

In case the MSEDCL purchases the excess generation corresponding to the higher limit of CUF declared by the HPD, the same may be done at 75% of the PPA tariff.

#### **5.6.4 Repowering:**

The HPD shall be allowed repowering for a maximum period of six (6) months during the entire PPA term of 25 years. The generator shall not be in default for non-supply of power during this period of repowering.

However, the MSEDCL will be obliged to buy power only within the range of CUF, specified in the PPA. Any excess generation will be dealt as specified in clause 3.12.3 of RfS.

#### **5.6.5 Generation compensation due to Backed Down:**

The HPD shall follow the forecasting and scheduling process as per MERC/CERC regulations as amended from time to time.

The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), encourages a status of “Must Run” to RE developers. Accordingly, Hybrid Power Plant duly commissioned, should be directed to back down by a Discom/ Load Dispatch Centre (LDC). In case such eventuality of Backdown arises, except for the cases where the back down is on account of events like consideration of grid security/ an emergency in CTU / STU s / Discom’s evacuation system for safe operation of its Grid or safety of any personnel or the other such condition, the HPD shall suitably back down their generation.

In case of backing down situation except for the reasons cited above, the HPD will be eligible for generation compensation from Procurer/MSEDCL after receipt of Regional Energy Account /State Energy Account as under:

<b>Duration of Back</b>	<b>Provision for Generation Compensation</b>
-------------------------	----------------------------------------------

Hours of backdown during monthly billing cycle	Minimum Generation Compensation = 100% of (Average Generation per hour during the Month) (number of lockdown hours during the month) x PPA tariff.
------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------

Generation Compensation as calculated above, will be limited to the extent of shortfall in annual generation corresponding to the maximum CUF permitted as per Clause 5.6 above and the same will be settled on annual basis.

The Generation Compensation is to be paid as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA) / State Energy Accounts.

It is clarified that the above compensation shall not be applicable in case must run status is withdrawn by applicable regulations in future

It is hereby clarified that for the purpose of **Clause 5.6.5**, “generation” shall mean scheduled energy based on Energy Accounts and AMR.

# ARTICLE 6: BILLING AND PAYMENT

## 6.1 Billing Provision:

The Billing will be on monthly basis . MSEDCL will be billed by the HPD based on REA/SEA/ Meter Reading (AMR/MRI) as certified by Maharashtra SLDC/RLDC or MSEDCL authority as may be applicable following the end of each month for the energy supplied and payment will be due on the thirtieth day following the delivery of the billing invoice.

## 6.2 Payment:

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

While making such payments to the Tariff invoices, MSEDCL shall deduct amounts equivalent to the penalties levied under Article 3.3(ii)(d) of the the PPA

## 6.3 Late Payment:

For payment of Monthly bill by MSEDCL thirty (30) days beyond its due date, if paid after Due date of Payment, a late Payment charge shall be payable by MSEDCL to the HPD at the rate of 1.25% percent in excess of the SBI, 1 year Marginal Cost of Funds Based Lending Rate (MCLR) per annum / any replacement thereof by SBI.

## 6.4 Rebate:

For payment of any Bill on or before Due Date, the following Rebate shall be paid by the wind power generator to MSEDCL in the following manner:

- i) A rebate of 2% shall be payable to MSEDCL for the payments made within a period of 10 days of the presentation of hard copy of Bill along with required supporting documents at MSEDCL office.
- ii) Any payments made beyond a period of 10 days of the date of presentation of hard

copy of Bill along with required supporting documents at MSEDCL office up to the due date shall be allowed a rebate of 1%.

- iii) For the above purpose, the date of presentation of Bill shall be the next Business Day of delivery of the physical copy of the Bill at MSEDCL.
- iv) No rebate shall be payable on the Bills raised on account of taxes, duties, cess etc.

## **6.5 Payment Security**

### **6.5.1 Revolving Letter of Credit:**

- i) MSEDCL shall establish and maintain irrevocable and unconditional revolving Letter of Credit in favour of, and for the sole benefit of, the HPD for the contracted capacity. All the cost incurred by MSEDCL for opening, maintenance and other cost related to establishment of Letter of Credit shall be borne by the HPD.
- ii) The Letter of Credit shall be established in favour of, and issued to, the HPD on the date hereof and made operational thirty (30) days prior to due date of first invoice and shall be maintained consistent herewith by MSEDCL and all times during the Term of the Agreement.
- iii) Such Letter of Credit shall be in form and substance acceptable to both the Parties and shall be issued by any Scheduled Bank and be provided on the basis that:
  - a) In the event a Tariff Invoice or any other amount due and undisputed amount payable by MSEDCL pursuant to the terms of this Agreement is not paid in full by MSEDCL as and when due, the Letter of Credit may be called by the HPD for payment of undisputed amount.
  - b) The amount of the Letter of Credit shall be equal to one month's projected payments during first contract year and thereafter during each contract year the amount of Letter of Credit shall be an average monthly bill in previous contract year.
  - c) The MSEDCL shall replenish the Letter of Credit to bring it to the original amount within 30 days in case of any valid drawdown.

- iv) The Letter of Credit shall be renewed and / or replaced by MSEDCL not less than 30 days prior to its expiration.
- v) Payment under the Letter of Credit: The drawl under the Letter of Credit in respect of a monthly tariff Invoice (excluding supplementary bills) shall require:
  - a) a copy of the metering statement jointly signed by the official representatives of both the Parties, supporting the payments attributable to the Delivered Energy in respect of such Tariff Invoice.
  - b) a certificate from the HPD stating that the amount payable by MSEDCL in respect of such Tariff Invoice has not been paid and disputed by MSEDCL till the Due Date of Payment of the Tariff Invoice.

#### **6.5.2 Payment Security Fund –**

The Payment Security Fund shall be suitable to support payment for at least 3 (Three) months billing of all the Projects tied up with such fund.

#### **6.6 Disputes:**

In the event of a dispute as to the amount of any Tariff Invoice, MSEDCL shall notify the HPD of the amount in dispute and MSEDCL shall pay the 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. The Parties shall discuss within a week from the date on which MSEDCL notifies the HPD of the amount in dispute and try and settle the dispute amicably.

Where any dispute arising out of or in connection with this agreement is not resolved mutually then such dispute shall be submitted to adjudication by the MERC /under Section 79 or 86 of Electricity Act 2003 and the MERC may refer the matter to Arbitration as provided in the said provision read with Section 158 of Electricity Act 2003. For dispute beyond the power conferred upon MERC, such dispute shall be subject to jurisdiction of the High Court at Mumbai. If the dispute is not settled during such discussion then the payment made by MSEDCL shall be considered as a payment under protest. Upon resolution of the dispute, in case the HPD is subsequently found to have overcharged, then it shall return the overcharged amount with an interest

of SBI 1 year Marginal Cost of Funds Based Lending Rate (MCLR) plus 1.25 % for the period it retained the additional amount. MSEDCL / HPD 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.

# **ARTICLE 7: METERING AND COMMUNICATION**

## **7.1 Reading and Correction of Meters**

- i) The metering point shall be as given below:
  - a) For new intra - state projects, metering shall be at the voltage level of 33 kV or above of STU/MSETCL sub-station including the dedicated transmission line connecting the Hybrid power project.
  - b) For inter - state projects, energy settlement and delivery point shall be at Maharashtra STU/MSETCL periphery.
- ii) For the purpose of energy accounting, the ABT compliant meter shall be installed by HPD at the metering point. Further, For the purpose of energy accounting the Generator shall have to install Availability Based Tariff meter /Special Energy Meter at the metering point as well as on each source i. e. Wind and Solar at CTU/STU substation end. Interface metering shall conform to the Central Electricity Authority (Installation and Operation of Meters) Regulations 2014 and amendment thereto. MSETCL/STU/MSEDCL shall stipulate specifications in this regard.
- iii) In the event that the Main Metering System is not in service as a result of maintenance, repairs or testing, then the Backup Metering/Check metering System shall be used during the period the Main Metering System is not in service and the provisions above shall apply to the reading of the Backup Metering System/Check Metering Systems.
- iv) The HPD shall also maintain records of generation of electrical energy from wind and solar component of the Wind Solar Hybrid Project separately. The same shall be made available by the HPD to MSEDCL as and when required by MSEDCL.

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

- i) The Main Metering System and the Backup Metering System shall be sealed in the presence of representatives of HPD and STU/CTU and DISCOM.

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

### **7.3 Records**

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

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



- 7.3.2 The HPD shall maintain records of generation of electrical energy from wind and solar component of the Hybrid Project separately. The same shall be made available by the HPD to MSEDCL as and when required by MSEDCL.
- 7.3.3 The grid connected solar PV power plants and wind plants will install necessary equipment for regular monitoring of solar irradiance (including GHI, DHI and solar radiation in the module plane), ambient air temperature, wind speed and other weather parameters and simultaneously for monitoring of the electric power (both DC and AC) generated from the Project.
- 7.3.4 Online arrangement would have to be made by the HPD at its own cost for submission of above data regularly for the entire period of this PPA to the SLDC/RLDC, MSEDCL and the concerned Ministry or concerned agency as per applicable regulation / directions.
- 7.3.5 Reports on above parameters on monthly basis (or as required by regulation / guidelines) shall be submitted by the HPD to RLDC/SLDC and MNRE and inform the same to MSEDCL for entire period of PPA.

# ARTICLE 8: FORCE MAJEURE

## 8.1 Force Majeure Events:

- a) Neither Party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations to pay money due prior to occurrence of Force Majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a "Force Majeure Event") beyond the reasonable control of the Party experiencing such delay or failure, including the occurrence of any of the following:
- b) Definition of Force Majeure: A 'Force Majeure' (FM) would mean one or more of the following acts, events or circumstances or a combination of acts, events or circumstances or the consequence(s) thereof, that wholly or partly prevents or unavoidably delays the performance by the Party [(Power Producer / Power Procurer) (Affected Party)] of its obligations under the relevant Power Purchase Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices.

## 8.2 Categorisation of Force Majeure Events:

### 8.2.1 Natural force Majeure Event:

- a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado if it is declared / notified by the competent state / central authority / agency (as applicable), or verified to the satisfaction of Procurer;
- b) radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or

has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party;

- c) the discovery of geological conditions, toxic contamination or archaeological remains on the Project land that could not reasonably have been expected to be discovered through an inspection of the Project land; or
- d) any event or circumstances of a nature analogous to any of the foregoing.

#### **8.2.2 Non-Natural Force Majeure Event :**

- a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action;
- b) nation/state-wide strike, lockout, boycotts or other industrial disputes which are not directly and solely attributable to the actions of the Affected Party, but does not include strike or labour unrest limited to the Affected Party or its contractors;
- c) nationalisation or any compulsory acquisition by any Indian Governmental Instrumentality/ State Government in national interest or expropriation of any material Project assets or rights of the Generator, as a result of which the Generator or its shareholders are deprived (wholly or partly) of their rights or entitlements under the Power Purchase Agreement. Provided that such action does not constitute remedies or sanctions lawfully exercised by the Procurer or any other Government Authority as a result of any breach of any of the Applicable Laws or the Applicable Permits by the Generator or the Generator related parties;
- d) action of a Government Authority having Material Adverse Effect including but not limited to change in law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 9 of this PPA; any unlawful or unauthorised or without jurisdiction revocation of, or delay in, or refusal, or failure to renew or grant without valid cause, any Permits of the Generator or any of the clearance, licence, authorization to be obtained by the Contractors to perform their respective obligations under the relevant PPA and/or the Project Documents; provided that such delay, modification, denial, refusal or revocation did not result from the Generator's or any Contractors inability or failure to comply with any condition relating to grant, maintenance or renewal of such Permits or clearance, licence, authorization, as the case may be.