

8.3 Force Majeure Exclusions:

8.3.1 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;
- b) Delay in the performance of any contractor, sub-contractor or their agents;
- c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- d) Strikes at the facilities of the Affected Party;
- e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- f) Non-performance caused by, or connected with, the Affected Party's:
 - i. Negligent or intentional acts, errors or omissions;
 - ii. Failure to comply with an Indian Law; or
 - iii. Breach of, or default under this Agreement

8.4 Notification of Force Majeure Event

8.4.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) 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.

8.4.2 Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under the PPA. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The

Affected Party shall give the other Party regular (and not less than 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.

- 8.4.3** The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under the PPA, as soon as practicable after becoming aware of each of these cessations.

8.5 Performance Excused

- 8.5.1** The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under the PPA 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. The Parties may mutually agree to extend the period for which performance is excused due to a Force Majeure Event.
- 8.5.2** For the time period, as mutually agreed by the Parties, during which the performance shall be excused, the generator shall be entitled for a day to day extension of the period provided for Financial Closure or Scheduled Commissioning Period or the PPA period, as the case may be.
- 8.5.3** Provided always that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.
- 8.5.4** Provided further that, nothing shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

8.6 No Liability for Other Losses:

Save as otherwise provided in these Guidelines, 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.

8.7 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

PPA. 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.

8.8 Termination Due to Force Majeure Event:

8.8.1 Termination due to Natural Force Majeure Event:

- a) If, prior to the completion of the 180 (one hundred and eighty) Day period (or any extended period) for a Natural Force Majeure Event commencing from the date of issuance of the Force Majeure Notice, the Parties are of the reasonable view that a Natural 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 8.5 (Performance Excused); or that it is uneconomic or impractical to restore the affected Unit, then the Parties may mutually decide to terminate the PPA, and the termination shall take effect from the date on which such decision is taken.
- b) Without prejudice to the provisions of Article 8.8.1(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 PPA in its sole discretion by issuing a notice to that effect.
- c) On termination of the PPA pursuant to Article 8.8.1(b):
 - i. no Termination Compensation shall be payable to the generator.
 - ii. the Generator shall be eligible for undisputed payments under outstanding Monthly Bill(s), before the occurrence of Force Majeure Event

8.8.2 Termination due to Non-Natural Force Majeure Event:

- a) Upon occurrence of a Non-Natural Force Majeure Event, the Generator shall, at its discretion, have the right to terminate the PPA forthwith after the completion of the period of 180 (one hundred and eighty) Days from the date of the Force Majeure Notice.
- b) Notwithstanding anything in Article 8.6, on termination of the PPA pursuant to Article 8.8.2(a):
 - i. the Procurer shall pay to the Generator, 'Force Majeure 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 in the Article 10.3.4 of this PPA and takeover the Project assets.

- 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:

9.1.1 "Change in Law" means the occurrence of any of the following events after the last date of bid submission resulting into any additional recurring/ non-recurring expenditure by the HPD or any income to the HPD:

- i) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- ii) a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- iii) the imposition of a requirement for obtaining any Consents, Clearances, Permits and/or licenses which was not required earlier;
- iv) a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the HPD;
- v) any statutory change in tax structure i.e. change in rates of taxes, duties and cess, or introduction of any new tax made applicable for setting up of Hybrid Power Project and supply of power by the HPD and has direct effect on the Project, shall be treated as per the terms of this Agreement.

9.1.2 But the above shall not however include any change in taxes on corporate income or any withholding tax on income or dividends distributed to the shareholders of the HPD or any change on account of regulatory measures by the Appropriate Commission.

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 HPD 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 HPD /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 Hybrid power project and supply of power from the Hybrid 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 $X =$ estimated monthly electricity generation (in kWh) $= (1/12) X$ [contracted capacity of the RE power plant as per PPA (in MW) x Annual CUF declared in PPA (in %) x 8760 hour x 10];

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

where,

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

$Mr =$ monthly rate of interest =; where $R =$ 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 Hybrid 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 Hybrid Power Developer shall be obliged to serve a notice to MSEDCL if it is beneficially affected by a Change in Law. Without prejudice