

**Energy Purchase Agreement**

**For**

**\_\_\_\_\_ MU**

**[Equivalent capacity of \_ MW]**

**at Village \_\_\_\_\_, Tal: \_\_\_\_, Dist: \_\_\_\_\_**

**Between**

**M/s \_\_\_\_\_**

**And**

**BRIHANMUMBAI ELECTRIC SUPPLY AND TRANSPORT  
UNDERTAKING**

# Energy Purchase Agreement

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**THIS ENERGY PURCHASE AGREEMENT** [the "Agreement") is made this  
\_\_\_\_\_ day of \_\_\_\_\_ 2010

**BETWEEN** M/s \_\_\_\_\_, a Public Limited Company duly incorporated  
under the Companies Act, 1956 with its registered Office at  
\_\_\_\_\_  
hereinafter referred to as the "**Seller** " [which expression shall  
unless repugnant to the context or meaning thereof include its  
successor and assigns]

**AND Brihanmumbai Electric Supply and Transport Undertaking (Procurer)**, formerly known as Brihanmumbai Electric Supply and Tramways Company Limited municipalized pursuant to the option given to it under the Deed of Concession granted to the Company having its Registered Office at....., Mumbai 400 001, hereinafter referred to as the "**Procurer / Purchaser**" (which expression shall unless repugnant to the context or meaning thereof include its successor and assigns)

**WHEREAS** the Seller desires to develop, design, construct, own and operate a \_\_\_\_\_ [Insert "Wind" or "Biomass" or "Non Fossil Fuel based Cogeneration" or "Small Hydro"] Generating Facility with an expected Installed Capacity of \_\_\_\_\_ **MW at Village \_\_\_\_\_, Tal \_\_\_\_\_, Dist; \_\_\_\_\_**, hereinafter referred to as the "Facility".

and

**WHEREAS** the Seller desires to interconnect the Facility with the State Grid as advised by the Procurer and sell and deliver to Procurer at the point of Delivery as defined in Exhibit B, \_\_\_\_\_ MU of the Energy produced by the Facility in accordance with the terms of this agreement.

and

**WHEREAS** if the Seller is a Trading Licensee, the Seller shall ensure that the Terms and Conditions of this Agreement pertaining to the Generating Facility are incorporated in the Agreement between the Trading Licensee and Developer. The Seller shall also ensure that the Developer shall comply to the provisions of this Agreement

and

**WHEREAS** the Procurer as a Utility under the Renewable Purchase Obligation (RPO) has agreed to buy the Energy generated from the Seller's Facility in accordance with and subject to the terms and conditions of this Agreement. This EPA will be governed by RPS order dated 16.08.2006 issued by MERC and any subsequent amendments thereof.

[Refer to Annexure A and Annexure B and insert the applicable in the preamble]

**NOW THEREFORE** in consideration of the mutual covenants herein contained, the parties agree to the following:

## **ARTICLE-I**

### **DEFINITIONS AND RULES OF INTERPRETATION**

#### **Section 1.01: Rules of Construction:**

The capitalised terms listed in this Article shall have the meanings set forth herein whenever the term appears in this Agreement either in the singular or plural. Other terms (whether in capital or not) used in this Agreement but not listed in this Article shall have the meanings as commonly used in the English language and where applicable, in Standard Utility Practises and accepted technical or trade parlance. In addition the following rules of interpretation shall apply:

- [i] References to “Articles”, “Sections” or “Exhibits” shall be to articles, sections, or exhibits of this Agreement.
- [ii] The Exhibits attached hereto are incorporated in and are intended to be a part of this Agreement, provided that in the event of a conflict between the terms of any Exhibit and the terms of the body of this Agreement, the terms of the body of this Agreement shall take precedence.

#### **Section 1.02: Definitions:**

In this Agreement, the following words and expressions shall have the respective meanings set forth herein:

- “**Act**” means the Electricity Act 2003 as in force from time to time
- “**Affiliate**” shall mean a company that either directly or indirectly
- a. controls or
  - b. is controlled by or
  - c. is under common control with
- a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and “control” means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;
- “**Agreement**” means this Energy Purchase Agreement executed between the Seller and Procurer (Purchaser) including the Exhibits attached hereto.
- “**Agricultural waste**” is the combustible organic matter obtained from agricultural products.
- “**Auxiliary Energy Consumption**” means the electrical energy consumed by the Seller from the Procurer’s System to meet its own

	energy requirement as recorded in the energy meter at the Metering Point.
<b>“Bagasse”</b>	is the combustible organic matter left after the extraction of the usable products of the sugarcane.
<b>“Bio-gas”</b>	is the combustible gas generated from the sugar mill / distillery/effluent.
<b>“Biomass”</b>	is the combustible organic matter obtained from trees, plants etc.
<b>“Business Day”</b>	means any calendar day, which is not a public holiday in Maharashtra.
<b>“Capacity Utilisation Factor (CUF %)”</b>	means the percentage of energy generated and measured at the Metering Point divided by the installed capacity multiplied by the number of hours (8760 Hours) in a calendar year.
<b>“Capital Cost”</b>	means the cost of the project and machinery including other costs such as cost of infrastructure development, cost of improvement in EHV system for Power Evacuation, soft financing costs, administrative cost etc.
<b>“COD Notice”</b>	means the meaning set forth in Section 8.02.
<b>“Commercial Operation Date (COD)”</b>	means the date, on which Board makes declaration as set forth in the Section 8.02.
<b>“Commercial Operation Year”</b>	means the period commencing on the Commercial Operations Date and ending twelve months thereafter and each successive twelve-month period thereafter during the Term.
<b>“Committed Energy”</b>	means ____MUS of energy per year
<b>“Conditions Precedent”</b>	bears the meaning set forth in Article 3.
<b>“Quoted Tariff”</b>	bears the meaning set forth in Section 9.01 & Exhibit C
<b>“Delivery Point”</b>	means the point where the energy from the power station of the Seller is delivered to the Procurer into the intrastate transmission system (including the dedicated transmission line connecting the power station with the intrastate transmission system). The Delivery Point is shown on Exhibit B.
<b>“Deemed Generation”</b>	means the as defined in Article- 9 Section 9.08.

- “Detailed Project Report (DPR)”** Detailed Project Report (DPR), of a energy project will consist of the equipment details, broad technical specifications, plan for interconnection arrangement(s) with the State Grid, prognosis analysis (energy generation per year), details of project cost, financing plan and financial cash flow of the project. DPR would also have specimen approvals required as amended in time by MEDA.
- “Distribution System”** means the Distribution system in the State of Maharashtra to which the Seller’s Generation Facility is connected, for delivery of energy to the Procurer.
- “Emergency”** means any abnormal occurrence in the interconnection or system condition that requires automatic or manual action to prevent or limit loss of the State Grid Electrical load or generation supply that in the reasonable judgment of the Procurer could (i) adversely affect the reliability of the Procurer’s system or generation supply, (ii) adversely affect the reliability of any interconnected system or (iii) otherwise result in significant disruption of service to consumers or pose a threat to public safety or property.
- “Energy”** means the net electric energy generated exclusively by the Facility (which is electric energy derived from a technology that exclusively relies on a renewable energy source) and delivered and metered to the Delivery Point by the Meters installed pursuant to Section 11.01.
- “Event of Default”** bears the meaning set forth in Section 13.01.
- “Extra High Voltage (EHV)”** means EHV transmission lines with voltage rating of 66 Kilo-Volts (KV) and above.
- “Facility”** means the Seller’s electricity generating facility as identified and described in Article 5 and **Exhibit A** to this Agreement, the purpose for which is to produce electricity and deliver such electricity to the Delivery Point. The facility includes without limitation, the Seller’s plant equipment, together with other associated equipment, control systems, safety devices, property, interconnection facilities, buildings, step-up transformers, output breakers, electric lines, overhead transmission lines and any other facilities necessary to connect to the Delivery Point.
- “Financial Year”** means the year commencing from 1<sup>st</sup> April of the year to 31<sup>st</sup> March of the next year.

<b>"Force Majeure Event"</b>	means any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event is reasonably unforeseeable, beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, including without limitation an act of God or the elements, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event, transportation delays, unavailability of materials, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, strike or other labor difficulty caused or suffered by third parties beyond the reasonable control of such Party or its Affiliates (whether such cause is similar or dissimilar to the foregoing) or any restraint or restriction imposed by law or by rule, regulation or other acts of governmental authorities, whether central, state or local; <i>provided</i> , further, that Seller's failure to obtain any of the Permits shall not be a Force Majeure Event.
<b>"Forced Outage"</b>	means any condition of the facility that requires immediate disconnection of the Facility, or some part thereof, from service and/or the period of interruption or reduction or shutdown of the Facility attributed to unforeseen conditions other than planned or scheduled outages.
<b>"GOI"</b>	means Government of India.
<b>"GoM"</b>	means Government of Maharashtra.
<b>"KWh"</b>	means kilowatt-hour, a unit of energy equal to one kilowatt of power supplied or taken from an electric circuit for one hour.
<b>"Lead Member"</b>	shall mean ..... [Insert name of company], which company holds equity stake in the Seller in accordance with Article 20.00 of this Agreement and so designated by other Member(s) of the Bidding Consortium in accordance with the consortium agreement as specified in the RFP
<b>"MERC"</b>	means the Maharashtra Electricity Regulatory Commission or any successor agency.

- “Metering Point”** is the physical point at which the meters are installed on the State Grid to measure the Energy sold to the Procurer at the delivery point.
- “MUS”** means a unit of energy, equal to one million kWh.
- “Operating Procedures”** bears the meaning set forth in Section 10.01.
- “Operating Records”** means all the agreements / records associated with the Facility, operating logs, and blueprints for construction, operating manuals, all warranties on equipment and all documents whether in printed or electronic format, that the Seller uses or maintains for the operation and maintenance of the Facility.
- “Parent Company” or “Parent”** shall mean a company that holds at least twenty six percent (26%) of the paid-up equity capital directly or indirectly in the Seller or in the Member, as the case may be.
- “Permit”** means a written consent (Permission) obtained by the Seller from the Procurer (Officer designated for the same) for carrying out any maintenance work in the Facility which requires a shut down.
- “Power Factor”** means is the cosine of the electrical angle between the voltage and current complexors in an AC circuit and expressed in decimal form.
- “Reactive Energy”** means the integral of Reactive Power in relation to an AC circuit with respect to time and measured in the units of ‘volt-ampere’ hours reactive (VARh) or in standard multiples thereof.
- “Reactive Power (KVAR)”** means the product of voltage, current and the sine of the electrical phase angle between the voltage complexor and current complexor, in relation to AC circuit, measured in volt – amperes reactive (VAR) and in standard multiples thereof.
- “Renewable Purchase Obligation (RPO)”** is the total consumption of electricity for purchase from renewable sources of energy in the area of each distribution licensee under Section 86 (i) (e) of Electricity Act 2003.
- “Scheduled Outage”** means planned shutdown or outage / reduction of the Facility’s generation that both (i) has been coordinated in advance with the Procurer, with mutually agreed start

date and duration and (ii) is required for inspection or preventive or corrective maintenance.

**“SCADA “** means the Supervisory Control and Data Acquisition System (SCADA) installed for recording and transferring the data on line.

**“Site”** means the immovable property on which the Facility will be constructed and located as more specifically described in Article 5 and **Exhibit B** to this Agreement.

**“Stabilization Period”** means the period between first synchronization of the Facility and Commercial Operations Date.

**“Standard Utility Practices”** means the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric power generation industry, MERC and/or any other Governmental agency) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy and expedition. With respect to the Facility, Standard Utility Practices includes, but is not limited to, taking reasonable steps to ensure that:

- (i) Equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Facility's needs;
- (ii) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to (A) operate the Facility properly and efficiently, and in coordination with Procurer, and (B) respond in an appropriately timely manner to reasonably foreseeable Emergency conditions whether caused by events, circumstances or conditions on or off the Site;
- (iii) Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;
- (iv) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

- (v) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization and/or control system limits; and
- (vi) Equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency conditions.

**“State Grid System”** means the intrastate transmission system of the State of Maharashtra as modified and expanded from time to time, for delivery of electricity to the Procurer’s consumers in the State of Maharashtra.

**“STU”** means the State Transmission Utility notified by the respective State Government under Sub-section (1) of Section 39 of the Act.

**“Term”** means the period of time during which this Agreement shall remain in full force and effect, as set forth in Section 4.01.

**“Test Energy”** means the energy, which is produced by the Facility and delivered to the Procurer at the Point of Delivery at the time of testing of the Facility prior to Commercial Operations.

**“Ultimate Parent Company”** shall mean a company which directly or indirectly owns at least twenty six percent (26%) paid up equity capital in the Seller or Member (as the case may be) and such Seller or Member (as the case may be) shall be under the direct control or indirectly under the common control of such company

**“Wind Turbines”** means the generating devices (wind mills) powered by the wind that are included in the Facility.

**ARTICLE 2**  
**REGULATORY APPROVAL**

**Section 2.01: MERC Orders:**

*[Insert as applicable from a, b, c & d]*

- a) The sale of Wind Energy under this Agreement shall be governed by MERC's Orders dated 24<sup>th</sup> November 2003 in Case No. 17 (3), 3, 4 & 5 of 2002, in the matter of Procurement of Wind Energy & Wheeling for Third Party Sale and/or Self Use and subsequent orders.
- b) The sale of Biomass Energy under this Agreement shall be governed by MERC's Orders dated 8th August 2005 In Case No. 37 of 2003, in the matter of in the matter of Tariff and Related Dispensation for Procurement of Power from Biomass-based Generation Projects
- c) The sale of energy from Non fossil fuel based Cogeneration plants under this Agreement shall be governed by MERC Orders dated 16th August 2001 In case no 8/9/10/15/17/18/19/20/21 of 2001 in the matter of Purchase of Power from Bagasse based Co-generation Projects and in the matter of aiding the State Government in formulation of Policy.
- d) The sale of energy from Small Hydro plants under this Agreement shall be governed by MERC Orders dated 9th November 2005 in Case No. 25 of 2004 In the matter of Determination of Tariff for Small Hydel Power (SHP) Projects within Maharashtra

**Section 2.02: Subject to MERC and Electricity Act 2003:**

This Agreement is subject to any further orders passed by MERC and shall be subject to all necessary sanctions/permissions/approvals as may be required to be obtained from the MERC or any other Governmental Authority. The Seller shall follow the grid discipline and Grid Connectivity Rules and Regulations as well as technical standards for Grid Connectivity, as may be set out by the MERC or any other Competent Authority as per the provisions of the Electricity Act 2003.

## **ARTICLE 3**

### **CONDITIONS PRECEDENT**

#### **Section 3.01**

##### **A. Conditions Precedent for Seller**

The obligations under this Agreement are subject to the satisfaction in full of the following conditions precedent at the Seller's own cost and risk within six (6) months. In case of the Seller being a Trading Licensee, the Seller shall ensure that the Developer all the necessary Condition Precedent are incorporated in the Agreement signed with the Developer and further ensure that necessary proof of the same is provided to the Procurer:

- a) The Seller shall obtain all clearances to operate the Generation Facility as may be required under Electricity Act, 2003 and the relevant MERC Orders, rules and regulation there under.
- b) Execution of any other Agreements or Contracts deemed necessary by the Seller for the Commercial Operation of the Generation Facility;
- c) The Seller shall comply with all the requirements under Electricity Act, 2003.
- d) The Seller providing Procurer a Detailed Project Report (DPR) in respect of the Facility.
- e) The Seller obtaining the necessary licenses/ sanctions/ approvals/ clearances from Governmental agencies, inter-alia, including:
  - (i) All approvals and clearances from the Maharashtra Energy Development Agency (MEDA), Government of Maharashtra, as are required;
    - (1) Land Documents (Registered Sale Deed, 7/12 Extract, N.A. Permission)
    - (2) Geology and Mining Permission.
    - (3) NA Permission from Development Commissioner (Industries) for use of Land for Industrial Purpose.
    - (4) Forest Clearance, if applicable
    - (5) Pollution control and environmental clearances, if applicable
    - (6) Commitments for supply of water from GoM and other relevant authorities and water allocation clearance and any other NoC from relevant authorities, if applicable
  - (ii) Statutory approval from the Electrical Inspectorate, GOM.
  - (iii) Arrange for evacuation, wheeling and transmission facilities as applicable.
  - (iv) Any other statutory permission as may be required.

- f) The Seller shall procure electricity at the Generation Facility (including construction, commissioning and start-up power) and complies in a timely manner all formalities for getting such a supply of electricity
- g) The Seller shall ensure that the design and construction of the Facility shall be in line with the provisions of permissions from GOI/ GOM/ MEDA/ Procurer and shall be as per the requirements of any Governmental guidelines and standards prescribed.
- h) The Seller shall have to conclude financial closure within the period of six months from the date of signing of EPA and in case of failure to achieve the financial closure, the EPA will become null and void unless the period for financial closure is agreed to be extended by Procurer on verification of the following documents.
  - 1. Proof of purchase /placing of order for T-G set and allied equipment.
  - 2. Status of financial tie up with financial Institutions.
  - 3. Work order for execution, civil works, building etc.
  - 4. Document indicating status of execution at site or
  - 5. Any other related documents, that too on written request from the Seller.

*[Insert the Conditions Precedent additionally in case of Wind energy plants]*

- 1) The Seller obtaining the necessary licenses/ sanctions/ approvals/ clearances from Governmental agencies, inter-alia, including: *[To be inserted under Point e) above]*
  - (1) Micro Siting Plan.
  - (2) WEG Technical Specification, Power Curve and Type Test certificate.

*[Insert the Conditions Precedent additionally in case of Non-fossil fuel based Cogeneration plants]*

- 1) Before taking up execution of work, approval of C.E. (Elec) PWD, Govt. Maharashtra will have to be obtained by the Seller.
- 2) Before commissioning a Seller set, the Seller shall obtain all the permission / licenses / authorization including but not limited to NOC from MPCB / environmental dept., Electrical inspector as may be required under Electricity Act, 2003 and rules and regulations made there under.

*[Insert the Conditions Precedent additionally in case of Biomass based plant]*

- 1) Seller shall have provided a Bank Guarantee for penalty amount on non-compliance on use of fossil fuel (amount equivalent to annual generation corresponding to 80% PLF multiplied by penalty of Rs. 0.30 per unit) as specified under Article 8 of this agreement.

- 2) The Seller obtaining the necessary licenses/ sanctions/ approvals /clearances from government agencies inter-alia, including all recommendations and clearances from the Maharashtra Energy Development Agency MEDA, Government of Maharashtra, are as required; *[To be inserted under point e) above]*
- Vetting by MEDA on desired quality and quantity of fuel availability and fuel procurement plan.
  - MEDA's recommendation on forwarding note for coal linkages.
  - MEDA's Final Clearance.
  - NA permission from development commissioner (Industries) for use of Land for Industrial purpose, if applicable.
- 3) Statutory approval of Single Line diagram (SLD) from the Electrical Inspector

**B. Conditions Precedent for Procurer:**

Procurer shall obtain clearances on a timely basis to arrange for the necessary facilities including transmission lines and interconnection facilities.

**Section 3.02: Obligations to Satisfy the Conditions Precedent**

Seller and Procurer shall use all reasonable endeavours to procure the satisfaction in full of the Conditions Precedent set out above when and in so far as the subject matter of the relevant condition falls within the scope of its respective responsibility under Article 3.01.

Procurer and Seller shall co-operate as required to procure necessary legal opinions with respect to their respective authorization to execute this Agreement and the enforceability of this Agreement.

**Section 3.03: Non-fulfillment of Conditions Precedent**

- A. If any of the conditions specified in Section 3.01 is not duly fulfilled by the Seller, even one(1) months after the time specified under Section 3.01, otherwise than for the reasons directly attributable to the Procurer or Force Majeure event, then on and from the expiry of such period and until the Seller has satisfied all the conditions specified in Section 3.01, the Seller shall, on weekly basis, be liable to furnish to the Procurer additional Contract Performance Guarantee of Rs. .... *[Insert Amount not less than that derived on the basis of Rs. 0.57 lakhs per MU of Contracted Energy]*, which has been provided to the Procurer within two (2) business days of expiry of every such week. Such additional Contract Performance Guarantee shall also be valid till the end of the Term of Agreement, and the Procurer(s) shall be entitled to hold and/ or invoke the Contract Performance Guarantee, including such increased Contract Performance Guarantee, in accordance with the provisions of this Agreement.
- B. Subject to Clause 3.03 (C), if:
- (i) fulfilment of any of the conditions specified in Section 3.01 is delayed beyond the period of one (1) months after the date specified in Section 3.01 above, and the Seller fails to furnish the

- additional Contract Performance Guarantee to the Procurer(s) in accordance with Clause 3.03A hereof; or
- (ii) the Seller furnishes additional Contract Performance Guarantee to the Procurers in accordance with Clause hereof but fails to fulfil the conditions specified in Section 3.03A for a period of two (2) months beyond the period specified in Section 3.01 above, the Procurer shall have the right to terminate this Agreement by giving a Termination Notice to the Seller in writing of at least seven (7) days.

If the Procurer elects to terminate this Agreement in the event specified in the preceding paragraph of this Article, the Seller shall be liable to pay to the Procurer an amount of Rupees ..... [*Insert amount not less than that derived on the basis of Rs. 15 lakhs per MU of the Contracted Energy*] only as liquidated damages.

The Procurers shall be entitled to recover this amount of liquidated damages by invoking the Contract Performance Guarantee and shall then return the balance Contract Performance Guarantee, if any, to the Seller. If the Procurers are unable to recover the amount of liquidated damages or any part thereof from the Contract Performance Guarantee, the amount of liquidated damages not recovered from the Contract Performance Guarantee, if any, shall be payable by the Seller to the Procurer(s) within ten (10) days from the date of termination of the Agreement. It is clarified for removal of doubt that this Article shall survive the termination of this Agreement.

- C. In case of inability of the Seller to fulfill the conditions specified in Section 3.01 due to any Force Majeure event, the time period for fulfillment of the Conditions Precedent as mentioned in Section 3.01, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by Procurer or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party.
- D. Similarly, in case of inability of the Procurer(s) to fulfill the conditions specified in Section 3.01 due to any Force Majeure event, the time period for fulfillment of the condition precedent as mentioned in Section 3.01, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either Procurer or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement, shall take effect upon the expiry of the last date of the said notice period.
- E. No Tariff adjustment shall be allowed on account of any extension of time arising under any of the sub-articles of Section 3.03; Provided that due to the provisions of Clause 3.03 C and 3.03 D, any increase in the time period for completion of Conditions Precedent mentioned under Section 3.01, shall also lead to an equal extension in the Scheduled Delivery Date.

**Section 3.04: Consequences of Termination or Cancellation pursuant to Clause 3.03**

Subject to liability for a breach of Clause 3.02, in the event of termination of this Agreement pursuant to Clause 3.03 above neither party shall have any liability to the other whatsoever as a result of such termination apart from the liability mentioned in Clause 3.03.

**Section 3.05: Obligations of Seller and Procurer:**

**Seller's Obligations**

- (i) The Seller shall obtain all statutory approvals, clearances and permits necessary for the project in addition to those Approvals as listed in Article 3
- (ii) The Seller shall construct the Facility including the Interconnection Facilities upto the Delivery Point.
- (iii) The Seller shall achieve Scheduled Date of Completion within twelve months from the date of signing of the Agreement.
- (iv) The Seller shall make available to Procurer confirmatory letters from the banks /financial institutions within 15 days from receipt of such documents.
- (v) The Seller shall enter into necessary agreements with STU/MSETCL in respect of interconnection facilities.
- (vi) The Seller shall undertake at its own cost construction/ up gradation of (a) the Interconnection Facilities (b) the transmission lines as per the specifications and requirements of STU/MSETCL upto the Delivery Point and (c) the wheeling arrangements, if any as per the requirements of the concerned utility.
- (vii) Seller shall submit the monthly fuel usage statements for verification by Procurer along with the monthly energy bills and shall also submit the statement to MEDA for record, monitoring and verification.
- (viii) The Seller shall be responsible at their end for all payments on account of any taxes, cesses, duties or levies imposed by the GOM or its competent statutory authority on the land, equipment, material or works of the project or on the electricity generated or consumed by the Seller or by itself or on the income or assets owned by it.
- (ix) The Seller shall also comply with the provisions of IEGC/State Grid Code prevailing ABT order issued by CERC, and other technical operational and safety criteria.
- (x) The Seller shall comply with the appropriate provisions as stipulated under clause 2.10.7 and Clause 2.10.8 of MERC Order dt. 16.8.2006, on Long Term Development of Renewable Energy Sources and associated Regulatory(RPS) Framework , as mentioned under Section 12.1 d] of this agreement.
- (xi) The Seller shall obtain and maintain necessary policies of insurance during the term of this agreement consistent with Standard Utility Practice.
- (xii) For ascertaining deemed generation period, Seller shall inform telephonically the probable causes alongwith the related system and Log Book record to

the concerned substation in -charge and Procurer O&M circle office in case of non feeding of power into the grid.

- (xiii) Seller shall conduct initial capacity test after first commissioning of the project as per Article 8 of the agreement and annual capacity test every year during the tenure of the contract as per Article 8 of the agreement.

**Procurer's Obligations:**

Procurer agrees:

1. to coordinate with MSETCL/STU to complete the construction of transmission facility including equipments at interconnection points, if required, within MSETCL grid system, prior to Schedule Date of Completion before synchronization.
2. to off-take and purchase the electricity (as per Grid code) generated by the Seller and metered at Metering Point subject to transmission or system constraints or Force Majeure events other than the events as specified under Article 9, Section 9.01 of this agreement. However backing down of generation for any reason what so ever shall be in accordance with the Grid Code and other regulations as notified by the Commission from time to time.
3. to make tariff payments to the Seller as set out in Article 12, Section 12.01.
4. to open a Letter of Credit ( irrevocable and revolving) in favour of the Seller for an amount equivalent to the average monthly bill at the cost and option of the Seller as specified under Article 12 Section 12.04 of this agreement.

## **ARTICLE 4**

### **TERM**

#### **Section 4.01: Term and Termination:**

This Agreement shall remain effective as of the date first written above, and shall remain in full force and effect until the \_\_\_<sup>th</sup> anniversary [*Insert the anniversary year as applicable*<sup>1</sup>] of the Commercial Operations Date unless renewed or extended under section 4.02 unless subjected to any early termination. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

#### **Section 4.02: Pre-Commercial Operation Termination:**

Procurer may terminate this Agreement if the regulatory approvals contemplated by Article 2 are not granted or are conditioned upon modification of this Agreement unless the party adversely affected by such modification agrees to it by written notice to the other Party given within thirty (30) days following receipt of a copy of such regulatory approval.

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<sup>1</sup> 13 years in case of Biomass, Wind projects, Non-fossil fuel based Cogeneration plants and 30 years in case of Small Hydro projects

## **ARTICLE 5**

### **FACILITY DESCRIPTION**

#### **Section 5.01 Summary Description:**

*[Insert in case of Small Hydro plants]*

The Seller shall construct, own, operate and maintain the Facility having installed capacity of \_\_\_\_\_ **MW. Exhibit A** to this Agreement includes a complete written description of the Facility, including identification of the Turbines and other equipment and components that make up the Facility.

*[Insert in case of Wind based plants]*

The Seller shall construct, own, operate and maintain the Facility, which shall consist of \_\_\_ **Nos. \_\_\_ KW each Wind Turbines** and associated equipment having a maximum installed capacity of \_\_\_\_\_ **MW. Exhibit A** to this Agreement includes a complete written description of the Facility, including identification of the Wind Turbines and other equipment and components that make up the Facility.

*[Insert in case of Biomass based plants]*

The Seller shall construct, own, operate and maintain the Rankine Cycle Technology based Facility and associated equipment, which shall use predominantly non-fossil fuel such as biomass, having a maximum installed capacity of \_\_\_\_\_ **MW. Exhibit A** to this Agreement includes a complete written description of the Facility, including identification of the fuel type and other equipment and components that make up the Facility.

*[Insert in case of Non-fossil fuel based Cogeneration plants]*

The Seller shall construct, own, operate and maintain the Co-generation Facility and associated equipment, which shall use predominantly non-fossil fuel such as Bagasse biomass, biogas, agricultural waste such as rice husk, groundnut shells, etc., having a maximum installed capacity of \_\_\_\_\_ **MW. Exhibit A** to this Agreement includes a complete written description of the Facility, including identification of the fuel type and other equipment and components that make up the Facility.

#### **Section 5.02: Location of the Facility:**

The facility shall be located on the Site and shall be identified as **M/s \_\_\_\_\_** **[Name of Facility]. The address of the Facility is at Gut No. \_\_\_\_\_ of Village \_\_\_\_\_, Tal: \_\_\_\_\_, Dist: \_\_\_\_\_.** A scaled map that identifies the Site, the location of the Facility at the Site, the location of the Delivery Point and the location of the ancillary facilities and the interconnection facilities is included in **Exhibit B** to this Agreement.

#### **Section 5.03: General Design of the Facility:**

*[Insert in case of Small Hydro plants]*

The Seller shall design, construct, operate and maintain the Facility according to the permissions/sanctions mentioned in Article 3 and in accordance with the Standard Utility Practices, the relevant technical standards in terms of the Electricity Act 2003. The Seller shall ensure that the Facility at all times:

- [a] Have installed SCADA for transferring the data of Energy generated from the Facility's switchyard to the State Grid's nearest manned Sub-Station;
- [b] Have necessary protective equipments and interlocking facilities, which shall be so coordinated that any malfunctioning or abnormality in the Seller's Facility shall not adversely affect the State Grid System and in the event of such malfunctioning or abnormality the Seller's circuit breaker shall trip first to protect the equipments;

*[Insert in case of Wind energy plants]*

The Seller shall design, construct, operate and maintain the Facility according to the permissions/sanctions mentioned in Article 3 and in accordance with the Standard Utility Practices, the relevant technical standards in terms of the Electricity Act 2003. The Seller shall ensure that the Facility at all times:

- [a] Have installed SCADA for transferring the data of Wind Energy generated from the Facility's switchyard to the State Grid's nearest manned Sub-Station;
- [b] Have necessary protective equipments and interlocking facilities, which shall be so coordinated that any malfunctioning or abnormality in the Seller's Facility shall not adversely affect the State Grid System and in the event of such malfunctioning or abnormality the Seller's circuit breaker shall trip first to protect the equipments;
- [c] Have provided HV transmission lines and complete installation of allied equipments from individual Wind Turbines to the Facility's switchyard and from the switchyard up to the State Grid EHV sub-station and/or the Distribution sub-station as applicable, for evacuation of the Wind Energy.
- [d] Have installed at the Facility a capacitor bank of required capacity, so as to maintain the Power Factor as per the terms and conditions of supply prescribed by MERC.

*[Insert in case of Non Fossil fuel based Cogeneration Plants]*

1. The Co-generation power project should predominantly use non-fossil fuels such as Bagasse, biomass, biogas, agricultural waste such as rice husk, groundnut shells, etc. The co-generation projects should be sized in correlation to the locally available non-fossil fuel. The Seller should establish the availability of fuel for the project period.
2. The Generation Facility will be sized based on the availability of Bagasse from the cane crushing which has been established as \_\_\_\_ Tonnes per day (TPD).

3. The Generation Facility will first meet its own power requirement and power/process steam demand of the sugar mill. The power generated in excess of the sugar mill requirement & Auxiliary Energy Consumption of the cogen plant shall be delivered to Procurer.

*[Insert in case of Biomass based Plants]*

1. Facility should be designed to operate on Rankine cycle based technology.
2. The facility should be sized in co-relation to the locally available biomass fuel. The Sellers should establish the availability of the biomass fuel for the Project period and a fuel management chain with appropriate commercial arrangements to ensure continuous availability of fuel supply.
3. If designed to use fossil fuel also, the power plant installation should incorporate adequate systems/equipment for environmental management and pollution control, and comply with extant regulations regarding environmental emissions.
4. The Seller shall design, construct, operate and maintain the facility according to the permissions, sanctions mentioned in Article 3 and in accordance with the Standard Utility Practices, the relevant technical standards in terms of the Electricity Act 2003.
5. The Seller shall ensure that the facility at all times:
  - a. Have necessary protective equipments and interlocking facilities, which shall be so coordinated that any malfunctioning or abnormality in the Seller's Facility shall not adversely affect State Grid System and in the event of such malfunctioning or abnormality the Seller's circuit breaker shall trip first to protect the equipments;
  - b. Have installed at the Facility a capacitor bank of required capacity, so as to maintain the Power Factor as per terms and conditions of supply prescribed by MERC.

## **ARTICLE 6**

### **FACILITY DEVELOPMENT**

#### **Section 6.01: Facility Financing:**

The Seller will be responsible for obtaining all financing necessary to construct, operate and maintain the Facility for the Term of the Agreement and will provide the Procurer with evidence of financing arrangement.

#### **Section 6.02: Facility Permits:**

The Seller shall be fully responsible for obtaining and maintaining the validity of any and all licenses, permits and approvals necessary for the construction and operation of the Facility. In accordance with Section 8.02, the satisfaction of the foregoing obligation on the part of the Seller will be a condition precedent to Commercial Operations and any obligation of the Procurer under Article 3 Section 3.05.

## **ARTICLE 7**

### **INTERCONNECTION, EVACUATION AND WHEELING**

#### **Section 7.01: Interconnection:**

The Seller shall interconnect and operate in parallel its Facility with the State Grid System/ concerned Distribution System subject to the following terms and conditions:

- [a] The Seller shall be responsible for planning, constructing and paying for the procurement, construction and installation of its interconnection facilities at the concerned Distribution sub-station and/or Point of Delivery at the State Grid EHV sub-station;
- [b] The Seller shall make all arrangements at its cost for paralleling /connecting the Facility with the State Grid System at the Point of Delivery in consultation with the STU and/or the concerned utility, as applicable.

#### **Section 7.02: Evacuation and Wheeling:**

Seller shall be responsible for arranging transmission and/or Distribution access as applicable from the switchyard of the Generating Facility to the Delivery Point. Such arrangement shall be as per the regulations specified by the Appropriate Commission, as amended from time to time.

The Seller shall initiate action for development of the requisite transmission/distribution system from bus-bar of the generating Facility to the Delivery Point by coordinating with the STU/ Distribution utility in accordance with the relevant regulations of the Appropriate Commission.

The Seller shall be wholly responsible to arranging the necessary wheeling and/or transmission access from the bus-bar of the Generating Facility to the Delivery Point. The Procurer shall be wholly responsible to arrange transmission lines and associated facilities beyond the Delivery Point for the evacuation of energy.

## **ARTICLE 8**

### **COMMERCIAL OPERATIONS**

#### **Section 8.01: Commercial Operations:**

- [a] **Commercial Operations Date:** The Facility shall achieve Commercial Operations in accordance with the provisions of this Agreement, which is ..... *[insert the date specified by the Procurer/Seller]* and shall be fully capable of reliably producing the Energy to be provided under this Agreement and delivering such Energy to the Procurer at the Delivery Point.
- [b] **Pre Commercial Operations:** There shall be no obligation for the Procurer to take delivery of Energy prior to Commercial Operations Date, except that the Procurer shall take all energy produced during the testing of the Facility, without payment of any charges.

#### **Section 8.02 Notice of Commercial Operations:**

The Seller will specify in a written notice ("COD Notice") to the Procurer that (i) the Facility is constructed in accordance with this Agreement and is ready to deliver Energy in accordance with the terms hereof; (ii) all permissions and approvals required for the Facility to sell Energy at the rates and terms specified under this Agreement have been obtained and (iii) all interconnection facilities are available to receive Energy from the Facility. Such notice shall take effect and the Commercial Operations Date will be achieved following the Procurer's declaration that all of the conditions set forth in this Section and Article 3 have been satisfied or waived by the the Procurer i.e:

- (a) The Seller has successfully completed the testing of the Facility in accordance with the manufacturer's recommendations and the Seller has obtained and provided to the Procurer Certificates from the Electrical Inspectorate (GOM), MEDA and the Procurer's officer as may be designated;
- (b) The Seller has delivered to the Procurer a list of the Facility's equipment, showing the make, model, serial number and certified the installed capacity of the Facility;
- (c) The Facility has achieved initial synchronization with the State Grid System and has demonstrated the reliability of its communications systems and communications with the Procurer;
- (d) The Seller has operated the Facility without experiencing any abnormal or unsafe operating conditions on any interconnected system;
- (e) The Seller shall also have notified the Procurer no later than 14 days prior to the Commercial Operations Date. At that time, Officers of the Procurer shall verify that the Seller has achieved all of the conditions precedent to Commercial Operation and shall provide the Seller a written endorsement in this behalf acknowledging the documents, certificates, approvals etc provided by the Seller in this behalf.

*[Refer to Annexure A for additional clauses regarding Synchronization, Capacity Test and Fuel Usage to be incorporated in case of a Biomass plant]*

## ARTICLE 9

### SALE AND PURCHASE OF ENERGY

#### Section 9.01: Sale and Purchase:

- [a] Commencing at COD, Seller will sell and deliver and the Procurer will purchase and accept all of the Energy of the Facility at the Point of Delivery, subject to the terms and conditions of this Agreement. The Procurer will pay the Seller for the Energy as metered at the Delivery Point at the tariff set forth in **Exhibit "C" "a" ("Quoted Tariff")**. The Seller undertakes not to sell any Energy (all of which is committed to the Procurer) to any other person barring the provisions mentioned in Article 13.03 of this Agreement.
- [b] The quantum of energy purchased and/or the quantum of energy sold to Procurer shall be the Net committed energy supplied by the Seller as per the terms and conditions of this agreement. Any shortfall in the generation/ sale of committed / guaranteed energy shall be subjected to the penalty as per Commission's ruling under Clause 2.10.7 and Clause 2.10.8 as per MERC Order on Long Term Development of Renewable Energy Sources and Associated Regulatory (RPS) Framework dt. 16.8.2006.

Accordingly, Procurer shall be liable to pay at the rate of Rs. 7.00 per unit of shortfall for 2009-10. Similarly, if the Seller fails to add RE capacity / committed capacity/ committed energy units associated with the contracted capacity or fails to supply RE power, then, Procurer shall be entitled to recover such costs of enforcement from the Seller. However, MERC directives, if any, on this issue from time to time shall be binding on the Seller.

*[Insert additionally in case of Wind based plants]*

- [a] As per clause No. 1.6.4 of MERC on wind dated 24.11.2003. Wind being infirm in nature there should be no limitation on purchase of Wind power by Procurer/utility/licensee on the maximum and minimum quantity supplied by the said wind power project. All MERC Order including RPS Order shall also be applicable in this matter.

*[Insert additionally in case of Biomass plants]*

- [a] Seller shall comply with the provisions of the applicable Law regarding to Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code relating to scheduling and Dispatch and the matters incidental thereto..
- [b] The Tariff Rate and structure for the project shall be as shown in Exhibit - C
1. The Tariff Rate shall comprise two parts, viz, (i) a fixed charge component, and (ii) a variable charge component. The fixed charge component shall be linked to the year of operation of the Project, based on its date of

commissioning. The variable charge component shall be linked to the financial year, with \_\_\_\_ being the first financial year. Fixed charge recovery will be on pro-rata basis linked PLF achieved.

2. The Project shall be entitled to recover the fixed charge component of the Tariff Rate for generation (including deemed generation) upto the threshold PLF level of 80% (70 % for the first year). For actual generation in excess of this threshold level, an incentive component at the rate of Rs 0.25 per unit shall be payable in addition to the variable charge component. The incentive component shall be payable only if actual generation exceeds 80% (70 % for the first year) PLF (i.e. excluding deemed generation). The entitlement to incentive payment shall be determined at the end of the financial year, based on adjustments as referred under clause 15.3.

*[Insert in case of Non fossil fuel based Cogen plants]*

- [a] Seller shall comply with the provisions of the applicable Law regarding to Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code relating to scheduling and Dispatch and the matters incidental thereto.

**(a) Normal Conditions**

The supply by the Seller to Procurer and purchase of energy units by Procurer from the Seller under this Agreement shall be in the nature of infirm purchase of energy units. The Seller shall use its reasonable efforts to supply energy units to Procurer. Procurer shall purchase all energy units supplied by Seller as per the Contracted Energy mentioned elsewhere in this agreement. However, the Seller must follow grid discipline.

**a) Testing Conditions**

- i) During the period of testing and commissioning of the Generation Facility, Procurer shall accept from the Seller, all of the electricity that Seller makes available for delivery to Procurer at the Delivery Point.
- ii) Procurer shall pay for the energy delivered to Procurer during the testing period at the rate as per the prevalent regulations.

**Section 9.02 Reactive Energy (KVARh):**

- [a] The Seller shall make necessary payments to the concerned utilities for Reactive Energy purposes as prescribed by State Grid Code and other MERC Orders from time to time.

**Section 9.03 Transmission and Delivery Arrangements:**

The Seller shall be responsible for all electric losses, transmission, distribution (if any) and ancillary service arrangements and costs required to deliver the Energy and Test Energy, on a firm basis, from the Facility to the Procurer at the Delivery Point. The Procurer shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to deliver the Energy and Test

Energy received at the Delivery Point, on a firm transmission service basis, to points beyond the Delivery Point.

**Section 9.04 Title and Risk of Loss:**

As between the Parties, the Seller shall be deemed to be in control of the Energy and the Test Energy output from the Facility up to and until delivery and receipt at the Delivery Point and the Procurer shall be deemed to be in control of such energy from and after delivery and receipt at the Delivery Point. Title and risk of loss related to the Energy and Test Energy shall transfer from the Seller to the Procurer at the Delivery Point

**Section 9.05 Procurer's right to disconnect / curtail Energy due to Procurer's System / Grid constraints:**

Notwithstanding any other provisions of this Agreement, the Procurer shall have the right to ask the Seller to backdown his Facility to the extent of the energy contracted from the Procurer's System, if at any time the Procurer determines that:

- (a) The Seller's Facility may endanger the safety of persons; or
- (b) The continued operation of the Seller's Facility may endanger the integrity of the Procurer's System or have an adverse effect on the electric service to the Procurer's other consumers.

The Seller's Facility shall remain disconnected until such time that the condition(s) referred to above have been corrected and the Procurer shall not be obligated to accept or pay for any Wind Energy from the Seller during such period of disconnection.

With reference to the provisions made above the Procurer reserves the right to ask the Seller to back down or shutdown the Facility to the extent of the Contracted Energy and will be under no obligation to evacuate the Energy from the Seller's Facility. The Seller shall suitably back down or shut down, as the case may be, its generation and shall have no right to claim any compensation in such an event. The Procurer will however, make all reasonable efforts to bring back normalcy at the earliest.

*[Not applicable in case of Biomass based plants]* Notwithstanding anything contained hereinabove, the Seller shall not be entitled to and the Procurer shall not be liable to pay any compensation on account of non-drawl of energy due to defect in Procurer's System / grid or Force Majeure condition or any other circumstances beyond the control of the Procurer.

**Section 9.06 RPS charges:**

Seller shall supply the energy quantum as agreed under this Agreement. If the Seller fails to supply the contracted energy quantum, the Seller shall have to pay the Procurer RPS charges. The RPS charges shall be the maximum of

- marginal cost of power purchase of MSEDCL for the previous financial year; or

- Penal charges levied as per directives of MERC issued vide order dtd. 16.08.06 on RPS. However, the MERC directives, if any, on this issue from time to time shall be binding on the Seller.

The penal charges towards RPS shall be made effective in the subsequent financial year on the basis of shortfall, if any; during the previous financial year.

### **Section 9.07 Incentive**

An incentive will be provided to the Seller for commencement of supply of energy prior to the Commercial Operation Date. The incentive will be provided at the rate of one paise per week from the first week from signing of EPA till the last week ending with the COD.

For eg. Incentive will be 52 paise for immediate supply of energy , 51 paise after 1st week, 50 paise after 2nd week & so on till the 52nd week. In case the Seller starts supply of power one week prior to the Scheduled Delivery Date, he will be eligible for 1 paise incentive for that week.

*[Insert only in case of Biomass plants]*

### **Section 9.08 Deemed Generation Status**

Seller shall be entitled to the benefit of deemed generation in order to enable recovery of the fixed charge component but up to a threshold PLF of 80% (70 % for the first year) (including deemed generation), if not dispatched due to transmission system constraints or Force Majeure Events that affects the Procurer.

However, MSEDCL shall not be liable to pay any fixed charges under deemed generation benefit in case of non-availability or limited availability of biomass fuel. The benefit of deemed generation in respect of fixed charge recovery shall be subject to the provision of the settlement and balancing mechanism for Intra-State transactions as per the Regulations prescribed by the Commission. Payment of incentives under deemed generation shall be linked to the capacity of the plant ascertained based on annual capacity test as referred under Article 08 of the agreement.

Fixed charge recovery under deemed generation benefit shall be on pro-rata basis and shall take into consideration average PLF for that financial year. The Seller should submit the duration of deemed generation for the inadequacy of the power evacuation system along with all supporting technical details on monthly basis to the Procurer.

### **Section 9.09 Plant Load Factor**

The Seller shall maintain its generation at a PLF of 70% during the first year and 80% thereof throughout the year in order to recover full fixed cost payments. Payment of fixed charges by Procurer to Seller shall be adjusted on pro rata basis for PLF below the limit as specified above.

[For e.g., if the project achieves PLF (including deemed generation) of 40%, the Seller should be permitted to recover 50% of fixed charges.]

## **ARTICLE 10**

### **OPERATION AND MAINTENANCE**

#### **Section 10.01: Facility Operation:**

- [a] The Seller covenants to operate the Facility as an integrated part of the Procurer's System / grid.
- [b] The Seller covenants to operate and maintain the Facility in safe and reliable operating condition and in compliance with Standard Utility Practices and within the specified voltage and frequency ranges. The Seller shall provide suitable automatic disconnection arrangement for the Facility, in case the ranges of electrical characteristics go outside the limits specified, due to the Procurer's System constraints. The Procurer shall not be responsible for any damages to Seller's equipment due to variation in voltage and frequency in Procurer's System and Procurer shall not be liable to compensate the Seller for any damages suffered there from.
- [c] The Seller will devise and implement a plan of inspection, maintenance and repair of the Facility and the components thereof ("Operating Procedures") in order to maintain such equipment in a safe and reliable operating condition and in accordance with Standard Utility Practices, and shall keep records with respect to such inspections, maintenance and repairs. The Operating Procedures shall be devised in consultation with the Officer of the Procurer as may be designated.
- [d] During the period of generation, the Seller shall liaison and co-ordinate with the Officer of the Procurer, as may be designated.
- [e] During the Term of this Agreement the Seller shall arrange for testing and commissioning of the protection system at least once a year and intimate in advance to the officer of the Procurer, as may be designated. If requested by the Seller, the Procurer shall extend the assistance for the purpose of testing, subject to condition that the Seller shall pay the charges for such assistance provided by the Procurer as would be notified or indicated by the officer of the Procurer, as may be designated.

#### **Section 10.2 Outage and Performance Reporting:**

- [a] The Seller shall comply with all outage-reporting requirements as may be revised from time to time, and as may apply to the Facility.
- [b] When Forced Outages occur, the Seller shall notify the Procurer of the existence, nature and expected duration of the Forced Outage as soon as practicable after the Forced Outage occurs. The Seller shall immediately inform the Procurer of changes in the expected duration of the Forced Outage unless relieved of this obligation by the Procurer for the duration of each Forced Outage.

**Section 10.03 Operating and Generation Reports:**

- [a] On or before the 10<sup>th</sup> day of each calendar month, the Seller shall submit a monthly operating report summarizing the results of the previous month's operations, outages and maintenance activities. The format and content of the monthly operating report is set out in **Exhibit "D"** to this Agreement, and may be adjusted by the parties as needed from time to time during the Term of this Agreement. The report shall be submitted to the Officer of the Procurer, as may be designated and to the concerned officer in MEDA at Pune.
- [b] The Seller shall furnish a Quarterly Generation Report as per the prescribed format to the Chief Engineer (Electrical), Govt. of Maharashtra, and to the Electrical Inspector of the Seller's area and the Officer/s of the Procurer, as may be designated, for quarters ending June, September, December and March before the 10<sup>th</sup> day of the subsequent month in the manner set out in **Exhibit "E"** to this Agreement.

**Section 10.04 Operating Records:**

The Seller shall maintain Operating Records at the Facility that contain an accurate and up to date operating log, in electronic format, records of production, changes in operating status, Scheduled Outages and Forced Outages and hourly average wind speed during the Term of this Agreement, including such records as may be required by MERC. The Procurer may examine the Operating Records and data kept by the Seller at any time during the period the records are required to be maintained, upon request and during normal business hours.

**Section 10.05 Access to Facility:**

The Seller shall ensure that appropriate Officers of the Procurer shall at all reasonable times, including weekends and nights have access to the Facility to read meters and perform all inspections, maintenance, service and operational reviews as may be appropriate to facilitate the performance of this Agreement.

## **ARTICLE 11**

### **MEASURING AND METERING**

#### **Section 11.01 Meters:**

The supply of power in terms of this Agreement shall be metered at the agreed and finalized Delivery Point. For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Seller and the Procurer shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time.

## **ARTICLE –12**

### **BILLING AND ENERGY ACCOUNTING.**

#### **Section 12.01 Monthly Energy Bills:**

The Seller shall raise a monthly energy bill no later than 15 days after the end of each calendar month. The Seller will send to the Procurer by hand delivery / courier, the monthly energy bill showing all billing parameters, rates and factors, and any other data reasonable pertinent to the calculation of monthly payments to the Seller in the format set out in **Exhibit “F”**.

#### **Section 12.02 Payments:**

The due date of payment shall be 45 days from receipt of the Seller’s monthly energy bills by the Procurer and will be paid by account payee’s cheque in the name of Seller or authorized representative, in whose name power of attorney is given by the Seller. In case of delay in payment beyond the due date, the Seller shall be entitled to interest on such delayed payment at the rate of 2% per annum above the State Bank of India short term lending rates. The Procurer, however, shall be entitled to make adjustments in the Seller’s Invoices for any charges/costs incurred on behalf of the Seller and payable by the Seller under this Agreement. This shall be shown in the audited statement issued by the Procurer.

#### **Section 12.03 Billing and Payment Records:**

The Billing and Payment records shall be maintained by the Seller for the reconciliation by the Corporate Office of Procurer bi-annually.

#### **Section 12.04 Payment Mechanism:**

The Procurer shall provide to the Seller, in respect of payment of its Monthly Bills, a unconditional, revolving and irrevocable letter of credit (“Letter of Credit”), opened and maintained by the Procurer, which may be drawn upon by the Seller in accordance with this Article. The Procurer shall provide the Seller draft of the Letter of Credit proposed to be provided to the Seller one (1) Month before the Commercial Operation Date. Further, the Letter of Credit shall be provided from the scheduled bank by the Procurer.

Not later than one (1) Month before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, the Procurer(s) shall through a scheduled bank at ..... [*Identified Place(s)*] open a Letter of Credit in favour of the Seller, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to one times the estimated average monthly billing;
- ii) for each subsequent Contract Year, equal to the one times the average of the monthly Tariff Payments of the previous Contract Year.

Provided that the Seller shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill, and shall not make more than one drawal in a Month.

Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in this Article above otherwise than by reason of drawl of such Letter of Credit by the Seller, the Procurer shall restore such shortfall within seven (7) days.

The Procurer(s) shall cause the scheduled bank issuing the Letter of Credit to intimate the Seller, in writing regarding establishing of such irrevocable Letter of Credit. In case of drawl of the Letter of Credit by the Seller, in accordance with this Article, the amount of the Letter of Credit shall be reinstated by the Procurer within a period of seven (7) days from the date of such shortfall in the Letter of Credit.

If the Procurer(s) fails to pay a Monthly Bill or part thereof within and including the Due Date, then the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurer, an amount equal to such Monthly Bill or part thereof plus Late Payment Surcharge, if applicable, in accordance with Article 12.02 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill which has remained unpaid by the Procurer;
- ii) a certificate from the Seller to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and
- iii) calculations of applicable Late Payment Surcharge, if any.

## **ARTICLE 13**

### **EVENTS OF DEFAULTS AND REMEDIES**

#### **Section 13.01 Events of Default:**

An "Event of Default" shall mean in respect to a Party ("Defaulting Party"), the occurrence of any one of the following, subject to the applicable opportunity to cure.

[a] No Opportunity to Cure: Unless otherwise excused or permitted under the terms of this Agreement, any of the following shall constitute an immediate Event of Default, without the opportunity to cure:

- (i) An act of Insolvency occurs with respect to a party to this Agreement or such party is adjudged bankrupt;
- (ii) The Seller fails to comply with any material provision of this Agreement (other than with respect to the payment of money), and such failure shall continue uncured for 90 days after notice thereof by Procurer, provided that Procurer may exercise discretion to extend the period for compliances, on satisfaction of reasonable grounds
- (iii) the Seller shall fail to make payments for amounts due under this Agreement to Procurer within 30 days after receipt of written notice of such non-payment; or
- (iv) the Seller (A) makes a general assignment or an arrangement or composition with or for the benefit of its creditors, (B) or takes any action for the purpose of effecting the foregoing or (C) files a voluntary winding-up petition under any bankruptcy or similar Law; or
- (v) a proceeding or case shall be commenced against the Seller, without the application or consent of the Seller, in any court of competent jurisdiction, seeking
  - (A) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts other than in the course of amalgamation or reconstruction of the Seller duly approved by Procurer and the Financing Parties, (B) the appointment of a receiver, custodian, liquidator or the like of the Seller or of all or any substantial part of its assets or (C) similar relief in respect of the Seller under any Law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debts, and such proceeding or case shall continue undismitted, or an order, judgement or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 180 days; or
- (vi) If the Seller fails to supply energy for a continuous period of three months for what so ever reason except due to Force Majeure event.
- (vii) Failure to follow the grid discipline in accordance with Grid Code.
- (viii) Any other reason which will act against the interest of Procurer's consumers.

- (ix) Seller's failure to commence Commercial Operations within 12 (twelve) months from the date of Signing of EPA, except to the extent such failure is attributable to an event of Force Majeure.

*[Insert in case of Wind energy]*

- (i) Seller's failure under this Agreement in any Commercial Operating Year to deliver Wind Energy to the Point of Delivery equal to no less than 50% of the Committed Wind Energy, provided that to the extent such failure is attributable to an event of Force Majeure the contribution of such event of Force Majeure and the outage of Procurer system, where the evacuation of the facility is connected to, shall be imputed into the calculation of Committed Wind Energy for the purposes of, and only for purposes of, establishing an Event of Default of the Seller.

*[Insert in case of Biomass based plants]*

- (i) Seller fails to comply with the conditions of fossil fuel usage during any year as mentioned under Article 08 of this agreement.

[b] Thirty (30) Day Opportunity to Cure: Unless otherwise excused or permitted under the terms of this Agreement, any of the following shall constitute an immediate Event of Default, unless the Party shall have cured the same after thirty (30) days of receipt of notice from the other Party:

- (i) Seller's failure to use reasonable diligence in operating, maintaining or repairing the Facility, such that the safety of persons and property, the Procurer's equipment or the Procurer's service to others is adversely affected.
- (ii) Failure or refusal by either Party to perform its material obligations under this Agreement.
- (iii) Abandonment of its interconnection facilities by the Procurer or the discontinuance by the Procurer of services covered under this Agreement, unless such discontinuance is caused by Force Majeure or for the reasons beyond the control of the Procurer.
- (iv) the Seller shall permanently abandon the construction or operation of the Facility (other than due to a Force Majeure Event) and within 30 days after receipt of notice from Procurer asserting it intends to terminate this Agreement due to such abandonment, the Seller fails to start (and thereafter continue) good faith efforts to construct or operate the Facility;
- (v) Any representation or warranty made by such party herein is false or misleading in any material respect at the time it was made.

### **Section 13.02 Remedies for Seller Event of Default**

Procurer may:

- (a) *[Insert in case of Biomass]* Impose penalty at the rate of 30 paise per unit corresponding to the entire energy sale by such Seller to Procurer during that year in case of non-compliance of the condition of fossil fuel usage by a Seller during any year (as outlined under Article 08). Further in case non-compliance beyond one year, the Procurer shall terminate the Agreement and shall invoke the bank guarantee at the occurrence of default for the second time.
- (b) Terminate this Agreement by giving written notice to the Seller of such breach and Procurer's intention to terminate this Agreement, which termination shall be effective on the date indicated in such notice.
- (c) Subject to the terms of this Agreement , exercise any rights or remedies it has at law or in equity, including compensation for monetary damages, injunctive relief and specific performance, encashment of Contract Performance Guarantee, etc.
- (d) Compensation if any, made applicable by the State Load Dispatch Centre shall be levied on the Seller, for Event of Default specified under Article 13, Section 13.01 [a] (vii).

### **Section 13.03 Remedies for Procurer Event of Default**

Procurer Event of Default if any, occurs and is continuing, the Seller shall be entitled to sale of energy to third party consumers, subject to compliance with the Open Access Regulations of MERC as may be applicable from time to time.

### **Section 13.04 Consequence of Termination:**

Termination of this Agreement shall be without prejudice to the accrued rights and liabilities of the parties at the date of termination, unless waived in writing by agreement made by the Parties.

## **ARTICLE 14**

### **LIMITATION OF LIABILITY AND DAMAGES**

#### **Section 14.01 Limitation of Liability:**

- [a] Each Party shall be responsible for the acts of its employees and will indemnify, defend and hold the other harmless from any and all claim, damage or expense arising out of or relating to:
  - (i) An act of the indemnifying party's employees; and
  - (ii) Injury to or death of any of the indemnifying party's employees (except if caused by the gross negligence of the other party) which such employee is on the premises of the other party pursuant to this Agreement.
  
- [b] Neither party shall be liable for any failure or delay on its part in performing any of its obligations under this Agreement or for any loss, damages, costs, charges or expenses incurred or suffered by the other party by reason of such failure or delay, if and so far as such failure or delay shall be the result of or arising out of Force Majeure.
  
- [c] The Procurer shall not be responsible for the damage if any, caused to the Seller's Facility, or a part thereof, arising from a problem or defect in the Procurer's System or any reason beyond the control of the Procurer.

#### **Section 14.02 Limitations on Damages:**

The parties hereby confirm that the express remedies and measures of damages provided in this agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy and the obligor's liability shall be limited as provided in such provision. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct actual damages only. Neither party shall be liable to the other party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein).

## **ARTICLE 15**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

#### **Section 15.01 Seller's Representations, Warranties and Covenants:**

The Seller hereby represents and warrants as follows:

- [a] The Seller is a [corporation, limited liability company, etc.] duly organized, validly existing and in good standing under Indian laws. The Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver and perform its obligations under this Agreement.
- [b] The execution, delivery and performance of its obligations under this Agreement by the Seller have been duly authorized by all necessary corporate action, and do not and will not:
  - (i) Require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the Procurer upon its request);
  - (ii) Violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination or award currently in effect having applicability to Seller or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;
  - (iii) Result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or
  - (iv) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.
- [c] This Agreement is a valid and binding obligation of Seller.
- [d] The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility.

- [e] To the best knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations mentioned in this Agreement, which Seller anticipates will be obtained by Seller in the ordinary course of business, all permits, consents, approvals, licenses, authorizations or other action required by any Governmental Authority to authorize Seller's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect.
  
- [f] The Seller shall comply with all applicable local, state and central laws, regulations and ordinances, and all applicable central, state, and local environmental laws and regulations presently in effect or which may be enacted during the Term of this Agreement.

**Section 15.02 Procurer's Representations, Warranties and Covenants:**

The Procurer hereby represents and warrants as follows:

- [a] The Procurer is a Company duly organized, validly existing and in good standing under Indian Laws and has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver and perform its obligations under this Agreement.
  
- [b] The execution, delivery and performance of its obligations under this Agreement by the Procurer have been duly authorized by all necessary action.

## **ARTICLE 16**

### **FORCE MAJEURE**

#### **Section 16.01: Force Majeure:**

- [a] Except for obligations to pay money and other accrued rights and obligations, the performance of any obligation required hereunder shall be excused during the continuation of any Force Majeure Event suffered by the Party whose performance is required in respect thereof, and the time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure Event shall be extended by the number of Days of the Force Majeure Event; *provided, however,* that the Party experiencing the delay shall notify the other Party of the occurrence of such Force Majeure Event and the anticipated period of delay within ten (10) days after the commencement of the Force Majeure Event, provided, further that in no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its Term. Failure to provide timely notice of a Force Majeure shall be deemed to be a waiver of such Force Majeure Event. Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to void, nullify, overcome or otherwise to mitigate in all material respects the effects of any Force Majeure Event suffered by either of them and the Parties agree to meet to seek and coordinate appropriate mitigation measures.
- [b] In the event that any delay or failure of performance caused by a Force Majeure Event continues for an uninterrupted period of ten (10) months from its occurrence or inception, as noticed pursuant to Section 16.1(a), the Party not claiming such Force Majeure Event may, at any time following the end of such period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to damages, costs and balances incurred prior to the effective date of such termination.

## **ARTICLE 17**

### **GOVERNING LAW, DISPUTE RESOLUTION AND CONSENT TO JURISDICTION**

#### **Section 17.01: Governing Law:**

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the Laws of India.

#### **Section 17.02 Dispute Resolution:**

Any disputes arising out of, in connection with or with respect to this Agreement, the subject matter hereof, the performance or non-performance of any obligation hereunder, that cannot be resolved by negotiation among the Parties within sixty (60) days, shall be exclusively adjudicated before the MERC and any Civil Court in Bombay having jurisdiction in the matter. Each of the Parties irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought to the Bombay High Court and appellate courts from any thereof, having subject matter jurisdiction and, by execution and delivery of this Agreement and such other documents executed in connection herewith, each Party (i) accepts the exclusive jurisdiction of the aforesaid courts, (ii) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (iii) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action or proceedings brought in any such court has been brought in any inconvenient forum.

## **ARTICLE 18**

### **CLEAN DEVELOPMENT MECHANISM (CDM)**

#### **Section 18.01 CDM:**

The Seller should avail CDM benefits wherever applicable. MEDA has been designated as State nodal agency for undertaking CDM activities in the State of Maharashtra. For proper implementation the Seller should preferably route their application through MEDA. However, the Seller is free to select their own consultant for availing CDM benefit. In that case the Seller shall notify the name, address and any such details of the consultancy firm to Procurer. Once the project gets registered for CDM or similar credit, the Seller shall inform to Procurer along with the copy of Emission Reduction Purchase Agreement.

#### **Section 18.02 CDM Benefit:**

Should the project get registered as CDM project and actually sells CER (Certified Emission Reductions) the revenue so derived, net of all charges shall be shared equitably by the Seller and the Procurer prorate to the Energy contracted by the Procurer. However, once the project gets registered for CDM or similar credits, the sharing of the same between the Seller and Procurer shall be governed by the prevalent regulations.

**ARTICLE 19**

**NOTICES**

**Section 19.01 Notices in Writing:**

All notices, requests, consent or other communication shall be addressed to the other Party at the addresses noted below or such other address as shall be notified by a Party in writing to the other Party. All such notices, requests, consent or other communication, unless otherwise specified herein, shall be in writing and may be delivered by hand delivery, post, courier service or by facsimile:

**To Seller:**

**M/s** \_\_\_\_\_  
\_\_\_\_\_

**The Procurer:**

**The Designated Officer,  
Brihanmumbai Electric Supply And Transport Undertaking  
Colaba**

## **ARTICLE 20**

### **MISCELLANEOUS**

#### **Section 20.00 Minimum Equity holding/ Equity Lock-In:**

The minimum shareholding requirements specified in this Article shall apply to all of the entity/ entities which have made equity investment in the Seller and where the Seller is different from the Successful Bidder.

The aggregate equity share holding of the .....[*Insert "Lead Member" in case the Successful Bidder is a Bidding Consortium or "the Successful Bidder" in case the Successful Bidder is a Bidding Company*] in the issued and paid up equity share capital of the Seller shall not be less than the following:

- a) Fifty-one percent (51%) from the Effective Date up to a period of two (2) years after commencement of supply of power; and
- b) Twenty-six (26%) for a period of three (3) years thereafter.

[*Insert in case of Successful Bidder being a Bidding Company*]

All investors of the Seller, except the Bidding Company, shall be allowed to divest their equity as long as the other remaining investors hold the minimum equity specified in this Article

[*Insert in case of Successful Bidder being a Bidding Consortium*]

All Members of the Seller, except the Lead Member, shall be allowed to divest their equity as long as the other remaining Members (which shall always include the Lead Member) hold the minimum equity specified in this Article above.

In case equity in the Seller is held by the Affiliate(s), Parent Company or Ultimate Parent Company, such Affiliate(s), Parent Company or Ultimate Parent Company shall be permitted to transfer its shareholding in the Seller to another Affiliate or Parent Company or Ultimate Parent Company. If any such shareholding entity, qualifying as an Affiliate /Parent Company/ Ultimate Parent Company, is likely to cease to meet the criteria to qualify as an Affiliate /Parent Company/ Ultimate Parent Company, the shares held by such entity shall be transferred to another Affiliate/ Parent Company/ Ultimate Parent Company.

All transfers of shareholding of the Seller by any of the entities referred to above, shall be after prior written permission from the Procurer(s).

For computation of effective Equity holding, the Equity holding of the Successful Bidder or its Ultimate Parent Company in such Affiliate(s) or Parent Company and the equity holding of such Affiliate(s) or Ultimate Parent Company in the Seller shall be computed in accordance with the example given below:

- If the Parent Company or the Ultimate Parent Company of the Successful Bidder A directly holds thirty percent (30%) of the equity in the Seller, then holding of Successful Bidder A in the Seller shall be thirty percent (30%);

- If Successful Bidder A holds thirty percent (30%) equity of the Affiliate and the Affiliate holds fifty percent (50%) equity in the Seller, then, for the purposes of ascertaining the minimum equity/ equity lock-in requirements specified above, the effective holding of Bidder A in the Seller shall be fifteen percent (15%), (i.e., 30%\* 50%)

The provisions as contained in this Article shall override the terms of the consortium agreement submitted as part of the Bid.

*[Insert this Article in case the PPA is being signed by the Seller being a Trading Licensee]*

The provisions contained in this Article given above shall not be applicable if the Seller is a Trading Licensee or in case of a Seller being a bidding company and not forming a separate Project Company. However the Seller in such case shall ensure that similar provisions as contained in this Article are incorporated in the exclusive power purchase agreement submitted by the Seller. In such case, the aforesaid provisions shall be applicable with respect to ..... (Insert name of the majority investor in the Developer as specified in the power purchase agreement submitted as a part of the Selected Bid). The Seller shall ensure the compliance of the provisions mentioned in this Article and any default on the part of the Seller in compliance of the same shall be an Event of Default in terms of Article 13. The Procurer(s) shall have the right to verify the compliance of the provision as mentioned in this Article.

**Section 20.01 Amendments and Exhibits:**

This Agreement may not be changed or amended unless such change or amendment shall be in writing and signed by authorized representatives of both Parties.

**Section 20.02 Disclaimer:**

No review, approval, consent, advice, recommendation, authorization, notice, inspection, test or other act by a Party regarding the construction, ownership, operation, use or maintenance of the Facility or the delivery of Energy under this Agreement shall constitute or be interpreted as or be relied upon by any other person or entity not a party to this Agreement as a warranty, representation or endorsement by such Party.

**Section 20.03 Entire Agreement:**

This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

**Section 20.04 Waiver:**

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter or any other matter. Any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to a subsequent default or other matter.

**Section 20.05 Captions; Construction:**

All indexes, titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement.

**Section 20.06 Assignment:**

The Seller shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the Procurer. However, the Procurer shall be entitled to assign, transfer or otherwise dispose of any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the Seller, in the event of a restructuring or reorganization of the Procurer which will be notified to the Seller by the Procurer.

**Section 20.07 No Agency:**

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

**Section 20.08 Cooperation:**

The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term hereof, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make reasonable efforts to cooperate and assist each other in making such change.

**Section 20.09 Further Assurances:**

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 20.09.

**Section 20.10 Counterparts:**

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**Section 20.11 Severability:**

If any of the terms of this Agreement is finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect; *provided, however*, that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties.

**Section 20.12 Taxes, Fines and Penalties:**

- [a] Seller shall be solely responsible for any and all present or future Taxes, including without limitation, taxes relating to the construction, ownership or leasing, operation and maintenance of the Facility, or any components or appurtenances thereof, or by reason of the sale and delivery of Energy to the Procurer, and all ad valorem taxes relating to the Facility.
  
- [b] Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors in connection with the design, development, construction, operation and maintenance of the Facility and the satisfaction of Sellers obligations under this Agreement, including obligations imposed under the Permit or by law. If any such fees, fines, penalties or costs are claimed or assessed against Procurer by any governmental authority or other person, Seller shall indemnify and hold the Procurer harmless against any and all such fees, fines, penalties and costs suffered or incurred by the Procurer, including claims for indemnity or contribution made by third parties against the Procurer.

**IN WITNESS WHEREOF, the Parties hereto have duly executed this Energy Purchase Agreement as of the day and year first above written.**

**Seller:**

**Procurer**

M/s \_\_\_\_\_

**Brihanmumbai Electric Supply and Transport Undertaking (Procurer)**

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

**Seal:**

**Seal:**

**Witness:**

**1. Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

**Signature:**

**Witness:**

**1. Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

**Signature:**

**2. Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

**Signature:**

**2. Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

**Signature:**

**Energy Purchase Agreement**

**For**

\_\_\_\_\_ **MU**

**at Village \_\_\_\_\_, Tal: \_\_\_\_\_, Dist: \_\_\_\_\_**

**Between**

**M/s \_\_\_\_\_**

**And**

**BRIHANMUMBAI ELECTRIC SUPPLY AND TRANSPORT  
UNDERTAKING**

**EXHIBIT A**

**FACILITY DESCRIPTION**  
**(To be prepared as per MNES Guidelines)**  
**To be filled and duly signed by Seller**

<b>Sr.No</b>	<b>Item</b>	<b>Description</b>
.		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		

Seal of Company  
Date:

Name of Seller:  
Signature:

**EXHIBIT B**

**SITE MAPS**  
**POINT OF DELIVERY**

## EXHIBIT C

(1) **Quoted Tariff:**

[13 years In case of Wind, Biomass and Non Fossil fuel based cogen plants and 30 years in case of small hydro. Break up of Energy and Capacity charges is applicable only in case of Biomass plants]

<b>Sr. No</b>	<b>Year of Commercial Operation</b>	<b>Firm Quoted Energy Charge Rs/kWh</b>	<b>Firm Quoted Capacity Charge Rs/kWh</b>	<b>Firm Quoted Tariff Rs/KWh</b>
1	1 <sup>st</sup> Year of Operation			
2	2 <sup>nd</sup> Year of Operation			
3	3 <sup>rd</sup> Year of Operation			
4	4 <sup>th</sup> Year of Operation			
5	5 <sup>th</sup> Year of Operation			
6	6 <sup>th</sup> Year of Operation			
7	7 <sup>th</sup> Year of Operation			
8	8 <sup>th</sup> Year of Operation			
9	9 <sup>th</sup> Year of Operation			
10	10 <sup>th</sup> Year of Operation			
11	11 <sup>th</sup> Year of Operation			
12	12 <sup>th</sup> Year of Operation			
13	13 <sup>th</sup> Year of Operation			

(2) **Capital Cost:**

**EXHIBIT D**

**Monthly Operating Report**

**To be prepared as per site requirements.**

**EXHIBIT E**

**Quarterly Generation Report**

**To be prepared as per site requirements.**

**EXHIBIT F**

**Format for Monthly Energy Bill**

**To be prepared as per site requirements.**

**EXHIBIT-G**

**Location of Facility**

**To be filled & duly signed by Seller**

Sr. No.	Particulars	Details to be filled up by the Seller
1.	Land purchase date	
2.	Total area of the land in possession	
3.	Name of (a) village (b) Taluka (c) District Location/Installation	Village Taluka District
4.	Survey No.	
5	Whether counter-survey of the land is carried out (copy enclosed)	
6.	Shortest distance from the common HT line from the proposed wind power project to MSEB Sub-station or common export point at project site.	

**MSEB / Procurer NOCs/CONSENT**

**GOM DIRECTIVES**

**MEDA PERMISSIONS**

**CONNECTIVITY PERMISSION**

**ELECTRICAL INSPECTOR PERMISSION**

**COMMISSIONING REPORT ETC.**

**AS INDICATED IN ARTICLE AGREEMENT**

**PERMISSION FROM GEOLOGY AND MINING**  
**DETAILED PROJECT REPORT (DPR)**  
**MICROSITING**  
**TECHNICAL SPECIFICATION**  
**AND**  
**POWER CURVE**  
**TYPE TEST CERTIFICATE**  
**APPROVAL FROM ELECTRICAL INSPECTOR**  
**LAND: SALE DEED**

## **Annexure A**

### **Applicable in case of Biomass Plants**

#### **Applicability** [Incorporate at the start of the Agreement in the Preamble]

1. **WHEREAS** this EPA shall be applicable to “**Rankine Cycle Technology**” based biomass energy generation projects/facility located in Maharashtra, harnessing biomass in Maharashtra, and commissioned in the state for sale of electricity to Procurer.
2. **WHEREAS** The Seller shall abide by the rules and regulation/ terms and conditions laid down by the Maharashtra Electricity Regulatory Commission (MERC) in its Order dt. 8th August 2005 and the subsequent Clarificatory Order dt. 19th August 2006 in the matter of tariff and related dispensation for procurement of power from Biomass Based power Generation projects. The Seller also accepts to abide by the terms and conditions of the Order dt 16.8.2006, on Long Term Development of Renewable Energy Sources and Associated Regulatory (RPS) Framework applicable to the Seller and such other Orders applicable to the projects based on Non-conventional Energy Sources that may be issued by MERC from time to time.
3. **WHEREAS** The Tariff Rate and Structure provided under this agreement shall be applicable to the facility /project commissioned by 31st March 2010 or until installed planned capacity based on Biomass reaches 250 MW, whichever is earlier. Thereafter, the MERC order on revised rate if any, shall be applicable, in respect of variable charge component, the revision upon review shall also be applicable to the facility commissioned by then.

#### **Synchronization** [Insert under Article 8]

1. The Seller shall give the Procurer at least sixty (60) days advance written notice of the date on which it intends to synchronize a Unit to the Intra State Transmission System.
2. Subject to Clause (1), a Unit may be synchronized to STU when:
  - (a) it has been completed in accordance with the Technical Specification and the Functional Specification;
  - (b) it meets all connection conditions prescribed in any Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the STU System; and
  - (c) is capable of being operated safely.
3. The Seller shall notify Procurer as soon as it believes a Unit has been completed, satisfies that conditions listed in clause (2) and is ready to be synchronized to STU System in accordance with this Agreement.
4. The Procurer shall inspect any of the Contracted Units, which the Seller intends to synchronize to the Grid System within five (5) days after being notified in

writing by the Seller pursuant to clause (3) to determine whether the requirements of clause (2) have been met. The Seller shall provide Procurer employees, access to the site, as it reasonably requires making such determination.

5. If Procurer's officials are satisfied that the Unit is ready to be synchronized in accordance with clause (2) they shall promptly notify the Seller to that effect and provide the Seller with all reasonable assistance in synchronizing the Unit as soon as reasonably practicable.
6. If Procurer official does not inspect the Unit when required pursuant to clause (4), or having inspected the Unit, determines that the requirements of clause (2) are not met, the Seller shall nevertheless be entitled to synchronize the Unit to the Grid System, and Procurer shall provide the Seller with all reasonable assistance in synchronizing the Unit as soon as practicable, if the Seller
  - (a) certifies to Procurer in writing that, in its opinion, the Unit has been completed in accordance with clause (2) and
  - (b) gives in writing the reasons why, in its opinion, any objections raised by Procurer are not well founded.
7. Procurer may if found necessary, enter in to general / separate agreement in this regard with MSETCL

**Initial capacity test** *[Insert under Article 8]*

Prior to or on the Commercial Operation Date of each Unit, an independent reputed engineering firm or another internationally reputable engineering firm mutually acceptable to Procurer and the Seller shall establish the Tested capacity of such Unit (adhering to CERC norms for performance test i.e. it should operate continuously for seventy two consecutive hours at or above ninety five (95%) of its contracted capacity and within the Electrical System Limits and the Functional Specification), the cost of which shall be borne by Seller.

If the tested capacity of such Unit is equal to or greater than 95% (referred above) of the Contracted Capacity of such Unit, then, upon notice by the Seller to Procurer, the Commercial Operation Date of such Unit shall have occurred. The Seller shall give Procurer at least 15 days prior notice of the performance of the initial capacity tests and Procurer shall be entitled to monitor and witness all such tests. The Seller shall bear the costs and expenses of such tests, provided that Procurer shall be responsible for any costs or expenses incurred by it in connection with monitoring or witnessing such tests.

**Annual Capacity Test** *[Insert under Article 8]*

- 1) The Seller shall conduct an annual performance test (as per CERC norms) during each Financial Year during the tenure of EPA to establish the Tested Capacity of each Unit or the Facility. If the Tested Capacity of such Unit or the Facility is less than the Contracted Capacity, the Declared Capacity for purposes of determining availability shall not exceed the Tested Capacity of such Unit or the Facility as determined by such capacity test. However, incentive would be

calculated for actual generation against 80% PLF of the Contracted capacity. If the Tested Capacity of such Unit or the Facility is equal to or greater than the

- 2) Contracted Capacity, the Declared Capacity for purposes of determining Availability shall not exceed the Contracted Capacity. However, incentives would be calculated for actual generation against 80% PLF of tested capacity and not of the contracted capacity.
- 3) The Parties shall mutually agree upon the date of the performance of any requested annual test. Procurer shall be entitled to monitor and witness all such tests. If the Seller is unable to establish that the Tested Capacity of such Unit or the Facility is at least the Contracted Capacity during the performance of the annual test, the Seller shall thereafter have the right to rerun such performance test as often as the Seller deems appropriate, in order to establish the Tested Capacity at a level of the Contracted Capacity or more, provided the Seller gives Procurer at least 24 hours prior notice of the rerunning of any test. Without the prior approval of Procurer (not to be unreasonably withheld or delayed), the Seller shall not have the right to rerun the test more than six times during any Contract Year.
- 4) Procurer shall reimburse the 50% costs and expenses incurred by the Seller for conducting any annual capacity test requested by Procurer to the extent such costs and expenses would not have been incurred by the Seller in the normal operation of the Facility unless the Seller fails to establish the Tested Capacity at a level equal to or greater than the Contracted Capacity, in which case the Seller shall bear all such costs and expenses. The Seller shall bear all the cost and expenses for rerunning any annual test.

**Fuel Usage [Insert under Article 8]**

- 1) The Facility should be designed to use and should use non-fossil fuels available within Maharashtra such as crop residues, agro-industrial residues, forest residues, etc. and other biomass fuel types.
- 2) The Seller shall establish availability of fuel during the term of this agreement and put in place a fuel management plan with appropriate commercial arrangement to ensure continuous availability of fuel.
- 3) The usage of fossil fuel by biomass plants shall be restricted to the limit of 25% of the total fuel quantity, corresponding to annual generation, used on a cumulative monthly basis (i.e. in any financial year).
- 4) Before commissioning of the project, the Sellers shall furnish a Bank Guarantee covering the penalty amount (i.e. amount equivalent to annual generation corresponding to 80%PLF, multiplied by penalty of Rs 0.30 per unit) to the nodal officer of Procurer.
- 5) Non-compliance of the condition of fossil fuel usage by a Seller during any year (as outlined in Clause 2 and 3) shall attract a penalty at the rate of 30 paise per unit corresponding to the entire energy sale by such Project to Procurer during that year. Further in case of non-compliance beyond one year, Procurer shall have the right to terminate the agreement. Procurer shall invoke the bank

guarantee at the occurrence of default for the second time, along with termination of the EPA.

- 6) The Seller shall submit 'Monthly Fuel Usage Statement' of actual fuel quantity used during the month (with break-up of all fuels-biomass and fossil fuels) and cumulative till the end of the month along with copy of monthly energy bill for record monitoring and verification purpose to MEDA and nodal officer of Procurer.
- 7) The Seller shall submit monthly fuel procurement statement of actual fuel quantity procured during the month (with break-up of all fuels-biomass and fossil fuels) to MEDA/Procurer for record monitoring and verification purpose. The monthly fuel procurement statement will cover details of actual fuel quantity procured (in tones) for each fuel type
- 8) (Biomass and fossil fuel) during the month and detailed break-up of delivered cost of fuel during the month for each such type. The break-up of delivered cost of fuel (expressed in Rs. and Rs. Per tones) would include the cost of procurement payable to fuel supplier storage and handling cost, loading and unloading and transportation cost. The information provided in this regard shall be as per the format approved by MERC.
- 9) The Seller shall also submit a certification from its Auditor or a Chartered Accountant to MEDA and to MESDCL to the effect that the details furnished in the Monthly Fuel Procurement Statement have been verified and certified by him.
- 10) Procurer shall not be liable to pay any energy bills or interest on any delayed payments for non-compliance with Monthly Fuel Usage Statements.
- 11) The Seller shall conform to the pollution control and environmental standards as may be applicable from time to time.
- 12) The Seller shall prepare and implement an environment management plan. It shall install necessary pollution control equipment in accordance with extant norms. The Seller shall adhere to all the terms and conditions of the NOC/Consents from the Maharashtra State Pollution Control Board (MSPCB).
- 13) The Seller shall facilitate Procurer in verifying and ensuring that all statutory permissions, approvals and clearances for the establishment and operation of the Project from MSPCB and/or other competent authorities have been acquired, before entering into this agreement.
- 14) The Seller shall route its application for coal / fossil fuel linkage, if any, through MEDA for its consent/recommendation, accompanied by the relevant fees to be fixed by MEDA. The Seller must also furnish a copy of its agreement with coal suppliers to MEDA and Procurer.
- 15) Procurer shall be at liberty to undertake surprise checks (preferably at least once in a quarter) to the power plant site to confirm that the fuel stock positions as reported under the Monthly Statement are in line with the actual quantity at site. The Seller shall provide necessary information and extend its co-operation to Procurer for such verification.
- 16) Procurer reserves the right to appoint a competent agency/surveyor/Energy auditor to verify fuel statement submitted to MEDA and Procurer. In case of major variation in the fuel stock statement submitted by the Seller and the

stock verified by MEDA/ competent agency for fuel actually used and available at site, MEDA's certification shall be given due weightage.

- 17) The Seller shall reimburse to Procurer the service charges for implementation of fuel monitoring and verification mechanism.
- 18) The Seller shall maintain the requisite information as required under the Cost Accounting Records (Electricity Industry) Rules, 2001 prescribed by GOI vide Notification dated 21st December 2001 (or as amended from time to time).

## **Annexure B**

### **Applicable in case of Non fossil fuel based Cogeneration Plants**

**Applicability** [Incorporate at the start of the Agreement in the Preamble]

**WHEREAS** this EPA shall be applicable to Non fossil fuel based Co-generation Plants. The Seller's Plant can be qualified as a Cogeneration facility when it simultaneously produces two or more forms of useful energy such as electrical power and steam, electric power and shaft (mechanical) power, etc. A project may qualify to be termed as a co-generation project, if it is in accordance with the definition and also meets the qualifying requirement outlined below:

*Topping cycle mode of Co-generation – Any facility that uses non-fossil fuel input for the power generation and also utilizes the thermal energy generated for useful heat applications in other industrial activities simultaneously.*

***For the co-generation facility to qualify under topping cycle mode, the sum of useful power output and one half the useful thermal output be greater than 45% of the facility's energy consumption, during season.***

**WHEREAS** Any incidental co-generation by the sugar mill will not be termed as "Co-generation". Further, the Co-generation project should predominantly use non-fossil fuels such as bagasse, biomass, bio-gas, agricultural waste such as rice husk, groundnut shells, etc. Any other industrial co-generation or fossil fuel based co-generation will not be covered under this EPA.