

under this agreement within three (3) months after the due date of a valid invoice raised by MSEDCL on the Power Producer.

- e) If the Power Producer (i) assigns or purports to assign its assets or rights in violation of this agreement; or (ii) transfers or novates any of its rights and / or obligations under this agreement, in violation of this agreement.
- f) If the Power producer becomes voluntarily or involuntarily the subject of proceeding under any bankruptcy or insolvency laws or goes into liquidation or dissolution or has a receiver appointed over it or liquidator is appointed, pursuant to Law, except where such dissolution of the Power producer is for the purpose of a merger, consolidated or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and creditworthiness similar to the Power Producer and expressly assumes all obligations under this agreement and is in a position to perform them; or
- g) Occurrence of any other event which is specified in this Agreement to be a material breach / default of the Power Producer.

10.3.2 Upon being in default, the Power Producer shall be liable to pay MSEDCL, damages, as detailed in the PPA in Clause No.3.3.2 for failure to commission within stipulated time and 5.5.2 for failure to supply power in terms of the PPA. For other cases, pay to the Procurer, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity. The Procurer shall have the right to recover the said damages by way of forfeiture of bank guarantee without prejudice to resorting to any other legal course or remedy.

10.3.3 In addition to the levy of damages as aforesaid, in the event of a default by the Power Producer, the lenders shall be entitled to exercise their rights of substitution and in concurrence with the Procurers. However, in the event the lenders are unable to substitute the defaulting Solar Power Producer within the stipulated period, the Procurer may terminate the PPA and acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.

10.3.4 MSEDCL's Default:

- (a) If MSEDCL is in default on account of reasons including inter alia:
 - (i) Default by MSEDCL in performing its obligation under this agreement,
 - (ii) Failure to pay the monthly and / or supplementary bills beyond 90 days,
 - (iii) If MSEDCL becomes voluntarily or involuntarily the subject of proceeding under any bankruptcy or insolvency laws or goes into liquidation or dissolution or has a receiver appointed over it or liquidator is appointed, pursuant to Law, except where such dissolution of MSEDCL is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial

standing to perform its obligations under this Agreement and creditworthiness similar to MSEDCL and expressly assumes all obligations under this agreement and is in a position to perform them.

The defaulting Procurer shall, subject to the prior consent of the Solar Power Producer, novate its part of the PPA to any third party, including its Affiliates within the stipulated period.

- (b) In the event the aforesaid novation is not acceptable to the Solar Power Producer, or if no offer of novation is made by the defaulting Procurer within the stipulated period, then the Solar Power Producer may terminate the PPA and at its discretion require the defaulting Procurer to either:
 - (i) takeover the project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 110% (one hundred and Ten per cent) of the adjusted equity as defined below, less Insurance cover, if any, or
 - (ii) pay to the Solar Power Producer, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the project assets being retained by the Solar Power Producer.
- (c) In the event of termination of PPA, any damages or charges payable to the STU, for the connectivity of the plant, shall be borne by MSEDCL.
- (d) Adjusted Equity means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “Reference Date”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date (the date of achievement of Financial Closure) and the Reference Date;
 - (i) On or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date;
 - (ii) An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”);
 - (iii) After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three three three percent) thereof at the commencement of each month following the COD [reduction of 1% (one percent) per quarter of an year] and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be

made for a period equal to the duration, if any, for which the PPA period is extended, but the revision on account of WPI shall continue to be made.

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

- (i) The principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the 'Principal') but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;
- (ii) All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause 10.3.4(e)(i) above until the Transfer Date but excluding: (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Utility Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost.

Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken.

Provided further that the Debt Due, on or after COD, shall in no case exceed 80% (eighty percent) of the Total Project Cost.”

10.4 Termination:

10.4.1 Termination for Power Producer's Default:

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

At the expiry of 30 (thirty) days from the delivery of this default notice and unless the Parties have agreed otherwise, or the Event of Default giving rise to the default notice has been remedied, MSEDCL may deliver a Termination Notice to the Power Producer. MSEDCL may terminate this Agreement by delivering such a Termination Notice to the Power Producer and intimate the same to the MERC. Upon delivery of the Termination Notice this Agreement shall stand terminated and MSEDCL shall stand discharged of all its obligations. The Power Producer shall have liability to make payment within 30 days from the date of termination notice towards compensation to

MSEDCL 6 (Six) months or balance PPA period whichever is less, of charges for its contracted capacity at declared Capacity Utilization factor(CUF).Where a Default Notice has been issued with respect to an Event of Default, which requires the co-operation of both MSEDCL and the Power Producer to remedy, MSEDCL shall render all reasonable co-operation to enable the Event of Default to be remedied without any legal obligations.

10.4.2 Termination for MSEDCL's Default:

- (a) Upon the occurrence of an Event of Default as set out in sub-clause 10.3.4 above, the Power Producer may deliver a Default Notice to MSEDCL in writing which shall specify in reasonable detail the Event of Default giving rise to the Default Notice, and calling upon MSEDCL to remedy the same.
 - (i) At the expiry of 30 (thirty) days from the delivery of the Default Notice and unless the Parties have agreed otherwise, or the Event of Default giving rise to the Default Notice has been remedied, the Power Producer may serve a "Suspension Notice" to MSEDCL for a duration not exceeding one year ("Suspension Period").
 - (ii) During the "Suspension Period" mentioned herein above, MSEDCL shall, subject to the prior consent of the Solar Power Producer, novate its part of the PPA to any third party, including its affiliates or the Solar Power Producer shall be free to sell in the open market by finding the said consumers on its own or through any Central / State power trading utilities. In case of wheeling of power to such third parties, the transmission charges, transmission losses, wheeling charges and losses SLDC charges and cross subsidy surcharge etc. shall be applicable as per MERC's regulation in force from time to time and paid directly to respective agencies by third party. No banking facility shall be allowed to Power Producer and third parties.
 - (iii) Till expiry of the Suspension Period, MSEDCL will be entitled to cure its default and buy power from the Power Producer. In the event novation is not acceptable to the Solar Power Producer, or if no offer of novation is made by the defaulting procurer within the stipulated period, then the Solar Power Producer may terminate the PPA and at its discretion require the defaulting procurer to either
 - 1) takeover the project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 110% (one hundred and Ten per cent) of the adjusted equity as detailed in the PPA or or
 - 2) pay to the Solar Power Producer, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity with the project assets being retained by the Solar Power Producer.

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

Article 11: DISPUTE RESOLUTION

- 11.1 All disputes or differences between the Parties arising out of or in connection with this Agreement shall be first tried to be settled through mutual negotiation.
- 11.2 The Parties hereto agree to attempt to resolve all disputes arising hereunder promptly, equitably and in good faith.
- 11.3 Each Party shall designate in writing and communicate to the other Party its own representative who shall be authorized to resolve any dispute arising under this Agreement in an equitable manner and, unless otherwise expressly provided herein, to exercise the authority of the Parties hereto to make decisions by mutual agreement.
- 11.4 In the event that such differences or disputes between the Parties are not settled through mutual negotiations within sixty (60) days, after such dispute arises, then it shall be adjudicated by MERC in accordance with Law.
- 11.5 In the event of a dispute as to the amount of any Tariff Invoice, MSEDCL shall notify the Solar Power Producer of the amount in dispute and MSEDCL shall pay the Solar Power Producer 100% of the undisputed amount within the due date provided either party shall have the right to approach the MERC to effect a higher or lesser payment on the disputed amount.
- 11.6 MSEDCL / Solar Power Producer shall not have the right to challenge any Tariff Invoice, or to bring any court or administrative action of any kind questioning/modifying a Tariff Invoice after a period of three years from the date of the Tariff Invoice is due and payable.
- 11.7 The Parties hereto agree to attempt to resolve all disputes arising hereunder promptly, equitably and in good faith.
- 11.8 Each Party shall designate in writing and communicate to the other Party its own representative who shall be authorized to resolve any dispute arising under this Agreement in an equitable manner and, unless otherwise expressly provided herein, to exercise the authority of the Parties hereto to make decisions by mutual agreement.
- 11.9 Where any dispute arises from a claim made by any change in or determination of Tariff or any matter related to Tariff or claims made by any party which partly or wholly relate to any change in the Tariff or determination of any matter agreed to be referred to the MERC, such dispute shall be submitted to adjudication by the MERC. Appeal against the decision of the MERC shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.
- 11.10 Courts in Mumbai shall have exclusive jurisdiction to enforce any award under this agreement, subject to the applicable Laws
- 11.11 The provisions of this clause shall survive the termination of this PPA for any reason whatsoever
- 11.12 The disputes beyond the jurisdiction of MERC shall be filed before the Bombay High Court, Mumbai.