement, neither the BESSD nor MSEDCL nor its/ their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non- performance of this Agreement, or anything done in connection herewith, including claims in the nature

of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of MSEDCL, the BESSD or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.2.2 MSEDCL shall have no recourse against any officer, director or shareholder of the BESSD or any Affiliate of the BESSD or any of its officers, directors or shareholders for such claims excluded under this Article. The BESSD shall have no recourse against any officer, director or shareholder of MSEDCL, or any affiliate or any of its officers, directors or shareholders for such claims excluded under this Article.

#### **14.3 MSEDCL's Liability**

14.3.1 It is specifically agreed that the payment of money becoming due from the MSEDCL to the BESSD under this Agreement for supply of Energy / Capacity to the extent of the Contracted Capacity shall be as per the recourse under in the BESPA, shall be through Letter of Credit.

#### **14.4 Duty to Mitigate**

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

## **ARTICLE 15: ASSIGNMENTS AND CHARGES**

### **15.1 Assignments**

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

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

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

## **ARTICLE 16: GOVERNING LAW AND DISPUTE RESOLUTION**

### **16.1 Governing Law**

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

### **16.2 Amicable Settlement and Dispute Resolution**

#### **16.2.1 Amicable Settlement**

- i. Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement (“Dispute”) by giving a written notice (Dispute Notice) to the other Party, which shall contain:
  - (a) a description of the Dispute;
  - (b) the grounds for such Dispute; and
  - (c) all written material in support of its claim.
- ii. The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 16.2.1(i), furnish:
  - (a) counter-claim and defenses, if any, regarding the Dispute; and
  - (b) all written material in support of its defenses and counter-claim.
- iii. Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 16
  - (i) if the other Party does not furnish any counter claim or defense under Article 16
  - (ii) or thirty (30) days from the date of furnishing counter claims or defense 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 thirty (30) days from the later of the dates mentioned in this Article 16.2.1.
  - (iii) the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

### **16.3 Dispute Resolution**

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

- i) Where any Dispute or differences arises in relation to this agreement of any nature whatsoever including the construction, interpretation or implementation of the provisions of this agreement 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.
- ii) MSEDCL shall be entitled to co-opt the lenders (if any) as a supporting party in such proceedings before the Appropriate Commission.

### **16.4 *Parties to Perform Obligations***

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

## **ARTICLE 17: MISCELLANEOUS PROVISIONS**

### **17.1 Amendment**

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

### **17.2 Third Party Beneficiaries**

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

### **17.3 Waiver**

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

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

### **17.4 Confidentiality**

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

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

Party.

### **17.5 Severability**

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

### **17.6 Notices**

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

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

Address :

Attention :

Email :

Fax. No. :

Telephone No.:

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

(i) Address :

Attention

Email :

Fax. No. :

Telephone No.:

17.6.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office or other courier services in an envelope properly

17.6.5 addressed to the appropriate Party for delivery by registered mail and E-mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

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

## **17.7 Language**

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

17.7.2

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

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

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

## **17.9 Taxes and Duties**

17.9.1 The BESSD shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the BESSD, contractors or their employees that are required to be paid by the BESSD as per the Law in relation to the execution of the Agreement and for supplying storage capacity as per the terms of this



Agreement.

17.9.2 MSEDCL shall be indemnified and held harmless by the BESSD against any claims that may be made against MSEDCL in relation to the matters set out in Article 17.9.1.

17.9.3 MSEDCL shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the BESSD by MSEDCL on behalf of BESSD.

#### **17.10 Independent Entity**

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

17.10.2 Subject to the provisions of the Agreement, the BESSD shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the BESSD or contractors engaged by the BESSD in connection with the performance of the Agreement shall be under the complete control of the BESSD and shall not be deemed to be employees, representatives, contractors of MSEDCL and nothing contained in the Agreement or in any agreement or contract awarded by the BESSD shall be construed to create any contractual relationship between any such employees, representatives or contractors and MSEDCL.

#### **17.11 Compliance with Law**

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

#### **17.12 Breach of Obligations**

The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified

in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

#### **17.13 Order of priority in application**

In case of inconsistencies between the agreement(s) executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below:

- i. applicable Law, rules and regulations framed thereunder;
- ii. the Grid Code; and
- iii. the terms and conditions of this Agreement;

#### **Note:**

1. Commissioning procedure, which forms part of Schedule-D of the BESP. The indicative Single Line Diagrams & GA report and form part of Schedule G of the BESP.

**Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:**

IN WITNESS WHERE OF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of  
[MSEDCL]

For and on behalf of  
[BESSD]

Name, Designation and Address  
Signature with seal

Name, Designation and Address  
Signature with seal

Witness:

1.

2.

Witness:

1.

2.

### **Schedule-A System Criteria & calculation under BESPA**

1. Power rating of a \_\_\_\_ MWh (\_\_\_\_ MW x 2 hrs) BESS will be \_\_\_\_ MW, i.e., the maximum value of the active Output and Input Power at the Delivery Point. The Energy rating of \_\_\_\_ MWh of the system will be the dispatchable capacity at COD of the system, as measured at the Metering Point. Terms and definitions of terminologies related to BESS shall be as defined in IEC 62933- 2-1.
2. The BESSD shall make the BESS available for **1 operational cycles per day**, i.e. **1 complete charge-discharge cycles per day**. Following provisions shall be applicable on the Project Capacity:
  - i. The procurement shall be in power (MW) terms. The BESSD shall install, operate and maintain the BESS to offer facility to the Buying Entity to charge and discharge the BESS on an “on demand” basis. The BESSD shall guarantee a minimum system availability of 95% on annual basis. The BESSD shall pay the liquidated damages for such shortfall and shall duly pay such damages to MSEDCL. Amount of such liquidated damages shall be twice the Capacity Charges for the capacity not made available.
  - ii. Availability of the Project shall mean the ability of the BESS to execute a function i.e. charging or discharging, when called upon to do so, as per the schedule or signal provided by the off-taker, subject to the minimum system ratings specified herein. In addition, the BESSD shall also demonstrate, on annual basis, 100% of the minimum dispatchable Capacity of the BESS as required as under,

For a given BESPA, the Annual availability guarantee shall commence from the date of commissioning of the system and shall be calculated as below:

Monthly System Availability = Mean of the System availabilities of all time-blocks during the Month in which the off-taker has scheduled power for charging/discharging the BESS.

where,

System Availability in a time-block=

$$\frac{\text{Actual Injection/Drawal } MUi(A)}{\text{Scheduled Injection/Drawal } MUi(B)},$$

where

- a) i refers to the ith time-block in the Month where Scheduled Injection/Drawal  $MUi \neq 0$ .
- b) Actual Injection/Drawal  $MUi$  is the Actual Scheduled for Charging/Discharging in the ith time block, in MUs
- c) Scheduled Injection/Drawal  $MUi$  is the Energy Scheduled for Charging/Discharging in the ith time block, in MUs
- d) A and B shall be as per the DSM/UI Reports published by the Western RPCs or measurement at the Main ABT Meter at the Point of Interconnection.

The Monthly Average Availability shall be calculated for each month. On the basis of monthly Availability, average of each month taken for calculation of Annual Average Availability. While considering Annual Average availability, only lesser than 95% or up to 95% Monthly Average Availability to be added to derive the

Annual Average Availability. The illustration is provided as under,

**Illustration:**

Month	Monthly Average Availability	Monthly Average Availability for Calculation	Annual Average Availability = $\{\sum(\text{Monthly Average Availability})\} / 12$
1	95%	95%	$= (95\%+95\%+93\%+95\%+93\%+95\%+95\%+92\%+95\%+95\%+91\%+90\%)/12$ $=93.66\% \sim 94\%$
2	95%	95%	
3	93%	93%	
4	97%	95%	
5	93%	93%	
6	98%	95%	
7	95%	95%	
8	92%	92%	
9	96%	95%	
10	95%	95%	
11	91%	91%	
12	90%	90%	

iii. Round Trip Efficiency(RtE):-

The BESSD shall guarantee AC to AC roundtrip efficiency (RtE) of system on monthly basis. The BESSD shall be liable for Liquidated Damages to the off-taker, if any, on account of excess conversion losses, based on the following conditions:

- For RtE <80%, there shall be a liquidated damage @ APPC charge of previous financial year of the Discoms of excess conversion losses considering system RtE = 95% and tariff payment for the corresponding month shall not be made to the BESSD;
- For  $80\% \leq \text{RtE} < 95\%$ , there shall be a liquidated damage levied @ APPC tariff of last year of MSEDCL per unit of excess conversion losses considering system RtE = 95%.

**System Roundtrip Efficiency =**

$$\frac{\text{Sum Total of Actual Injection/Discharging MUSj in a month (C)}}{\text{Sum Total of Actual Drawal/Charging MUSj in a month (D)}}$$

Where,

j refers to the jth month in a year;

$D \neq 0$ ;

$D \leq 2 \times \text{Ebess} \times (\text{MDn-1} - (\text{MDn-1} - \text{MDn}) \times j/12) \times (\text{Number of days in the jth month}) / \text{RtEg}$ ;

Ebess refers to Energy Rating specified as under;

For example, for the Project Capacity / Contracted Capacity of 150 MW, the BESPA shall entitle the off-taker to schedule discharge up to 300 MWh of energy from the BESS in each cycle, subject to the following:

I. MSEDCL will schedule charging of the BESS with equal amount of energy plus energy expected to be lost as conversion losses (determined from the guaranteed Round-Trip Efficiency (RtE) of the system).

Illustration: For a Project / Contracted Capacity of 150 MW/300 MWh, assuming an RtE of , 95% MSEDCL shall supply charging power to the tune of 315.8 MWh, to expect a discharge of 300 MWh as per the desired schedule.

II. Energy scheduled for discharge in a given cycle during a year shall be more than or equal to the Min. Dispatchable Energy Capacity at the End of Year as specified under this Clause.

MDn-1 refers to minimum guaranteed dispatchable energy at the end of the previous year (as a % of Capacity at the COD specified in below);

MDn refers to minimum guaranteed dispatchable energy at the end of the current year;

RtEg refers to the guaranteed Round-Trip Efficiency under the BESPAs;

C and D shall be as per the DSM/UI Reports published by the Western RPCs or measurement at the Main ABT Meter at the Point of Interconnection.

**Note:**

1. The Scheduled capacity shall be subject to the System Power Rating specified in contracted capacity of this agreement.
2. The BESSD shall take separate, metered connection for the Auxiliary Power load of BESS.
3. The nameplate ratings shall be achievable during discharge for the full range of environmental conditions at the project site when the battery is fully charged. In any case, the BESS shall be capable of being discharged at reduced power levels from that specified above. However, the energy discharged from the battery shall not require to be greater than the nameplate watt-hour rating specified herein.
4. The SLDC shall, in accordance with Applicable Laws and Regulations thereunder, issue instructions to the BESSD for dispatch of electricity to the Grid during such period and in such volume as it may specify in its instructions. The BESSD shall clearly specify the maximum recovery times required to restore the BESS for functional availability between duty cycles. However, in no case, the **same shall be more than 2 hour**.
5. **Operational Window:** Operational Window shall mean the expected hours/duration of system (capacity) availability on each day during the term of the Contract, excluding:
  - a. Maximum BESS recovery time as specified in this document
  - b. Grid Outages (duly certified to this effect by the Grid Operator)
  - c. Planned Maintenance Outage duly informed by the BESSD to the off-taker with at least one month's prior notice, subject to total no. of **planned outage period being not more than 34 hours in a two-month period**.

BESSD will have to comply with the Charging and Discharging Schedule as intimated by SLDC/MSEDCL. Alternation if any in Charging. It is clarified that discharge of BESS shall take place subject to the transmission constraints at the MSEDCL/MSETCL substation. For example, discharge of power from BESS during peak Solar hours (say, 11:00 AM- 2:00 PM) may be subject to the Grid constraints.

4. In addition to above, the BESSD shall also submit Available energy Test Report for the Project Capacity as per IEC 62933-2-1 on Annual basis.

5. It shall be the responsibility of the BESSD to make periodic replacements/replenishments of system capacities (to ensure annual guaranteed system ratings), if and when required, up to the Term of the Contract. Outage time as a result of replacement will also be counted as an “Accountable BESS Outage” for the purpose of computing BESS Availability.

### **Illustration of SA & RtE**

#### **1. System Availability**

Under a BSSPA between an off-taker ‘X’ and BESSD ‘Y’ for a capacity ‘C’, the Schedule and Actual Injection into/Drawl from the Grid from the Project, as per the DSM/ UI Reports published by the WRPC for a Sample day is shown below:

<b>Date</b>	<b>Block</b>	<b>Drawl (from Grid) MW (Charging) (X)</b>	<b>Injection (into Grid)MW (Discharging) (Y)</b>	<b>Scheduled MW (Z)</b>	<b>Time-block Availability, (TA) = (Xi/Zi) + (Yi/Zi)</b>
01-May-22	1	250	0	250	1
01-May-22	2	250	0	250	1
01-May-22	3	240	0	250	0.96
01-May-22	4	240	0	250	0.96
01-May-22	5	235	0	250	0.94
01-May-22	6	235	0	250	0.94
01-May-22	7	240	0	250	0.96
01-May-22	8	240	0	250	0.96
01-May-22	9	0	0	12.5	0
01-May-22	10	12.5	0	0	NA
01-May-22	11	0	0	0	NA
01-May-22	12	0	0	0	NA
01-May-22	13	0	0	0	NA
01-May-22	14	0	0	0	NA
01-May-22	15	0	0	0	NA
01-May-22	16	0	0	0	NA
01-May-22	17	0	0	0	NA
01-May-22	18	0	0	0	NA
01-May-22	19	0	0	0	NA
01-May-22	20	0	0	0	NA
01-May-22	21	0	0	0	NA
01-May-22	22	0	0	0	NA
01-May-22	23	0	0	0	NA
01-May-22	24	0	190	250	0.76
01-May-22	25	0	190	250	0.76
01-May-22	26	0	200	250	0.8
01-May-22	27	0	200	250	0.8
01-May-22	28	0	200	250	0.8
01-May-22	29	0	200	250	0.8
01-May-22	30	0	200	250	0.8

01-May-22	31	0	200	250	0.8
01-May-22	32	0	0	0	NA
01-May-22	33	0	0	0	NA
01-May-22	34	0	0	0	NA
01-May-22	35	0	0	0	NA
01-May-22	36	0	0	0	NA
01-May-22	37	0	0	0	NA
01-May-22	38	0	0	0	NA
01-May-22	39	0	0	0	NA
01-May-22	40	0	0	0	NA
01-May-22	41	0	0	0	NA
01-May-22	42	0	0	0	NA
01-May-22	43	12.5	0	12.5	1
01-May-22	44	245	0	250	0.98
01-May-22	45	240	0	250	0.96
01-May-22	46	240	0	250	0.96
01-May-22	47	235	0	250	0.94
01-May-22	48	240	0	250	0.96
01-May-22	49	250	0	250	1
01-May-22	50	250	0	250	1
01-May-22	51	250	0	250	1
01-May-22	52	0	0	0	NA
01-May-22	53	0	0	0	NA
01-May-22	54	0	0	0	NA
01-May-22	55	0	0	0	NA
01-May-22	56	0	0	0	NA
01-May-22	57	0	0	0	NA
01-May-22	58	0	0	0	NA
01-May-22	59	0	0	0	NA
01-May-22	60	0	0	0	NA
01-May-22	61	0	0	0	NA
01-May-22	62	0	0	0	NA
01-May-22	63	0	0	0	NA
01-May-22	64	0	0	0	NA
01-May-22	65	0	0	0	NA
01-May-22	66	0	0	0	NA
01-May-22	67	0	0	0	NA
01-May-22	68	0	0	0	NA
01-May-22	69	0	0	0	NA
01-May-22	70	0	0	0	NA
01-May-22	71	0	0	0	NA
01-May-22	72	0	0	0	NA
01-May-22	73	0	0	0	NA
01-May-22	74	0	0	0	NA
01-May-22	75	0	0	0	NA
01-May-22	76	0	0	0	NA

01-May-22	77	0	0	0	NA
01-May-22	78	0	0	0	NA
01-May-22	79	0	0	0	NA
01-May-22	80	0	230	250	0.92
01-May-22	81	0	235	250	0.94
01-May-22	82	0	235	250	0.94
01-May-22	83	0	230	250	0.92
01-May-22	84	0	210	250	0.84
01-May-22	85	0	200	250	0.8
01-May-22	86	0	190	250	0.76
01-May-22	87	0	185	250	0.74
01-May-22	88	0	0	0	NA
01-May-22	89	0	0	0	NA
01-May-22	90	0	0	0	NA
01-May-22	91	0	0	0	NA
01-May-22	92	0	0	0	NA
01-May-22	93	0	0	0	NA
01-May-22	94	0	0	0	NA
01-May-22	95	0	0	0	NA
01-May-22	96	0	0	0	NA
<b>Total</b>		<b>3905</b>	<b>3295</b>	<b>8025</b>	29.7
NO OF BLOCK IN COLUMN Z IS NOT ZERO					34
SYSTEM AVAILABILITY					0.87

Note: For calculating the System Availability for day/month, schedule provided by Procure/SLDC to be considered. Shortfall in System Availability will be calculated as per below methodology. DSM / UI charges shall be treated separately as per applicable regulations and paid by BESSD.

If MSEDCL has scheduled for charging of BESS & discharge of BESS and BESSD has not charge & discharge the BESS according to schedule then TA will be calculated as  $TA = (X/Z) + (Y/Z)$  for that time block.

If MSEDCL has not scheduled for charging of BESS & discharge of BESS then TA will be NA for that time block.

If MSEDCL has not scheduled for charging of BESS and BESSD has taken charging power from grid then TA will be NA for that time block.

If MSEDCL has not scheduled for discharge of BESS and BESSD has discharge power to the grid then TA will be NA for that time block.

If MSEDCL has scheduled for charging of BESS & discharge of BESS and BESSD has charge & discharge the BESS near to zero or zero then TA will be treated as Zero for that time block.

i is the  $i^{th}$  Timeblock in the day.

The System Availability for the day is calculated as the mean of **Column TA**, for all time-blocks where **Column Z is not zero**.

From the above table, Day's System Availability = 0.87



Similarly, the System availability shall be calculated for for Monthly, 2880 time-blocks (96\*30) in a Month (30 Days in a month considered in above), excluding time-blocks where Grid is unavailable or in case of Force Majeure.

Assuming the following parameters:

- a. Total Contract Capacity = 250 MW, **C**
- b. Quoted monthly Capacity charges = 5 lakhs/MW/month, **D**
- c. Annual system availability (as per procedure above) is calculated to be 0.87, **B**
- d.  $n = 12$

Liquidated Damages on account of shortage in annual system Availability, as calculated from formula provided in ARTICLE-4:

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

$$= (0.95 - 0.87) \times 250 \times 5 \times 12 \times 2$$

$$= \text{Rs. 2400 lakhs}$$

## 2. System Round Trip Efficiency

The present illustration is for calculating the Daily System Efficiency as demonstration only. The same methodology shall be used for calculation of monthly system efficiency as per ARTICLE-4.

$$\text{System Efficiency} = \frac{\text{Total of Column (Y)}}{\text{Total of Column (X)}} = \frac{3295}{3905} = 0.8437 \sim 0.84 \text{ (rounded off to 2 decimal places).}$$

Assuming:

- a. monthly System Efficiency = 0.84,
- b. Total Monthly Drawl from Grid (Charging Power) = 41.1 MUs

Liquidated Damages is calculated @ Rs. 2 for excess loss of energy considering expected System Round Trip Efficiency to be 95%

Excess conversion losses =  $(0.95 - 0.84) \times \text{Total Drawl from the grid in the month}$  (i.e. Charging Energy)

$$\text{Liquidated Damages for the month} = \text{Rs. } 0.11 \times 41.1 \times 2$$

$$= \text{Rs. 9.042 Millions}$$

$$= \text{Rs. 90.42 lakhs}$$

BESPPA (Phase )

**Schedule-B Right-to-Use/Land Lease/Sub-Lease Agreement**

(to be attached herewith separately for each Project)

BESPPA (Phase )

**SCHEDULE-C: PERFORMANCE BANK GUARANTEE (PBG)**

(to be attached herewith separately for each Project)

**SCHEDULE-D: COMMISSIONING PROCEDURE**

**COMMISSIONING PROCEDURE**

1. Commissioning Procedure for the Projects selected shall be as determined by Commissioning Committee designated by MSEDCL.
2. BESSD shall give advanced intimation to MSEDCL regarding commissioning of the project.
3. BESSD shall also submit the documents relating to the charging approval and other applicable approvals to MSEDCL and MSEDCL shall certify commissioning of the project or part thereof only after verification of such documents.
4. BESSD shall take into consideration the provisions of part commissioning provided in the BESPA and certify part commissioning of the project in line with the BESPA provisions.
5. MSEDCL may provisionally certify commissioning of the project on the date of commissioning after witnessing that the rated capacity of the project is in operation and energy is flowing into / out of the grid subject to final certification after verification of other documents.
6. The commissioning of the project shall be witnessed by Committee Constituted by MSEDCL which shall comprise officials of MSEDCL.

**SCHEDULE-E****TECHNICAL AND REGULATORY REQUIREMENTS TO BE FOLLOWED FOR BATTERY ENERGY STORAGE SYSTEMS****1. Codes and Standards**

The BESS shall comply with the following Codes and Standards or equivalent Indian Standards, as applicable.

<b>Standard/ Code (or equivalent Indian Standards)</b>	<b>Description</b>	<b>Certification Requirements</b>
IEC 62485-2	Safety requirements for secondary batteries and battery installations - to meet requirements on safety aspects associated with the erection, use, inspection, maintenance and disposal: Applicable for Lead Acid and NiCd / NiMH batteries	Applicable only for Lead Acid and NiCd/NiMH batteries
UL 1642 or UL 1973, Appendix E (cell) or IEC 62619 (cell) + IEC 63056 (cell)	Secondary cells and batteries containing alkaline or other non-acid electrolytes - Safety requirements for secondary lithium cells and batteries, for use in industrial applications	Required for Cell
UL 1973 (battery) or (IEC 62619 (battery) + IEC 63056 (battery))	Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail (LER) Applications / Secondary cells and batteries containing alkaline or other non-acid electrolytes - Safety requirements for secondary lithium cells and batteries, for use in industrial applications	Either UL 1642 or UL1973 or (IEC 62619 + IEC 63056) for the Battery level
IEC 62281 / UN 38.3	Safety of primary and secondary lithium cells and batteries during transport: Applicable for storage systems using Lithium Ion chemistries	Required for both Battery and Cell.
IEC 61850/ DNP3	Communications networks and management systems. (BESS control system communication)	
UL 9540 or (IEC TS 62933-5-1 + IEC 62933-5-2)	Electrical energy storage (EES) systems - Part 5-1: Safety considerations for grid-integrated EES systems – General specification / Standard for Energy Storage Systems and Equipment	Either UL9540 or (IEC 62933-5-1 + IEC 62933-5-2) is required for BESS system level
IEC 62933-2-1	Electrical energy storage (EES) systems - Part 2-1: Unit Parameters and testing methods - General Specification	Tests for Class B applications: . Duty Cycle Round Trip Efficiency Test . Equipment and Basic Function Test . Available energy Test . Insulation test

## BESPPA (Phase )

<b>Power Conditioning Unit Standards for BESS</b>	
IEC 62477-1	Safety requirements for power electronic converter systems and equipment - Part 1: General
IEC 62477-2	Safety requirements for power electronic converter systems and equipment - Part 2: Power electronic converters from 1 000 V AC or 1 500 V DC up to 36 kV AC or 54 kV DC
IEC 61000-6-2 Ed. 2	Electromagnetic compatibility (EMC) - Part 6-2: Generic standards - Immunity standard for industrial environments
IEC 61000-6-4 Ed. 2.1	Electromagnetic compatibility (EMC) - Part 6-4: Generic standards - Emission standard for industrial environments
IEC 62116 Ed. 2	Utility-interconnected photovoltaic inverters - Test procedure of islanding prevention measures
IEC 60068-2-1:2007	Environmental testing - Part 2-1: Tests - Test A: Cold
IEC 60068-2-2:2007	Environmental testing - Part 2-2: Tests - Test B: Dry heat
IEC 60068-2-14:2009	Environmental testing - Part 2-14: Tests - Test N: Change of temperature
IEC 60068-2-30:2005	Environmental testing - Part 2-30: Tests - Test Db: Damp heat, cyclic (12 h + 12 h cycle)

### 2. System Testing and Commissioning

The BESS shall be commissioned as per commissioning criteria and procedures specified by the CEA.

### 3. Identification and Traceability

Cells/Racks/Packs Assembly shall meet seismic requirement for the plant location of the BESS. Labelling of cells/batteries shall include manufacturer's name, cell type, name-plate rating, date of manufacture and date of expiry of parts and labor warranty.

### 4. Other Sub-systems/Components

Other subsystems/components used in the BESS must also conform to the relevant international/national Standards for Electrical Safety for ensuring Expected Service Life and Weather Resistance.

### 5. Fire Protection

The BESSD shall design and install a fire protection system that conforms to national and local codes. The fire protection system design and associated alarms shall take into account that the BESS will be unattended at most times. For high energy density technologies, the BESSD shall also obtain thermal runaway characterization of the battery storage systems.

## 6. Authorized Test Centres

Batteries/ Power Conditioning Units deployed in the power plants must have valid test certificates for their qualification as per above specified IEC/ BIS Standards by one of the ILAC member signatory accredited laboratories. In case of module types/ BESS/equipment for which such Test facilities may not exist in India at present, test certificates from reputed ILAC Member body accredited Labs abroad will be acceptable.

## 7. Warranty

BESSD shall procure performance guarantees from the OEM to ensure minimum performance levels for predefined application(s) as per the terms of this agreement. The Warranty shall clearly indicate life expectancy given discharge profiles provided for the application.

## 8. Performance Monitoring

As part of the performance monitoring, the following shall be carried out:

- a) The BESSD must install necessary equipment to continuously measure BESS operating parameters (including but not limited to voltage, current, ambient conditions etc.) as well as energy input into and energy output from the BESS along with Metering arrangement in accordance with extant regulations. They will be required to submit this data to MSEDCL and SLDC online and/or through a report on regular basis every month for the entire duration of contract.
- b) The BESSD shall provide access to MSEDCL/MNRE or their authorized representatives for installing any additional monitoring equipment to facilitate on-line transfer of data.
- c) All data shall be made available as mentioned above for the entire duration of the Contract.
- d) The plant SCADA should be OPC version 2.0a (or a later version including OPC UA) compliant and implement appropriate OPC-DA server as per the specification of OPC Foundation. All data should be accessible through this OPC server for providing real time online data (BESS parameters) to MSEDCL/ MNRE. This time series data shall be available from the Project SCADA system to facilitate monitoring and should include among others as stated before, below parameters to facilitate daily, monthly and annual Report for performance monitoring.
- e) Web-based monitoring should be available, which should not be machine dependent. The web-based monitoring should provide the same screens as available in the plant. Also, it should be possible to download reports from a remote web-client in PDF or Excel format.

## 9. Other necessary criteria

- a) BESS shall be capacity of operating in the frequency range of 47.5 Hz to 52 Hz and be able to deliver rated output in the frequency range of 49.5 Hz to 50.5 Hz.
- b) BESS shall be capacity of operating when voltage at the interconnection point on any or all phases dips/rises to the high or low levels. The levels applicable for wind/solar inverter-based generation may be referred as available in Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations.

- c) The safe and reliable operation of power system is ensured by frequency control as well as voltage control. BESS to be implemented shall have provisions for Primary frequency control with a droop which can be set as per system requirement between 1-3percent. The BESS performs regulations in one or several pre-defined ways (e.g. regulating its own output power according to the orders given by SCADA system) to achieve an active power balance between generation and demand to maintain the power system frequency within a reasonable range.
- d) BESS shall operate to maintain voltages as per specified voltage ranges in Grid standards. BESS shall have feature to detect the voltage of interconnection point, and regulate voltage independently. The response time of the BESS shall not exceed the value specified in relevant standards or grid codes.
- e) BESS shall operate in a manner to promote the power system reliability and improve the power quality. When power quality problems, such as voltage dip, flicker, unsatisfactory power factor, etc., occur in power system, the BESS could eliminate these problems by flexible active and reactive power output in this function.
- f) The BESS shall provide reliable protection and not be limited to as an overvoltage/under-voltage protection, overcurrent protection, low-temperature/over-temperature protection of battery, DC insulation monitoring, etc.
- g) BESS is required to have the following basic functions:
  - i) Monitoring: Monitor operational parameters, equipment status and communication status, alarm and faults of main equipment and BESS system, etc.
  - ii) Information exchange: Receive and process information with SLDC /RLDC/NLDC including operation parameters, switching information, various alarms and alerts, protective action signals, control information, etc.
  - iii) Control: Including control mode and parameter setting with SLDC/RLDC/NLDC.
- h) The static information like detailed write-up on present operation methodology of BESS, forbidden zones, number of cycle limits, Auxiliary consumption details, capability curve, simulation models (RMS/PSCAD) alongwith description or any specific information about BESS shall also be furnished as and when required by SLDC/RLDC/NLDC.

#### **10. Safe Disposal of unit Batteries from the BESS**

The Developer will comply with the requirements under Hazardous & other Waste (Management and Transboundary Movement) Rules, 2016, as amended from time to time, as applicable. The BESSD shall ensure that all Unit Battery modules from the plant after their 'end of life' (when they become defective/ non-operational/ non-repairable) are disposed in accordance with the "e-waste (Management and Handling) Rules, 2016" notified by the Government and as revised and amended from time to time and Battery Waste Management Rules, as and when notified by the Government of India.



### **Schedule-F Shareholding**

- The BESSD shall indicate its shareholding in the company indicating the controlling shareholding while signing of BESPA with MSEDCL.
- However, in case the Project is being set up by a listed Company, this condition will not be applicable.

Following shall not be considered as change in shareholding as mentioned above:

- a. Infusion of Fresh equity capital amongst the existing shareholders/promoters at the time of Bid Submission to meet equity requirements.
  - b. Conversion of CCDs, CCPs etc. already issued to existing shareholders.
  - c. Death, marriage, Divorce, minor attaining major (any legal heir who was minor at the time of signing of BESPA), insolvent, insane of existing shareholders.
  - d. Transfer of shares within the members of Immediate Promoter Group only.
  - e. Transfer of shares to IEPF.
  - f. Issue of Bonus Shares.
- In case of Project Developed (BESSD) through SPV: The BESSD executing the project, if being a single company, shall ensure that its shareholding in the SPV/ Project Company executing the BESPA, shall not fall below 51% at any time prior to COD of the Project. In the event BESSD is a consortium, then the combined shareholding of the consortium members in the SPV/ Project Company executing the BESPA, shall not fall below 51% at any time prior to COD. However, in case the Project is being set up by a listed Company, this condition will not be applicable.
  - In case of the BESSD itself executing the BESPA, it shall ensure that controlling shareholding of the BESSD remains unchanged until the COD. However, in case the Project is being set up by a listed Company, this condition will not be applicable.
  - In case of BESSD having multiple promoters (but none of the shareholders having more than 50% of voting rights and paid up share capital), it shall be considered as a BESSD under joint control. In such cases, the shareholding pattern in the BESSD as submitted at the time of bidding, shall be maintained up to the COD.
  - Any change in the shareholding after COD can be undertaken under intimation to MSEDCL.
  - In the event of Change in Shareholding/ Substitution of Promoters triggered by the Financial Institutions leading to signing of fresh BESPA with a new entity, an amount of INR 10 Lakh per Project +18% GST per Transaction as Facilitation Fee (non-refundable) shall be deposited by the BESSD to MSEDCL.

**Schedule-G SLD, GA report of selected S/S under BESP**

**Will be uploaded later**