

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 Hybrid 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 twenty five (25) years from the Commercial Operation Date. 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 HPD 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 HPD:

- i) Failure to commission the project by SCOD or fails to supply power in terms of the PPA.
- ii) O&M Default on part of HPD.
- iii) Failure or refusal by HPD to perform any of its material obligations under this

Agreement including but not limited to financial closure.

- iv) HPD fails to make any payment required to be made to MSEDCL under this agreement within three (3) months after the due date of a valid invoice raised by the MSEDCL on the HPD.
- v) If the HPD (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.
- vi) If the HPD 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 HPD 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 the HPD and expressly assumes all obligations under this agreement and is in a position to perform them; Or
- vii) The HPD repudiates this agreement.
- viii) Change in controlling shareholding before the specified time frame as mentioned in the RfP.
- ix) Occurrence of any other event which is specified in this Agreement to be a material breach / default of the HPD.

**10.3.2** Upon being in default, the Power Producer shall be liable to pay MSEDCL, damages, as detailed in the clause 3.3 of PPA for failure to commission within stipulated time and Clause 5.6 for failure to supply power in terms of the PPA. For other cases, HPD shall pay to MSEDCL, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity. MSEDCL shall have the right to recover the said damages by way of forfeiture of bank guarantee, if any, 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 HPD, the lenders shall be entitled to exercise their rights of substitution, in accordance with the substitution agreement provided in the PPA and in concurrence with the Procurers. However, in the event the lenders are unable to

substitute the defaulting Wind Solar Hybrid Power Developer(HPD) 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:**

- i) If MSEDCL is in default on account of reasons including inter alia:
  - a) Default by MSEDCL in performing its obligation under this agreement, (ii) Failure to pay the monthly and / or supplementary bills beyond 90 days,
  - b) 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.
  - c) The defaulting Procurer shall, subject to the prior consent of the HPD, novate its part of the PPA to any third party, including its Affiliates within the stipulated period.
  
- ii) In the event the aforesaid novation is not acceptable to the HPD, or if no offer of novation is made by the defaulting MSEDCL within the stipulated period, then the WPG may terminate the PPA and at its discretion require the defaulting Procurer to either:
  - a) 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
  - b) pay to the HPD, 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 HPD.

iii) 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.

**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 and the Reference Date;

- a) On or before 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;
- b) After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three three per cent) 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;
- c) An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the 'Base Adjusted Equity').

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.

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

- a) 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 prior to the Transfer Date;

- b) All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (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 HPD 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 HPD in writing which shall specify in reasonable detail the Event of Default giving rise to the default notice, and calling upon the HPD 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 HPD. MSEDCL may terminate this Agreement by delivering such a Termination

Notice to the HPD 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 HPD shall have liability to make payment within 30 days from the date of termination notice toward compensation to MSEDCL equivalent to three years billing based on normative CUF of 30 %.

Where a Default Notice has been issued with respect to an Event of Default, which requires the co-operation of both MSEDCL and the HPD 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 'sDefault:**

Upon the occurrence of an Event of Default as set out in sub-clause 10.3.4 above, the HPD 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.

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 HPD may serve a "Suspension Notice" to MSEDCL for a duration not exceeding one year ("Suspension Period").

During the "Suspension Period" mentioned herein above, MSEDCL shall allow the HPD to sell power from the project, to any HT consumers of the State, in the open market either 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 from time to time and paid directly to respective agencies by third party. No banking facility shall be allowed to HPD and third parties.

Till expiry of the Suspension Period, MSEDCL will be entitled to cure its default and buy power from the HPD. In the event MSEDCL fails to cure the default, the