

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

8.9 Available Relief for a Force Majeure Event:

- 8.9.1** No Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure event. However, adjustment in tariff shall not be allowed on account of Force Majeure event.
- 8.9.2** For avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party.
- 8.9.3** Provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Events.

Article 9: CHANGE IN LAW

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

"Change in Law" shall refer to the occurrence of any of the following events after the last date of the bid submission, including:

- (i) the enactment of any new law; or
- (ii) an amendment, modification or repeal of an existing law; or
- (iii) the requirement to obtain a new consent, permit or license; or
- (iv) any modification to the prevailing conditions prescribed for obtaining an consent, permit or license, not owing to any default of the Solar Power Producer; or
- (v) any change in the rates of any Taxes, Duties and Cess which have a direct effect on the Project.

However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends.

9.2 Relief for Change in Law:

- 9.2.1** In the event of occurrence of any of events as provided under Article 9.1 which results in any increase/ decrease in the Project Cost (i.e. the cost incurred by the SPD towards supply and services only for the Project concerned, upto the Actual Commissioning Date of the last part capacity or Scheduled Commissioning Date/extended Scheduled Commissioning Date, whichever is earlier), the **solar power producer/MSEDCL** shall be entitled for compensation by the other party, as the case may be, subject to the condition that the such 'Change in Law' is recognized by the Appropriate Commission. Compensation payment on account of such 'Change in Law' shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.
- 9.2.2** However, in case of change in rates of safeguard duty, GST and basic customs duty after [Insert last date of bid submission] and resulting in change in Project Cost, then 'such change will be treated as 'Change in Law' and the quantum of compensation payment on account of change in rates of such duties and shall be provided to the affected party by the other party as per Article 9, subject to the provision that Appropriate Commission recognizes such provisions at the time of adoption of tariff by the Appropriate Commission and any decision in this regard shall be governing on Power producer and MSEDCL. It is clarified that, any introduction of new tax/duty/cess made applicable for setting up the solar power project and supply of

power from the Solar Power project by the **Power producer** which have a direct effect on the Project, resulting in change in Project Cost, will also qualify under “Change in Law” as per timeline and procedure indicated **under Article-9** of PPA. It is further clarified that, applicability of Safeguard Duty on “Solar Cells whether or not assembled in modules or panels” which is till 29.07.2021, if gets extended and has a direct effect on the Project, resulting in change in Project Cost, such extension will also qualify under “Change in Law” as per timeline and procedure **indicated under Article-9** of PPA

- 9.2.3** If a Change in Law results in the Power Producer’s costs directly attributable to the Project being decreased or increased by one percent (1%), of the estimated revenue from the Electricity for the Contract Year for which such adjustment becomes applicable or more, during Operation Period, the Tariff Payment to the Power Producer shall be appropriately increased or decreased with due approval of MERC.
- 9.2.4** In case of approval of Change in Law by MERC and the same results in any increase or decrease in the cost of generation, the said increase/decrease in cost shall be passed on in tariff in the following manner:
- 9.2.5** Formula to calculate adjustment in the monthly tariff due to the impact of Change in Law,
 Allowable Change in Law Compensation (P) = Actual per MW variation in expenses on account of Change in Law event x Allowable DC capacity for Change in Law compensation;

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

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

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

where,

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

$Mr = \text{monthly rate of interest} = \frac{R}{12}$; where $R = \text{annual rate of interest equal to 125 basis points above the average State Bank of India Marginal Cost of Funds based leading rate (MCLR of one year tenor) prevalent during the last available six months for such period.}$

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

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

9.3 Notification of Change in Law:

- 9.3.1** If the Seller is affected by a Change in Law in accordance with Article 9.1 and wishes to claim change in Law under this Article, it shall give notice to MSEDCL of such Change in Law within 7 days after becoming aware of the same or should reasonably have known of the Change in Law.
- 9.3.2** Notwithstanding Article 9.3.1, the Solar Power Developer shall be obliged to serve a notice to MSEDCL if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurer contained herein shall be material. Provided that in case MSEDCL has not provided such notice, the Solar Power Developer shall have the right to issue such notice to MSEDCL.
- 9.3.3** Any notice served pursuant to this Article 9.3.2 shall provide, amongst other thing, precise details of:
- a) The Change in Law: and
 - b) The effect on MSEDCL of the matters referred to in Article 9.2

Article 10: TERM, TERMINATION AND DEFAULT

10.1 Term of the Agreement:

This Agreement shall become effective upon the execution and delivery thereof by the Parties hereto and unless terminated pursuant to other provisions of the Agreement, shall continue to be in force for such time until the completion of a period of 25 years from the Scheduled Commercial Operation Date in case of proposed/new solar power projects or for a period of 25 years from the date of execution of PPA for existing solar power projects, irrespective of dates of part commissioning or full commissioning. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) days prior to the Expiry Date.

10.2 Survival:

The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive penalty as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 8 (Force Majeure), Article 10 (Events of Default and Termination), Article 11 (Dispute Resolution), Article 12 (Indemnity), Article 13 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

10.3 Events of Default and the consequences thereof:

10.3.1 Power Producer's Default:

The occurrence of any of the following events at any time during the Term of this Agreement shall constitute an Event of Default by Power Producer:

- a) Failure to commission the project by scheduled commercial operation date or fails to supply power in terms of the PPA, or assigns or novates any of its rights or obligations contrary to the terms of the PPA or repudiates the PPA, or effectuates a change in control or shareholding of its promoters in breach of the provisions of the PPA, or commits any other acts or omissions as laid down in the PPA and is also unable to cure any of the aforesaid within the cure period, as may be provided in the PPA, the Solar Power Generator shall be construed to be in default.
- b) O & M Default on part of Power Producer.
- c) Failure or refusal by Power Producer to perform any of its material obligations under this Agreement including but not limited to financial closure.
- d) Power producer fails to make any payment required to be made to Power Procurer